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Contents

Federal Register

Vol. 68, No. 81

Monday, April 28, 2003

Agriculture Department
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Forest Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, approvals, 22415–22416

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings:
Access Board, 22358

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

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22386

Children and Families Administration
NOTICES
Adoption and Foster Care Analysis and Reporting System; improvement, 22386–22387

Coast Guard
RULES
Drawbridge operations:
Florida, 22294–22296
Ports and waterways safety:
Alaska Marine Highway System vessels in Southeast Alaska; security zone, 22298–22301
Portland Captain of Port Zone, ME—
Escorted vessel transits; security zones, 22305–22308
Passenger vessels; security zones, 22303–22305
Safety and security zones, etc.; list of temporary rules, 22301–22303
St. Croix, U.S. Virgin Islands; security zone, 22296–22298
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22407
Health Information Privacy Program:
Protected health information; appropriate uses and disclosures, 22407–22408
Meetings:
Houston/Galveston Navigation Safety Advisory Committee, 22408–22409

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

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Fiji, 22361
Indonesia, 22361–22362
Qatar, 22362–22363
Singapore, 22363
Textile and apparel categories:
Caribbean Basin Trade Partnership Act; short supply requests—
Shirting fabrics for use in blouses, 22363–22364

Commodity Credit Corporation
NOTICES
Domestic Sugar Program; 2002-crop cane sugar marketing allotments and allocations; revisions, 22355–22357

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22364–22365

Delaware River Basin Commission
NOTICES
Meetings and hearings, 22365–22366

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Church of the Living Tree; correction, 22453
Knoll Pharmaceutical Co., 22416

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22366–22368

Employment and Training Administration
PROPOSED RULES
Senior Community Service Employment Program, 22519–22561
NOTICES
Adjustment assistance:
Adecco, North American, LLC, 22417–22418
Adecco Staffing Services Workers, 22417
Alcatel USA Marketing, Inc., 22418
Andrews Wire Co., 22418
Edgcomb Metals, 22418
Maya Kanulie, 22419
Express Personnel Services, 22418
Fishing Vessel LONNY A., 22418
Fishing Vessel MISS SYNOVA, 22418–22419
George Wilson, 22419
National Refractories & Minerals Corp., 22419
Olin Corp., 22419
Raytheon Aircraft, 22419
Reliant Fastener, 22419–22420
Sanmina-SCI, 22420
Shephard Clothing Co., Inc., 22420
Shrimping Vessel VAGABOND, 22420
NAFTA transitional adjustment assistance:
General Cable Corp., 22420
Power One, 22420–22421

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration

NOTICES
Environmental statements; notice of intent:
Portsmouth, OH and Paducah, KY; depleted uranium hexafluoride conversion facilities; construction, operation, and decontamination/decommissioning, 22368–22369
Meetings:
Environmental Management Site-Specific Advisory Board—
Paducah Gaseous Diffusion Plant, KY, 22369

Environmental Protection Agency
NOTICES
Meetings:
Science Advisory Board, 22377–22379

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Dowty Aerospace Propellers, 22339–22341
NOTICES
Committees; establishment, renewal, termination, etc.:
National Parks Overflights Advisory Group, 22449–22450

Federal Bureau of Investigation
NOTICES
Committees; establishment, renewal, termination, etc.:
Criminal Justice Information Services Advisory Policy Board, 22416

Federal Communications Commission
RULES
Nondiscrimination on basis of disability in federally conducted programs and activities, 22315–22319
Radio stations; table of assignments:
Arizona and New Mexico, 22321
California, 22321–22322
Oklahoma and Texas, 22322–22323
Various States, 22319–22321
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22379

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
El Paso Merchant Energy, L.P., et al., 22371–22372
Midwest Independent Transmission System Operator, Inc., et al., 22372–22373
Meetings; Sunshine Act, 22373–22376
Applications, hearings, determinations, etc.:
Allegheny Energy Supply Units 3, 4, & 5, LLC, 22369–22370
Brookhaven Energy L.P., 22370
Capital Power, Inc., 22370
Entergy Services, Inc., 22371
S.D. Warren Co., 22371

Federal Motor Carrier Safety Administration
RULES
Motor carrier safety standards:
Drivers' hours of service—
Fatigue prevention; driver rest and sleep for safe operations, 22455–22517

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 22379–22380
Formations, acquisitions, and mergers, 22380
Privacy Act:
Systems of records, 22381–22385

Federal Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 22453

Fish and Wildlife Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish; subsistence taking and customary trade, 22308–22313
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Cactus ferruginous pygmy-owl; Arizona distinct population segment, 22353–22354
NOTICES
Comprehensive conservation plans; availability, etc.:
Seedskadee National Wildlife Refuge, WY, 22409
Endangered and threatened species and marine mammal permit applications, 22409–22410
Environmental statements; availability, etc.:
Incidental take permits—
Notomas Basin, Sacramento and Sutter Counties, CA; giant garter snake, valley elderberry longhorn beetle, etc., habitat conservation plan, 22410–22411
Environmental statements; notice of intent:
Incidental take permits—
Montana; Montana Natural Resources and Conservation Department; forested State Trust lands, 22412–22414

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Chlortetracycline and sulfamethazine, 22294
Praziquantel, pyrantel pamoate, and febantel tablets, 22293–22294
PROPOSED RULES
Food for human consumption:
Infant formula; current good manufacturing practice, quality control procedures, etc., 22341–22343
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22387–22389
Biological products:
Patent extension; regulatory review period determinations—
PREVNAR, 22389–22390
Human drugs:
Patent extension; regulatory review period determinations—
AROMASIN, 22390–22391
Meetings:
Medical Devices Advisory Committee, 22391
Reports and guidance documents; availability, etc.:
FDA Modernization Act of 1997—
Recognized Standards List modifications (Recognition List Number: 008), 22391–22400

Inspection by Accredited Persons Program; implementation under Medical Device User Fee and Modernization Act of 2002; accreditation criteria, 22400–22405

Food Safety and Inspection Service
NOTICES
Meetings:
Applied epidemiology and other tools use to protect public health, 22357–22358

Forest Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish; subsistence taking and customary trade, 22308–22313
NOTICES
Meetings:
Resource Advisory Committees—
Lincoln County, 22358

General Services Administration
RULES
Federal travel:
Per diem rates; per diem rate tables in Chapter 301 removed, and prescribed maximum per diem rates for Continental United States, 22314–22315
NOTICES
Acquisition regulations:
Transmittal for Transportation Schedules and Related Basic Documents (SF 1186); form revision, 22385

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
RULES
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalties imposition, and hearings; correction, 22453
NOTICES
Federal claims; interest rates on overdue debts, 22385–22386

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22405–22406
Meetings:
Primary Care Medicine and Dentistry Training Advisory Committee, 22406

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22450–22452

International Trade Administration
NOTICES
Antidumping:
Stainless steel bar from—
India, 22358–22359
Countervailing duties:
Alloy magnesium from—
Canada, 22359–22360

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Federal Bureau of Investigation

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 22416–22417

Land Management Bureau
NOTICES
Public land orders:
Colorado, 22414
Utah, 22414–22415

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Oil and gas lease sales—
Restricted joint bidders list, 22415

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts and Humanities, President's Committee, 22421
Combined Arts Advisory Panel, 22421
Fellowships Advisory Panel, 22421–22422

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Monkfish, 22325–22333
Northeast multispecies, 22333–22338
International fisheries regulations:
Pacific halibut—
Catch sharing plan; correction, 22323–22325

National Science Foundation
NOTICES
Meetings:
Education and Human Resources Advisory Committee, 22422

Nuclear Regulatory Commission
NOTICES
Petitions; Director's decisions:
AmerGen Energy Co., LLC, 22422–22423

Patent and Trademark Office
PROPOSED RULES
Patent cases:
Patent statute; changes to implement 2002 inter partes reexamination and other technical amendments, 22343–22353

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 22423

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Federal Physicians Comparability Allowance Amendments of 2000; application to certain Foreign Service and CIA benefits systems (EO 13297), 22563–22566

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
SEI Index Funds et al., 22423–22425
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 22425–22426
Chicago Board Options Exchange, Inc., 22426–22429
Depository Trust Co., 22429–22433
Fixed Income Clearing Corp., 22433–22434
National Association of Securities Dealers, Inc., 22434–22445
Options Clearing Corp., 22445–22446
Philadelphia Stock Exchange, Inc., 22446–22449

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Main Street Mezzanine Fund, L.P., 22449

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration

Treasury Department
See Internal Revenue Service

Western Area Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Cheyenne-Miracle Mile 115-kilovolt Transmission Line Rebuild Project, WY, 22376–22377

Separate Parts In This Issue

Part II
Transportation Department, Federal Motor Carrier Safety Administration, 22455–22517

Part III
Labor Department, Employment and Training Administration, 22519–22561

Part IV
Executive Office of the President, Presidential Documents, 22563–22566

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13297.....22565

14 CFR

Proposed Rules:

39.....22339

20 CFR

Proposed Rules:

641.....22520

21 CFR

520.....22293
558.....22294

Proposed Rules:

106.....22341
107.....22341

33 CFR

117.....22294
165 (5 documents) 22296, 22298, 22301, 22303, 22305

36 CFR

242.....22308

37 CFR

Proposed Rules:

1.....22343

41 CFR

Ch. 301-11.....22314
Ch. 302-4.....22314

45 CFR

160.....22453

47 CFR

1.....22315
73 (4 documents) 22319, 22321, 22322

49 CFR

385.....22456
390.....22456
395.....22456

50 CFR

100.....22308
300.....22323
648 (2 documents) 22325, 22333

Proposed Rules:

17.....22353

Rules and Regulations

Federal Register
Vol. 68, No. 81
Monday, April 28, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Praziquantel, Pyrantel Pamoate, and Febantel Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bayer Corp., Agriculture Division, Animal Health. The supplemental NADA provides for use of a larger size of praziquantel/pyrantel pamoate/febantel tablet for the removal of several species of internal parasites in dogs.

DATES: This rule is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *mberson@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, filed a supplement to NADA 141–007 that provides for use of a larger size of DRONTAL PLUS (praziquantel/pyrantel pamoate/febantel) Tablets for the removal of several species of internal parasites in dogs. The supplemental NADA is approved as of February 10, 2003, and the regulations are amended in 21 CFR 520.1872 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. Section 520.1872 is amended by adding new paragraph (a)(3), and by revising the table in paragraph (c)(1)(i) to read as follows:

§ 520.1872 Praziquantel, pyrantel pamoate, and febantel tablets.

(a) * * *

(3) Tablet No. 3: 136 milligrams (mg) praziquantel, 136 mg pyrantel base, and 680.4 mg febantel.

* * * * *

(c) * * *

(1) * * *

(i) * * *

Weight of animal		Number of tablets per dose		
Kilograms	Pounds	Tablet no. 1	Tablet no. 2	Tablet no. 3
0.9 to 1.8	2 to 4	1/2		
2.3 to 3.2	5 to 7	1		
3.6 to 5.4	8 to 12	1 1/2		
5.9 to 8.2	13 to 18	2		
8.6 to 11.4	19 to 25	2 1/2		
11.8 to 13.6	26 to 30		1	
14.1 to 20.0	31 to 44		1 1/2	
20.4 to 27.2	45 to 60		2	1
27.7 to 40.9	61 to 90			1 1/2
41.3 to 54.5	91 to 120			2

* * * * *

Dated: April 4, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–10416 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline and Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The ANADA provides for the use of a fixed-combination Type A medicated article containing chlortetracycline and sulfamethazine to make two-way combination drug Type C medicated feeds for beef cattle.

DATES: This rule is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, filed ANADA 200–314 for use of PENNCHLOR S 700 (chlortetracycline/sulfamethazine), a fixed-combination Type A medicated article used to make two-way combination drug Type C medicated feeds for beef cattle. Pennfield Oil Co.'s PENNCHLOR S 700 Type A medicated article is approved as a generic copy of Alpharma Inc.'s AUREO S 700, approved under NADA 35–805. The ANADA is approved as of January 29, 2003, and the regulations are amended in 21 CFR 558.140 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.140 [Amended]

■ 2. Section 558.140 *Chlortetracycline and sulfamethazine* is amended in paragraph (a) by removing ''046573'' and by adding in its place ''Nos. 046573 and 053389''.

Dated: April 1, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–10418 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–048]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Miles 1062.6 and 1064.0 at Fort Lauderdale, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the East Sunrise Boulevard (SR 838) and East Las Olas bridges, miles 1062.6 and 1064.0, in Fort Lauderdale, Florida. This temporary rule allows these bridges to not open for periods of time on May 3 and 4, 2003, to facilitate the vehicle traffic flow to and from the Air & Sea Show, while still providing for the reasonable needs of navigation.

DATES: This rule is effective from 4 p.m. on May 3 to 6 p.m. on May 4, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of this docket and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NRPM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM for this regulation. Publishing an NPRM was impracticable and contrary to the public interest. There was insufficient time remaining to publish an NPRM after we received this request to change the bridges' operating schedules, and further delaying the event to follow normal rulemaking procedures before incorporating this important safety measure would have a significant negative effect on the outcome of this highly-attended event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We did not receive this request to change the bridges' operating schedules with sufficient time remaining to delay the rule's effectiveness until 30 days after its publication. Further, delaying the event to follow normal rulemaking procedures before incorporating this important safety measure would have a significant negative effect on the outcome of this highly-attended event.

Background and Purpose

The East Las Olas Boulevard bridge, mile 1064.0, has a vertical clearance of 31 feet above mean high water and a horizontal clearance of 91 feet between

the fenders. The existing regulations in 33 CFR 117.5 require the bridge to open on signal.

The East Sunrise Boulevard bridge (SR 838), mile 1062.6, has a vertical clearance of 25 feet at mean high water and a horizontal clearance of 90 feet between the fenders. The existing regulation is 33 CFR 117.261(gg) and requires the bridge to open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

The City of Fort Lauderdale Police Department, on behalf of the City of Fort Lauderdale, recently requested that the Coast Guard temporarily change the operating regulations for these bridges during parts of the 2003 Air and Sea Show to allow the considerable volume of vehicular and pedestrian traffic to be routed from the beach as safely and quickly as possible. These temporary changes to the bridge operating regulations will require the East Sunrise Boulevard (SR 838) and East Las Olas bridges in Fort Lauderdale, Florida to remain closed from 4 p.m. to 6 p.m. and 9:45 p.m. to 10:45 p.m. on May 3, 2003, and from 4 p.m. to 6 p.m. on May 4, 2003, except that, the East Sunrise Boulevard bridge (SR 838) may open at 4:45 p.m. and 5:30 p.m. each day, and the East Las Olas bridge may open at 4:30 p.m. and 5:15 p.m. each day on May 3 and 4, 2003. In accordance with 33 CFR 117.261 (a), public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed through the draw of each bridge at any time.

Discussion of Rule

This temporary rule allows these bridges to remain closed for periods of time on May 3 and 4, 2003, to facilitate the vehicle traffic flow to and from the Air & Sea Show. The bridges' operating schedules will only be changed for a total of five hours over a two-day period and include two openings each day during each afternoon period affected by this temporary rule, and the longest a vessel will have to wait for an opening is one hour during the evenings of May 3, 2003, and May 4, 2003.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The bridges' operating schedules will only be changed for five hours over a two-day period and include two openings each day during each afternoon period affected by this temporary rule, and the longest a vessel will have to wait for an opening is one hour during the evenings of May 3, 2003, and May 4, 2003.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be changed for five hours over a two-day period and include two openings each day during each afternoon period affected by this temporary rule, and the longest a vessel will have to wait for an opening is one hour during the evenings of May 3, 2003, and May 4, 2003.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If this temporary rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 4 p.m. on May 3, 2003 until 6 p.m. on May 4, 2003, in § 117.261, temporarily suspend paragraph (gg) and add temporary paragraphs (ss) and (tt) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ss) East Las Olas bridge, mile 1064 at Fort Lauderdale. The draw shall open on signal except that on May 3 and 4, 2003, from 4 p.m. to 6 p.m. each day, the draw need only open at 4:30 p.m. and 5:15 p.m., and on May 3, 2003, from 9:45 p.m. to 10:45 p.m., the draw need not open.

(tt) East Sunrise Boulevard bridge (SR 838), mile 1062.6 at Fort Lauderdale. The draw shall open on signal except that on May 3 and 4, 2003, from 4 p.m. to 6 p.m. each day, the draw need only open at 4:45 p.m. and 5:30 p.m., and, on May 3, 2003, from 9:45 p.m. to 10:45 p.m., the draw need not open.

Dated: April 16, 2003.

James S. Carmichael,

Rear Admiral, Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–10290 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan–03–047]

RIN 1625–AA00

Security Zone; St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands. This security zone extends three miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. All vessels must receive permission from the U.S. Coast Guard Captain of the Port San Juan prior to entering this temporary security zone. This security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts.

DATES: This regulation is effective at 6 p.m. on March 18, 2003 until 11:59 p.m. on June 15, 2003. Comments and related material must reach the Coast Guard on or before June 27, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of (COTP San Juan-03–047) and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00968, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Roldan, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Similar regulations were established on December 19, 2001 and published in the **Federal Register** (67 FR 2332), and on September 13, 2002 and published in the **Federal Register** (67 FR 57952). However, these regulations expired on June 15, 2002 and December 15, 2002, respectively. We did not receive any comments on these two regulations. The Captain of the Port San Juan has determined that the need to continue to have this regulation in place exists. The Coast Guard intends to publish a notice of proposed rulemaking to propose making this temporary rule a final rule.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Juan 03–

047) indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels without a scheduled arrival from coming within 3 miles of the HOVENSA facility unless specifically permitted by the Captain of the Port San Juan, his designated representative, or the HOVENSA Facility Port Captain. The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, seven days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, seven days a week. The temporary security zone around the HOVENSA facility is outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because this zone covers an area that is not typically used by commercial vessel traffic, including fishermen, and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Small Entities

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

This rule may affect the following entities, some of which may be small entities: owners of small charter fishing or diving operations that operate near the HOVENSA facility. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

Protection of Children

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

health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new section 165.T07–101 is added to read as follows:

§ 165.T07–101 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* All waters three miles seaward of the HOVENSA facility waterfront outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, with the exception of vessels with scheduled arrivals to the HOVENSA Facility, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port San Juan or a Coast Guard commissioned, warrant, or petty officer designated by him, or the HOVENSA Facility Port Captain. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz). The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, seven days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, seven days a week.

(c) *Effective period.* This section is effective from 6 p.m. on March 18, 2003 until 11:59 p.m. on June 15, 2003.

Dated: March 18, 2003.

William J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Juan.

[FR Doc. 03–10293 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Southeast Alaska–03–001]

RIN 1625–AA00

Security Zone: Protection of Alaska Marine Highway System (AMHS) Vessels M/V Columbia, M/V Kennicott, M/V Malaspina, and M/V Matanuska, in Southeast Alaska Waters

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the security of AMHS vessels in the navigable waters of Southeast Alaska. This security zone will provide for the regulation of vessel traffic in the vicinity of AMHS vessels in the navigable waters of Southeast Alaska.

DATES: This temporary rule is effective March 19, 2003, until September 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP Southeast Alaska–03–001 and are available for inspection or copying at Marine Safety Office Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska 99801, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Darwin A. Jensen, Marine Safety Office Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska 99801, (907) 463–2450.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard AMHS vessels from sabotage, other subversive acts, or accidents. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to AMHS vessels from the threats posed by hostile entities and would compromise the vital national interest in protecting maritime transportation and commerce. The security zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for AMHS vessels. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

Background and Purpose

The Coast Guard, through this action, intends to assist AMHS vessels by establishing a security zone to exclude persons and vessels from the immediate vicinity. Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001, terrorist attacks (67 FR 58317 (Sept. 13, 2002) (Continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (Continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (Security

endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other Federal, State, or local agencies.

Discussion of Rule

This rule controls vessel movement in a regulated area surrounding AMHS high capacity passenger vessels that are in service. For the purpose of this regulation, AMHS high capacity passenger vessels are M/V Columbia, M/V Kennicott, M/V Malaspina and M/V Matanuska (''AHMS vessels''). All vessels authorized to be within 100 yards of these AMHS vessels shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel, except a public vessel (defined below), is allowed within 100 yards of the AHMS vessels, unless authorized by the on-scene official patrol or AMHS vessel master. Vessels requesting to pass within 100 yards of these vessels shall contact the official patrol or AMHS vessel master on VHF–FM channel 16 or 13. The on-scene official patrol or AMHS vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of the subject AMHS vessels in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of a passing AMHS vessel. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) Individual AMHS vessel security zones are limited in size; (ii) the on-scene official patrol or AMHS vessel master may authorize access to the AMHS vessel security zone; (iii) the AMHS vessel security zone for any given transiting AMHS vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of AMHS vessels in the navigable waters of the United States.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual AMHS vessel security zones are limited in size; (ii) the on-scene official patrol or AMHS vessel master may authorize access to the AMHS vessel security zone; (iii) the AMHS vessel security zone for any given transiting AMHS vessel will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard is committed to working with tribal governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of AMHS vessels and the Coast Guard's commitment to working with the tribes, we have determined that AMHS vessel security and fishing rights protection need not be incompatible. Therefore, we have determined that this Temporary Final Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969(NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A draft ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From March 19, 2003, until September 19, 2003, temporary § 165.T17–014 is added to read as follows:

§ 165.T17–014 Security Zone Regulations, Alaska Marine Highway System High Capacity Passenger Vessel Security Zone, Southeast Alaska, Captain of the Port Zone.

(a) The following definitions apply to this section:

(1) *Alaska Law Enforcement Officer* means any General Authority Alaska Peace Officer, Limited Authority Alaska Peace Officer, or Specially Commissioned Alaska Peace Officer, as defined by Alaska State laws.

(2) *Alaska Marine Highway System high capacity passenger vessel* (''AMHS vessel'') includes the following vessels; M/V Columbia, M/V Kennicott, M/V Malaspina and M/V Matanuska.

(3) *AMHS vessel security zone* is a regulated area of water, established by this section, surrounding an AMHS vessel for a 100-yard radius that is necessary to provide for the security of these vessels.

(4) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(5) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.05–25.

(6) *Navigation Rules* means the Navigation Rules, International-Inland.

(7) *Official Patrol* means those persons designated by the Captain of the Port to monitor an AMHS vessel security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized to enforce this section are designated as the Official Patrol.

(8) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(b) *Location.* The following is the Alaska Marine Highway System high capacity passenger vessel (''AMHS vessel'') security zone: All water and land areas within a 100-yard radius of an AMHS vessel when that vessel is located within the navigable waters of the United States, starting at 60 01.3′ N. latitude, 142 00′ W. longitude; thence northeasterly to the Canadian border at 60 18.7′ N. latitude, 141 00′ W. longitude; thence southerly and easterly along the United States-Canadian shoreside boundary to 54 40′ N. latitude; thence westerly along the United States-Canadian maritime boundary to the outermost extent of the United States Exclusive Economic Zone (EEZ); thence northerly along the outer boundary of the EEZ to 142 00′ W longitude; thence due north to the point of origin. [Datum: NAD 1983]

(c) An AMHS vessel security zone exists around the subject AMHS vessels at all times, whether the AMHS vessel is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within an AMHS vessel security zone.

(e) All vessels authorized to be within an AMHS vessel security zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel or person is allowed within 100 yards of an AMHS vessel, unless authorized by the on-scene official patrol or AMHS vessel master.

(f) To request authorization to operate within an AMHS vessel security zone, contact the on-scene official patrol or AMHS vessel master on VHF–FM channel 16 or 13.

(g) When conditions permit, the on-scene official patrol or AMHS vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of an AMHS vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing AMHS vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or

anchored AMHS vessel with minimal delay consistent with security.

(h) Exemption. Public vessels as defined in paragraph (a) above are exempt from complying with paragraphs (b), (c), (e), (f), (g), (i), and (j), of this section.

(i) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. When immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effective control in the vicinity of an AMHS vessel, any Federal Law Enforcement Officer or Alaska State Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR § 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(j) Waiver. The Captain of the Port Southeast Alaska may waive any of the requirements of this section for any vessel upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: March 18, 2003.

S. J. Ohnstad,

Commander, Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 03–10292 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2003–15023]

Safety Zones, Security Zones and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between October 1, 2002, and December 31, 2002, that were not published in the **Federal Register**. This quarterly notice lists temporary security zones, safety zones and regulated navigation areas of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between October 1, 2002, and December 31, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at *http:dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT Sean Fahey, Office of Regulations and Administrative Law, telephone (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Regulated navigation areas are fixed locations where the movement of vessels inside is limited for environmental, safety or security purposes. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when a event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these security zones, safety zones or regulated navigation areas by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary security zones, safety zones and regulated navigation areas. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, security zones and regulated navigation areas listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

■ The following rules were placed in effect temporarily during the period from October 1, 2002, through December 31, 2002, unless otherwise indicated. This notice also includes rules that were not received in time to be included on the quarterly notice for the third quarter of 2002.

Dated: April 22, 2003.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT—4TH QUARTER 2002

COTP docket	Location	Type	Effective date
CHARLESTON 02–142	COOPER RIVER, PORT OF CHARLESTON, SC	SAFETY ZONE	11/15/2002
HOUSTON-GALVESTON 02–019	SAN JACINTO RIVER, HOUSTON, TX	SAFETY ZONE	10/29/2002
HOUSTON-GALVESTON 02–020	SAN JACINTO RIVER, HOUSTON, TX	SAFETY ZONE	11/04/2002
HOUSTON-GALVESTON 02–021	SAN JACINTO RIVER, HOUSTON, TX	SAFETY ZONE	11/05/2002
HOUSTON-GALVESTON 02–022	SAN JACINTO RIVER, HOUSTON, TX	SAFETY ZONE	11/06/2002
HOUSTON-GALVESTON 02–023	SAN JACINTO RIVER, HOUSTON, TX	SAFETY ZONE	11/09/2002
HUNTINGTON 02–010	ELK RIVER, M. 0 TO 2	SECURITY ZONE	10/31/2002
JACKSONVILLE 02–129	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	10/31/2002

COTP QUARTERLY REPORT—4TH QUARTER 2002—Continued

COTP docket	Location	Type	Effective date
JACKSONVILLE 02–149	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	11/30/2002
JACKSONVILLE 02–150	ST. JOHNS RIVER, JACKSONVILLE, FL	SAFETY ZONE	12/11/2002
LOUISVILLE 02–008	OHIO RIVER, M. 468.5 TO 473	SECURITY ZONE	10/07/2002
LOUISVILLE 02–011	OHIO RIVER, M. 466.8 TO 470.5	SAFETY ZONE	10/19/2002
MIAMI 02–114	MIAMI RIVER, MIAMI, FL	SAFETY ZONE	10/03/2002
MIAMI 02–136	INTRACOASTAL WATERWAY, WEST PALM BEACH, FL.	SAFETY ZONE	12/07/2002
MIAMI 02–137	NEW RIVER, FORT LAUDERDALE, FL	SAFETY ZONE	12/07/2002
MIAMI 02–138	MIAMI BEACH, FL	SAFETY ZONE	12/31/2002
MIAMI 02–139	MIAMI BEACH, FL	SAFETY ZONE	12/31/2002
MIAMI 02–140	INTRACOASTAL WATERWAY, FT. LAUDERDALE, FL.	SAFETY ZONE	12/14/2002
MIAMI 02–152	MIAMI RIVER, MIAMI, FL	SAFETY ZONE	12/19/2002
MOBILE 02–018	PASCAGOULA, MISSISSIPPI	SAFETY ZONE	10/05/2002
MOBILE 02–021	GULFPORT, MISSISSIPPI	SAFETY ZONE	10/04/2002
MOBILE 02–023	GULFPORT CHANNEL, GULFPORT, MISSISSIPPI	SAFETY ZONE	10/03/2002
MOBILE 02–023	BLACK WARRIOR RIVER, WALKER COUNTY, AL	SAFETY ZONE	11/05/2002
MORGAN CITY 02–008	GULF INTRACOASTAL WATERWAY, M. 98 TO 99	SAFETY ZONE	10/22/2002
MORGAN CITY 02–009	GULF INTRACOASTAL WATERWAY, M. 86 TO 88	SAFETY ZONE	10/18/2002
MORGAN CITY 02–010	GULF INTRACOASTAL WATERWAY, M. 173 TO 175.	SAFETY ZONE	11/09/2002
NEW ORLEANS 02–023	TCHEFUNCT RIVER, M. 1 TO 3	SAFETY ZONE	10/11/2002
NEW ORLEANS 02–024	SOUTH SHORE, NEW ORLEANS, LA	SAFETY ZONE	11/06/2002
NEW ORLEANS 02–026	OUACHITA RIVER, M. 165 TO 168	SAFETY ZONE	12/07/2002
NEW ORLEANS 02–027	RED RIVER, M. 87 TO 90	SAFETY ZONE	12/20/2002
PADUCAH 02–010	OHIO RIVER, M. 934 TO 936	SAFETY ZONE	10/24/2002
PADUCAH 02–011	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	11/18/2002
PADUCAH 02–012	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	12/03/2002
PADUCAH 02–013	UPPER MISSISSIPPI RIVER, M. 51.5 TO 52.5	SAFETY ZONE	12/17/2002
PITTSBURGH 02–025	ALLEGHENY RIVER, M. 0.3 TO 0.6	SAFETY ZONE	10/04/2002
PITTSBURGH 02–026	ALLEGHENY RIVER, M. 0.4 TO 0.8	SAFETY ZONE	11/21/2002
PITTSBURGH 02–027	ALLEGHENY RIVER, M. 0.6 TO 0.9	SAFETY ZONE	12/03/2002
PORT ARTHUR 02–007	CAPTAIN OF THE PORT, PORT ARTHUR, AREA	SAFETY ZONE	10/02/2002
SAN DIEGO 02–020	SAN DIEGO BAY, SAN DIEGO, CA	SAFETY ZONE	10/05/2002
SAN DIEGO 02–025	NATIONAL CITY MARINE TERMINAL, SAN DIEGO, CA.	SECURITY ZONE	10/14/2002
SAN DIEGO 02–027	NATIONAL CITY MARINE TERMINAL, SAN DIEGO, CA.	SECURITY ZONE	10/26/2002
SAN FRANCISCO BAY 02–020	SAN FRANCISCO BAY, CALIFORNIA	SECURITY ZONE	11/15/2002
SAN FRANCISCO BAY 02–021	SAN FRANCISCO BAY, CALIFORNIA	SAFETY ZONE	12/31/2002
SAN JUAN 02–126	LAS MAREAS HARBOR, GUAYAMA, PUERTO RICO.	SAFETY ZONE	10/17/2002
SAVANNAH 02–134	SAVANNAH RIVER, SAVANNAH, GA	SECURITY ZONE	11/13/2002
WILMINGTON 02–001	WILMINGTON, NORTH CAROLINA	SECURITY ZONE	10/29/2002

DISTRICT QUARTERLY REPORT—4TH QUARTER 2002

District docket	Location	Type	Effective date
01–02–119	SOUTH BOSTON, MA	SAFETY ZONE	10/04/2002
01–02–125	FORE RIVER AND LONG CREEK, PORTLAND, ME	SECURITY ZONE	10/21/2002
01–02–126	VERRANZONO NARROWS BRIDGE, NEW YORK	SECURITY ZONE	11/03/2002
01–02–127	BOSTON, MA	SAFETY ZONE	10/21/2002
01–02–149	PORT OF NEW YORK/NEW JERSEY	SECURITY ZONE	12/31/2002
05–02–081	YORK RIVER, WEST POINT, VA	SAFETY ZONE	10/05/2002
05–02–082	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	10/06/2002
05–02–083	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	10/07/2002
05–02–084	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	10/12/2002
05–02–085	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	10/14/2002
05–02–086	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	10/24/2002
05–02–088	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	10/26/2002
05–02–089	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	10/29/2002
05–02–094	HAMPTON ROADS, ELIZABETH RIVER, VIRGINIA	SECURITY ZONE	11/12/2002
05–02–096	ELIZABETH RIVER, PORTSMOUTH, VIRGINIA	SAFETY ZONE	12/14/2002
05–02–098	CHESAPEAKE BAY, HAMPTON ROADS, VA	SAFETY ZONE	12/17/2002
05–02–104	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	12/29/2002
05–02–105	CHESAPEAKE BAY, HAMPTON ROADS, VA	SAFETY ZONE	12/27/2002
08–02–016	LOWER MISSISSIPPI RIVER, M. 529.8 to 532.3	REG NAV AREA	11/30/2002
09–02–524	CHICAGO RIVER, CHICAGO, IL	SAFETY ZONE	11/04/2002
09–02–525	CHICAGO ZONE, LAKE MICHIGAN	SECURITY ZONE	11/06/2002
09–02–527	NAVY PIER, CHICAGO HARBOR, IL	SAFETY ZONE	12/13/2002

DISTRICT QUARTERLY REPORT—4TH QUARTER 2002—Continued

District docket	Location	Type	Effective date
13–02–012	ELLIOTT BAY, WA	SAFETY ZONE	11/02/2002
13–02–017	ELLIOTT BAY, WA	SAFETY ZONE	10/26/2002
12–02–019	PUGET SOUND, WA	SECURITY ZONE	11/11/2002

REGULATIONS NOT ON PREVIOUS 3RD QUARTERLY REPORT

District/COTP	Location	Type	Effective date
COTP REGULATIONS FOR 3RD QUARTER			
MOBILE 02–020	GULFPORT, MISSISSIPPI, PASCAGOULA, MS, AND MOBILE, AL.	SAFETY ZONE	09/25/02

[FR Doc. 03–10423 Filed 4–25–03; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–001]

RIN 1625–AA00 [Formerly RIN 2115–AA97]

Security Zones; Passenger Vessels, Portland, ME, Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around high capacity passenger vessels, including international ferries, located in the Portland, Maine, Captain of the Port zone. These security zones are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels will be prohibited from entering these security zones without the permission of the Captain of the Port, Portland, Maine.

DATES: This rule is effective April 15, 2003.

ADDRESSES: There were no comments or material received from the public. However, documents indicated in this preamble as being available in the docket, are part of docket CGD01–03–001 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant R.F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 27, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone'' in the **Federal Register** (68 FR 9039). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The operation of international ferries and the arrival of passenger vessels begin in mid-April in the Portland, Maine, Captain of the Port zone. Due to heightened Homeland Security Advisory System threat levels, which have changed since this NPRM was first published, and the current conflict in Iraq, which has recently erupted, we feel it is necessary and prudent to enact this regulation on April 15, 2003 at the commencement of the international ferry and passenger vessel season, in order to properly protect these vessels, passengers, crew and others in the maritime community from possible terrorist actions.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing operations in the Middle East have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to these concerns, security zones around passenger vessels are necessary to ensure the safety and protection of the passengers aboard. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the ''Magnuson Act''), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

On October 7, 2002, a temporary final rule (TFR) entitled ''Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone'' was published in the **Federal Register** (67 FR 62373). That TFR, effective from September 25, 2002, until December 1, 2002, addressed concerns that vessels operating near passenger vessels present possible platforms from which individuals may gain unauthorized access to these passenger vessels or launch terrorist attacks upon said vessels. The TFR was issued to safeguard human life, vessels, and waterfront facilities from sabotage or terrorist acts.

To address the aforementioned concerns, the Coast Guard is establishing permanent security zones to prevent vessels or persons from accessing the navigable waters around and under passenger vessels in the Portland, Maine, Captain of the Port zone. Due to the continued heightened security concerns, this rule is necessary to provide for the safety of the port, the vessels, passengers and crew on the vessels, as well as to ensure passenger

vessels are not used as possible platforms for terrorist attacks.

Discussion of Comments and Changes

We received no public comments subsequent to the publishing of the proposed rule for these security zones. However, one change has been made to the rule as published in the notice of proposed rulemaking. Under ''Definition'', we have modified the phrase ''and for which passengers are embarked or disembarked'' to read, ''and for which passengers are embarked, disembarked or pay a port call.'' We feel this clarification more accurately reflects the fact that this rule applies to any of the defined passenger vessels that are entering a port in the Portland, Maine, Captain Of the Port zone, whether embarking new passengers, disembarking current passengers or just visiting the port.

Regulatory Evaluation

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

This rule is not significant for the following reasons: (a) The security zones will encompass only relatively small portions of the Captain of the Port, Portland, Maine zone around the transiting passenger vessels, allowing vessels to safely navigate around the zones without delay; and (b) vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

Small Entities

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

For reasons enumerated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. There is no indication the previous rule was burdensome on the maritime public. No letters commenting on the previous rule were received from the public.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Lieutenant R. F. Pigeon of Marine Safety Office Portland, Maine was available to answer any questions regarding this rule. No requests for assistance were received.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3427).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation, since implementation of

this action will not result in any: (1) Significant cumulative impacts on the human environment; (2) Substantial controversy or substantial change to existing environmental conditions; (3) Impacts on properties protected under the National Historic Preservation Act or (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.105 to read as follows:

§ 165.105 Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone.

(a) *Definition.* ''Passenger vessel'' as used in this section means a passenger vessel over 100 gross tons authorized to carry more than 500 passengers for hire making voyages, any part of which is on the high seas, and for which passengers are embarked, disembarked or pay a port call, in the Portland, Maine, Captain of the Port zone as delineated in 33 CFR 3.05–15.

(b) *Location.* The following areas are security zones:

(1) All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 100-yard radius of any passenger vessel that is anchored, moored, or in the process of mooring.

(2) All navigable waters, within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, extending 200 yards ahead, and 100 yards aside and astern of any passenger vessel that is underway.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port, Portland, Maine (COTP) or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

(d) *Enforcement.* The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: April 9, 2003.

Wyman W. Briggs,

Acting Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 03–10424 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–028]

RIN 1625–AA00

Security Zones; Escorted Vessel Transits, Portland, ME, Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones for vessels designated by the Captain of the Port (COTP) Portland, Maine, to be in need of a Coast Guard escort for security reasons while they are transiting the COTP Portland, Maine Zone. These security zones are needed to safeguard the public, designated vessels and their crews, other vessels and their crews, and the ports and infrastructure within the Portland, Maine, COTP zone from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into or movement within these zones, without the express permission of the Captain of the Port, Portland, Maine or his authorized patrol representative, is strictly prohibited.

DATES: This rule is effective from 12 a.m. (noon) EDT on April 15, 2003 until 12 a.m. (noon) EDT on October 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–03–028 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Portland, 27 Pearl Street, Portland, Maine, 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Ronald F. Pigeon at Marine Safety Office Portland, (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the heightened Homeland Security Advisory System threat level and the current conflict in Iraq we feel it is necessary and prudent to enact this regulation immediately to safeguard the public, the port, facilities, and the maritime community and to ensure the security of escorted vessel transits in the Portland, Maine, COTP zone. Any delay would leave escorted vessels, their crews, the port, facilities, and the maritime community with inadequate security measures to meet potential threats.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the heightened Homeland Security Advisory System threat level and the current conflict in Iraq, the Coast Guard has expanded its use of vessel boardings and escorts to better safeguard the public, the port facilities, and the maritime community from possible terrorist activity. This regulation is needed immediately to assist the Coast Guard in providing adequate protection around these escorted vessels while transiting in the Portland, Maine, COTP zone.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, the ongoing conflict in Iraq and the continuing concern for future terrorist acts against the United States, we have established security zones to safeguard escorted vessels transiting in the Portland, Maine, COTP zone. For purposes of this

rulemaking, escorted vessels include any vessels designated by the Coast Guard Captain of the Port, Portland, Maine to be in need of Coast Guard escorts in the Portland, Maine, COTP zone, other than Liquefied Petroleum Gas (LPG) vessels, which are covered under 33 CFR 165.103, or high capacity passenger vessels, which are covered under 33 CFR 165.105. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort protection.

These security zones are needed to protect escorted vessels, their crews, and the public, from harmful or subversive acts, accidents or other causes of a similar nature. The security zones have boundaries as follows: All navigable waters, within the Portland Maine, Captain of the Port zone, extending from the surface to the sea floor, extending 200-yards ahead, and 100-yards aside and astern of any designated vessel that is underway.

No person or vessel may enter or remain in the prescribed security zones at any time without the permission of the Captain of the Port. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or the designated Coast Guard on-scene representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), *in rem* liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the ''Magnuson Act''), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Rule

This proposed rule establishes temporary security zones for vessels designated to be in need of Coast Guard escorts by the Captain of the Port, Portland, Maine, while those vessels are transiting within the Portland, Maine, Captain of the Port zone. The security zones will encompass all navigable waters, within the Portland, Maine, Captain of the Port zone, extending from the surface to the sea floor, extending 200-yards ahead, and 100-yards aside and astern of any escorted vessel that is underway.

Given the threat of sabotage, terrorist or subversive attacks, this proposed rule is necessary to immediately assist the Coast Guard in providing adequate protection around escorted vessels while transiting in the Portland, Maine, COTP zone under Coast Guard escort. Specifically, the vessels at issue include: those which are deemed by the Captain of the Port, Portland, Maine to be in need of Coast Guard escorts, for security reasons. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of this escort protection.

The Captain of the Port, Portland, Maine will notify the maritime community of the periods during which the safety and security zones will be enforced. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zones and a designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary. Although this proposed rule will prevent some traffic from moving within a portion of the harbor during escorted vessel transits, the effect of this regulation will not be significant for several reasons: the impact on the navigational channel will be for a minimal amount of time, there is ample room to navigate around the zones, and delays, if any, will be minimal, as vessels will only have to wait a short time for the escorted vessel to pass if they cannot safely pass outside the zones. Moreover, broadcast notifications will be made via VHF radio to the maritime community advising them of the boundaries of the zones and Coast Guard and other law enforcement assets will be on-scene to direct vessels away from the zones. Vessels will be able to arrange passage through the zones, if needed, with the permission of the Captain of the Port or the designated on-scene patrol representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in these zones during escorted vessel transits. However, this rule will not have a significant economic impact on a substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zones; vessels can pass safely around the zones; vessels will only have to wait a short time for the escorted vessel to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Ronald F. Pigeon at Marine Safety Office Portland, (207) 780–3251.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation since implementation of this action will not result in any: (1) Significant cumulative impacts on the human environment; (2) Substantial controversy or substantial change to existing environmental conditions; (3) Impacts on properties protected under the National Historic Preservation Act or (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T01–028 to read as follows:

§ 165.T01–028 Security Zones; Escorted Vessel Transits, Portland, Maine, Captain of the Port Zone.

(a) *Definition.* ''Escorted vessel'' as used in this section describes escorted vessels operating in the Portland, Maine, Captain of the Port zone including the following: any vessels designated to be in need of Coast Guard escorts by the Captain of the Port, Portland, Maine, for security reasons, other than Liquefied Petroleum Gas (LPG) vessels, which are covered under 33 CFR 165.103, or high capacity passenger vessels, which are covered under 33 CFR 165.105. A designated representative aboard a Coast Guard cutter or patrol boat will accompany vessels deemed in need of escort protection.

(b) *Location.* The following areas are security zones: All navigable waters, within the Portland Maine, COTP zone, extending from the surface to the sea floor, extending 200 yards ahead, and 100 yards aside and astern of any escorted vessel that is underway.

(c) *Effective period.* This rule is effective from 12 a.m. (noon) EDT on April 15, 2003 until 12 a.m. (noon) EDT on October 11, 2003.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the COTP at telephone number 207–780–3251 or the authorized on-scene patrol representative on VHF–FM channel 13

(156.65 MHz) or VHF–FM channel 16 (156.8MHz) to seek permission to transit the area.

(3) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(4) The COTP or his designated representative will notify the maritime community of periods during which these zones will be enforced. The COTP or his designated representative will identify escorted vessel transits by way of marine information broadcast. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(e) *Enforcement.* The COTP will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: April 14, 2003.

Mark P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 03–10425 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI31

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—Subsistence Taking of Fish, Customary Trade

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule revises regulations related to the customary trade of fish taken under Subsistence Management Regulations. The rulemaking is necessary because Title VIII of the Alaska National Interest Lands Conservation Act recognizes customary trade as a use of subsistence-taken resources. However, the existing Federal regulations do not provide clear guidance as to what is or is not allowed in this regard. This rulemaking replaces a portion of the existing regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Wildlife Resources,'' which expire on February 29, 2004.

DATES: This rule is effective May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). On January 8, 1999, (64 FR 1276), the Departments published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt.* Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of Federal Subsistence Management Regulations (Subparts A, B, C, and D).

The Board has reviewed and approved the publication of this final rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands.

The Regional Council members represent varied geographical areas, cultures, interests, and resource users within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting in January 2003.

Recognizing Customary Trade Practices

Title VIII of ANILCA specifically identifies customary trade as a recognized part of subsistence uses. The term ''customary trade'' is defined in these regulations as the ''* * * exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal or family needs, and does not include trade which constitutes a significant commercial enterprise.'' The distinction between the terms ''customary trade'' and ''barter'' (which is also provided for in Title VIII) is that ''customary trade'' is the exchange of subsistence resources for cash, while ''barter'' is defined as the exchange of subsistence resources for something other than cash. While the exchange of subsistence resources as customary trade may involve fish, shellfish, or wildlife resources, this final rule only covers the customary trade of fish resources.

Prior to the expansion of the Federal program to include management on other waters on October 1, 1999, Federal Subsistence Board regulations applied only to subsistence fisheries in non-navigable waters. Those regulations contained the same definition for customary trade cited above, but also included the following regulatory language (in § __.26(c)(1)): ''No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination from the Federal Subsistence Board that the sale constitutes customary trade''. During the development of the regulations for the expanded fisheries program, it was recognized that the customary trade of fisheries resources was ongoing in many parts of Alaska, but was not provided for in the existing Federal regulation nor in existing State regulations (except for the sale of herring roe on kelp in southeast Alaska). Therefore the general prohibition in § __.26(c)(1) was replaced effective October 1, 1999, with the following language which generally permitted customary trade:

§ __.26(c)(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

While detailed statistics are not available to show where customary trade transactions of fishery resources take place, we believe that the large majority of such transactions take place within rural villages or nonrural communities. Generally, the Federal subsistence regulations apply only within or adjacent to conservation system units and other Federal lands as described in § __.3 of the regulations. We believe, however, that Federal regulations governing customary trade of subsistence-taken resources extend to any customary trade of legally taken subsistence fish regardless of where the actual cash transaction takes place.

We realized that those Federal regulations regarding customary trade needed to be refined. Much of the current discord and uncertainty associated with customary trade relates to the term ''significant commercial enterprise,'' which is not defined in the regulations. Additionally, there was a concern that, by allowing customary trade without further regulatory clarification, a loophole is created for valuable subsistence resources to become a commodity on the commercial market for monetary gain by those who wish to take advantage of the system. Without a more specific definition of ''significant commercial enterprise'' or other regulatory modification, law enforcement personnel regarded the regulation unenforceable. Another concern expressed by the Regional Councils was a potential need for a regional approach to customary trade regulations to take into account differences among the Regions.

Recognizing these concerns, the Board initiated an agreement with the Alaska Department of Fish and Game to assemble information on contemporary customary trade. In December 2000, the State submitted a report entitled ''Sharing, Distribution, and Exchange of Wildlife Resources, An Annotated Bibliography of Recent Sources'' documenting a wide range of continuing practices.

In late 2000, the Board established a Customary Trade Task Force composed of representatives of the 10 Regional Councils, fishery biologists, enforcement personnel, anthropologists, and others. This Task Force was charged with developing draft regulatory language defining the intent of customary trade as identified in ANILCA Title VIII. They met several times during 2001, requested, received, and considered public comments, and eventually developed preliminary draft regulatory language. The Task Force identified three different types of customary trade, with specific recommendations for each type. In the first, trade between rural residents was seen as involving relatively small amounts of fish and cash, and generally occurring within or between neighboring villages. Since this form of trade is relatively self-limiting, the Task Force recommended that unlimited cash exchange be permitted. For the second type, trade between rural residents and others (the term ''others'' is defined as ''commercial entities other than fishery businesses or individuals other than rural residents''), the Task Force recommended that customary trade also be permitted but that a monetary cap be applied to the customary trade of salmon. The Task Force chose a cap of $1,000 per household member per year for salmon as a starting point for discussion and potential modification by each Council. For the third type, customary trade or barter to fisheries businesses, the Task Force recommended that this activity not be permitted. This draft was circulated for review by all 10 Regional Councils, the 229 Federally recognized tribes, and for general public review. The Task Force met one more time to consider all comments received and eventually developed draft language that was presented to the Board on December 12, 2001, as Option 1 of six options for Board consideration. The preliminary draft language that was provided to the Regional Councils, 229 Federally recognized Tribal governments, and the general public was modified during the final meeting of the Task Force and then further modified by the Board at its December 2001 meeting.

Federal staff met with representatives of several villages, Tribal associations, and Regional Corporations. The consultation was conducted pursuant to the Department of the Interior, Alaska

Policy on Government to Government Relations with the Alaska Native Tribes. Three tribal governments submitted comments. Two of the Tribal governments concurred with the proposed regulatory language; the comments from the third tribal government were not specific to customary trade.

During the review of the draft Task Force recommendation by the Regional Councils, seven of the ten Councils made specific regional recommendations. Included as part of the Task Force draft language was a $1,000 cap per household member per year for the exchange of salmon for cash between rural residents and others. The Regional Council comments generally agreed with a monetary cap but also suggested regional needs and differences. Some Regional Councils thought the $1,000 cap too high; others thought it too low. Several Council members expressed concern about allowing sales of subsistence-taken salmon in areas experiencing subsistence shortages and limited fishing opportunities. In recent years, areas such as the Yukon and Kuskokwim Rivers have had poor salmon returns requiring managers to reduce subsistence fishing schedules and, in some instances, close subsistence fishing. Some Regional Councils also were concerned that the draft language restricted barter between rural residents and others.

After the Council, tribal government, and public review, the Task Force met one more time to consider comments received during that review. In general there was concurrence with the Task Force recommendations for unlimited customary trade between rural residents and a prohibition against customary trade between rural residents and fisheries businesses. (Two exceptions to this concurrence were the Bristol Bay Regional Council recommendations for a $1,000 limit on customary trade between rural residents in the Bristol Bay and Chignik Areas.) Based on concerns expressed at this Task Force meeting about the enforceability of a monetary cap on the exchange between rural residents and others, the Task Force added a permitting requirement to this section.

At its December 2001 meeting, the Board considered six options for a proposed rule regarding customary trade. After hearing the report of the Task Force, the six options, and comments from Regional Council Chairs, ADF&G, Alaska Department of Environmental Conservation, and other members of the public, the Board decided to initiate a formal rulemaking process with a proposed rule, as follows:

> Publish the proposed rule for public comment with the draft regulatory language, as recommended by the Customary Trade Task Force, except maintain the status quo for transactions between rural residents and others. Through the development and review of draft regulatory language for customary trade by the Task Force and the Regional Advisory Councils, there was general support and consensus for unlimited transactions between rural residents and the prohibition of transactions with fisheries businesses. Many of the concerns raised have been directed at the transactions between a rural resident and others. The proposed rule would maintain the status quo for transactions between a rural resident and others, prohibit transactions with State-licensed fisheries businesses, and allow further discussions and analyses to occur before proposing further restrictions on the transactions between a rural resident and others in a proposed rule.

To continue the rulemaking process, the Board published a proposed rule on February 27, 2002 (67 FR 8919). The Board invited comments on the proposed rule, the six options considered by the Board at their December 2001 meeting, and the regional recommendations provided by the Regional Councils. The Board also expanded public awareness of the proposed rule and the opportunity to comment through targeted mailouts to interested parties, news releases, additional Tribal consultation, and by posting on the Office of Subsistence Management Web site at *http://alaska.fws.gov/asm/home.html.* The Board expected to deliberate and take final action on this rule in May 2002.

In response to public requests, the Board members, at their May 2002 meeting, deferred action on the proposed rule for customary trade until January 2003. They took this action for several reasons:

- There were many public requests for a delay;
- The June Board meeting occurred during the peak of the rural subsistence fishing season so many subsistence users were unable to provide comments; and
- Any decision the Board made in June would not have been in effect until the 2003 fishing season.
- Also, this additional time provided further opportunity for discussion and input from the public.

In the meantime, the Board analyzed public comments and issued a summary of the comments in August 2002. This document was distributed to the public, tribal governments, 10 Federal Regional Advisory Councils, and other State and Federal agencies.

As a result of the initial comment period, the extended comment period, and the opportunity to testify at the January 14, 2003, public meeting, the Board received 102 written comments, recommendations from the Regional Councils, and public testimony from 10 others.

Comments were received from Federal and State agencies, Tribal organizations, sportsmen's associations, commercial fisheries business owners and organizations, and individuals. The comments generally fall into three categories:

—There should be no cash sale of subsistence-caught fish.
—There should be no regulations made by Federal or State governments that would limit customary trade.
—The final rule should be deferred.

These categories are not mutually exclusive. Some commentors who clearly oppose the proposed rule offer modifications that might lessen the effects of the proposed regulations. Others who clearly oppose the proposed rule urge the Board to defer action. Many do not state any position on the proposed rule, but recommend deferral of any action to allow for further research on use patterns, to confer with elders, and to consult with Tribal governments.

The suggested modifications to the proposed rule are as follows and may represent more than one commentor.

Paragraph (11): With few exceptions, those who commented on paragraph (11) believe that there should be no restrictions on trade between rural residents. The following modifications were recommended:

—Modify to included the words ''* * * exchange for cash between rural residents.* * *''
—No cash transactions should be allowed.
—Modify to require at least 50 percent of subsistence-caught fish must be retained for personal and family consumption.

We have revised the rule to include the words ''for cash'' to reflect the formal definition of customary trade. We did not modify the rule to require a certain amount of harvest be retained by the harvester. Because the exchange and use will be by rural residents, we felt this restriction was unnecessary and would require rather cumbersome record keeping.

Paragraph (12): Of the proposed regulations, paragraph (12) elicited the most comment. The comments tended to be regional with a few that would apply statewide. The following

comments and modifications were offered:

—Customary trade should be restricted to transactions between rural residents only.
—Customary trade outside of the local area is unknown in Yup'ik culture and should not be allowed now.
—There should be no limit set for the Seward Peninsula region.
—Some tribal entities stated that their trade patterns did not and do not include cash transactions. Traditional harvest and trade should continue under traditional management without interference from Federal or State governments.
—Allow only the sale of unprocessed fish.
—If escapement goals will not be met in a given year, customary trade of those fish stocks should be limited or prohibited.
—The monetary limit in northern Alaska should be $3,000 to $5,000 because of the higher cost of living.
—The monetary limit should be a range between $400 and $1,000 to be determined by region.
—Research should be conducted before setting a dollar limit on rural to urban customary trade.
—Eggs should not be sold at all.
—At least 50 percent of subsistence harvest of fish should be used for personal and family consumption.

We considered all of these comments and developed revised wording. The revisions allow sale to the end user only and will allow further regulatory adjustment by region.

Paragraph (13): This section was generally accepted. The following recommendations were offered:

—Modify to allow those who have commercial limited entry fishing permits to participate in subsistence trade and barter.
—Modify to exclude sales to those businesses that have filed the yearly ''Intent to Operate'' form with the State or those that operate retail sales establishments.
—Modify to read, ''No business or organization may purchase or barter for or solicit to barter for subsistence-taken fish, their parts, or their eggs.''

We have modified the wording of this section from the proposed rule to better cover the potential sale to or purchase by a commercial business. We believe, as do the Regional Councils, that subsistence-taken resources should not enter the commercial arena.

General Comments: In addition to these comments and recommendations, almost all the written public comments expressed concerns about topics within and surrounding customary trade.

Issue: These comments indicate that a significant number of the writers appear to have limited understanding of customary trade and the effects of the proposed regulation. Their comments imply that they believe the final rule will create a new practice and that subsistence hunting and fishing should only feed one's immediate family. These comments recommended the most restrictions or complete prohibition of customary trade.

Response: Customary trade in exchange for cash is recognized in Title VIII of ANILCA. Therefore, we must provide that opportunity for subsistence users. This regulation provides that opportunity while still providing a regulatory framework to avoid abuses.

Issue: Comments from those engaged in commercial fisheries and commercial sport fisheries expressed their fears that the proposed regulations will create a new commercial subsistence fishery that will substantially impact their businesses. They note that Alaska's fish stocks are already fully allocated and that the opportunity to generate cash from subsistence resources will result in additional harvest and pressure. They are concerned that the subsistence priority will reallocate fish to the detriment of established commercial and sport fisheries. They would either prohibit customary trade or would impose strict limits and reporting procedures.

Response: Because most customary trade among rural subsistence users occurs between local users and involves only small amounts of fish, the Board does not believe that this rule will create an incentive for additional harvest of the resources nor result in additional fish being sold in the commercial markets.

Issue: Other writers recommended that the Federal Subsistence Board initiate a public education process to help develop understanding and dispel current controversies. Some rural and Native comments centered on the tenet that subsistence is a right, not a privilege established by any non-Native government. They expressed concern that subsistence, as protected by ANILCA, may be diminished over time by the administrative fiat of bureaucrats. They are worried about the inevitable destructive impacts of the proposed regulations on centuries-old trade networks and, subsequently, on subsistence as a whole.

Response: This concern is not of a regulatory nature. However, we have a Web site that provides information relative to the Federal Subsistence Management Program and information to others relative to subsistence uses and resources.

Issue: There are those who are concerned about the inclusion of barter in these proposed regulations. They state that to include barter in any wording in this proposed rule sends a message that barter also needs to be controlled.

Response: We have removed any reference to barter from this rule.

Issue: Many writers expressed concern that the proposed rule has no permitting or recordkeeping requirement to make the regulation enforceable. They recommend accountability of harvests and sales to ensure evaluation for impacts to the resource and prevent increased harvests. Others recommend that the current recording of subsistence harvests done by ADF&G is sufficient.

Response: We have restructured the rule so that permitting and recordkeeping are unnecessary. We believe that total subsistence salmon harvests, including the portions kept for direct consumption and the portions shared, bartered, or exchanged in customary trade, are currently relatively well reported through subsistence fishing calendars and permits in most parts of rural Alaska. Should a problem surface in future years, we will consider adding a permitting or recordkeeping requirement.

Issue: There is also concern that public health safety standards must be assured by requiring that subsistence-caught fish sold to the public be processed under the State food handling and processing regulations.

Response: Nothing in this proposed rule would displace, supersede, or preempt State or Federal food and health safety laws and regulations governing the processing, handling, or sale of fish. In our public booklet version of these rules, we have specifically stated that sellers must conform to applicable public health and safety standards and regulations.

Issue: A majority of the letters, including those from State and Tribal agencies as well as from individuals, question the accelerated schedule the Board has set for addressing this matter and express varying degrees of uneasiness. Sufficient time has not been allowed to consider the effects the proposed regulations will have on individual lives, culture, or to develop collaborative management by Federal, State, and Tribal government agencies. More time is needed to conduct research to determine use patterns and needs and to consider the far-reaching effects of the proposed regulations. It was noted that Congress took 10 years to enact

subsistence protection regulations after ANCSA, so taking quality time to address customary trade should be acceptable to the Board. These writers urge the Board to proceed with care and caution and recommend deferring action.

Response: Recognizing some concerns relative to timing, we extended the comment period by nearly 7 months. The current regulations focus on protecting traditional practices of customary trade of subsistence-harvested fish, while minimizing the potential for commercialization of subsistence fish. These regulations create a baseline upon which additional region-specific regulations can be added. Also, we note that this rule is subject to annual review and potential revision, should it be necessary.

Regional Council Comments: In general, the Regional councils supported the unlimited exchange between rural residents and the prohibition on sale to or purchase by a business entity. Most Regional Council comments revolved around region-specific dollar limits on the sale of subsistence-taken resources to individuals other than rural residents. These dollar limits ranged from about $200 to $1,000. A few Regional Councils felt that there should be no limits or regulations.

Response: Because of this large variance among regions and because this is the first year under these regulations, we believe it is appropriate at this time to have standard language that applies statewide. We have, however, included recognition of a potential future need to adjust the regulations on a regional basis.

The Board discussed and evaluated proposed changes to this rule during a public meeting held in Anchorage, January 14, 2003. Following public testimony and after hearing Regional Council recommendations, the Board deliberated and took final action on requested changes to the proposed rule resulting in the final rule as set forth in this document.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992; amended January 8, 1999, 64 FR 1276; June 12, 2001, 66 FR 31533; and May 7, 2002, 67 FR 30559) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These proposed amendments do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

This rule is not significant under E.O. 12866. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule will not create inconsistencies with other agencies' actions; materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or raise novel legal or policy issues.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; however, the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources traded under this rule will be consumed by local rural residents and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish

(including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [Note: this is actually much higher than the current commercial ex-vessel value for salmon.] and $ 0.58 per pound for other fish, would equate to about $34 million in food value Statewide. We anticipate that only a very small portion of this harvest might be used in customary trade and most of that would remain in the local village or region.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. For this reason, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant adverse effects. During the development of this proposed rule, the Board initiated Tribal consultation with 229 Federally recognized Tribes. All of the comments that were received were consistent with the Task Force's recommended language. The Board will continue with Tribal consultation during the comment period through directed mailings and special meetings with Tribal entities. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART__—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart D—Subsistence Taking of Fish and Wildlife

■ 2. In subpart D of 36 CFR part 242 and 50 CFR part 100, § __.27(c)(11) through (13) is revised to read as follows:

§.__27 Subsistence taking of fish.

* * * * *

(c) * * *

(11) *Transactions between rural residents.* Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) *Transactions between a rural resident and others.* In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(13) *No sale to, nor purchase by, fisheries businesses.*

(i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011 or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions.

(ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken under the regulations in this part as part of your business transactions.

* * * * *

Dated: March 24, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: March 25, 2003.

Kenneth E. Thompson,

Regional Subsistence Group Leader, USDA—Forest Service.

[FR Doc. 03–10106 Filed 4–25–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 301–11 and 302–4

[FTR Case 2003–301; FTR Amendment 2003–03]

RIN 3090–AH72

Federal Travel Regulation; Per Diem Rates—Removal of Appendix A Per Diem Rate Tables to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

AGENCY: Office of Governmentwide Policy, Travel Management Policy Division, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to remove the per diem rate tables from Appendix A of chapter 301. The Continental United States (CONUS) per diem rates will be published on a periodic basis by the Office of Governmentwide Policy, Office of Transportation and Personal Property, Travel Management Policy, and will be available on the Internet at *http://www.gsa.gov/perdiem* as FTR Per Diem Bulletins. Such bulletins will be numbered consecutively on a fiscal year basis (*e.g.*, the first bulletin, scheduled to be effective for fiscal year 2003, would be numbered as FTR Per Diem Bulletin #03–1). Subsequent changes or updates to the fiscal year 2003 rate would be numbered 03–2, 03–3, etc. This change in the publication of the CONUS per diem rate is effective April 28, 2003. A notice will be published in the **Federal Register** to alert readers of any new FTR per diem bulletins.

EFFECTIVE DATE: This final rule is effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Harte, Office of Governmentwide Policy, Travel Management Policy Division, at (202) 501–1538 for technical information. For information pertaining to status or publication schedules, contact the Regulatory and Federal Assistance Publications Division, Room 4035, GS Building, Washington, DC, 20405, at (202) 208–7312.

SUPPLEMENTARY INFORMATION:

A. Background

The change in this final rule is made to expedite and simplify the publication of the CONUS per diem rates established by the General Services Administration (GSA).

B. Executive Order 12866

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comments; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301 and 302

Government employees, Travel, Travel allowances, and Travel and transportation expenses.

Dated: January 15, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, 41 CFR chapter 301 is amended as follows:

Chapter 301—Temporary Duty (TDY) Travel Allowances

■ 1. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 2. Revise § 301–11.6 to read as follows:

§ 301–11.6 Where do I find maximum per diem and actual expense rates?

Consult this table to find out where to access *per diem* rates for various types of Government travel:

For travel in	Rates set by	For *per diem* and actual expense see
(a) Continental United States (CONUS).	General Services Administration ...	For *per diem*, see applicable FTR Per Diem Bulletins issued periodically by the Office of Governmentwide Policy, Office of Transportation and Personal Property, Travel Management Policy, and available on the Internet at *http://www.gsa.gov/perdiem* for actual expense, *see* 41 CFR 301–11.303 and 301–11.305.
(b) Non-foreign areas	Department of Defense (*Per Diem,* Travel and Transportation Allowance Committee (PDTATAC).	*Per Diem* Bulletins issued by PDTATAC and published periodically in the Federal Register or Internet at *http://www.dtic.mil/perdiem/.* (Rates also appear in section 925, a *per diem* supplement to the Department of State Standardized Regulations (Government Civilians—Foreign Areas).)
(c) Foreign areas	Department of State	A *per diem* supplement to section 925, Department of State Standardized Regulations (Government Civilians—Foreign Areas).

* * * * *

■ 3. Revise Appendix A to chapter 301 to read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

For the Continental United States (CONUS) *per diem* rates, see applicable FTR *Per Diem* Bulletins, issued periodically and available on the Internet at *http://www.gsa.gov/perdiem.*

CHAPTER 302—RELOCATION ALLOWANCES

■ 4. The authority citation for 41 CFR part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5738, 20 U.S.C. 905(a); E.O. 11609; 36 FR 13747, 3 CFR, 1971–1973, Comp, p. 586.

■ 5. Revise § 302–4.200 to read as follows:

§ 302–4.200 What per diem rate will I receive for en route relocation travel within CONUS?

Your *per diem* for en route relocation travel between your old and new official stations will be at the standard CONUS rate (*see* applicable FTR Per Diem Bulletins available on the Internet at *http://www.gsa.gov/perdiem*). You will be reimbursed in accordance with

§§ 301–11.100 through 301–11.102 of this title.

[FR Doc. 03–10313 filed 4–25–03; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 03–48]

Amendment of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends our rules, entitled ''Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission,'' 47 CFR 1.1801 *et seq.*, to update the Commission's section 504 regulations. The rules modified by this document pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act are inapplicable.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, 202/418–0871, Fax 202/418–4562, TTY 202/418–0538, *smagnott@fcc.gov,* Disability Rights Office, Consumer & Governmental Affairs Bureau.

SUPPLEMENTARY INFORMATION: This is the full text of the Commission's Order (Order) in the Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities, FCC 03–48, adopted March 4, 2003 and released March 12, 2003, with the exception of Chairman's and Commissioners' separate statements, and Appendix B of the Order, which is the FCC Section 504 Programs and Activities Accessibility Handbook (Handbook). The full text of the Order, including the separate statements and the Handbook, is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554 (202/863–2893), *QUALEXINT@AOL.COM.*

Text of the Report and Order

By the Commission: Chairman Powell and Commissioners Copps and Adelstein issuing separate statements.

1. As originally enacted, section 504 of the Rehabilitation Act of 1973 prohibited discrimination against individuals with disabilities under any ''program or activity'' receiving Federal financial assistance. [1] In 1978, Congress amended section 504 to cover any program or activity conducted by any Executive Branch agency or the United States Postal Service. The 1978 amendment required covered agencies to promulgate regulations enforcing section 504's prohibitions. On April 15, 1987, the Commission released a *Report and Order* that adopted with minor modifications the Department of Justice's prototype regulations for implementing and enforcing section 504.[2] The *Report and Order* noted that the legislative history of the 1978 amendments indicated that Congress intended the amendments to apply to all federal agencies, including independent regulatory agencies such as this Commission.[3] Except for adding consumer complaint procedures, the Commission has not updated its section 504 regulations since 1987.

2. By this Order, we amend part 1, subpart N of our rules, entitled ''Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission,'' 47 CFR 1.1801 *et seq.*, to update the Commission's section 504 regulations. Specifically, we amend subpart N throughout to replace the terms ''handicap,'' ''individual with a handicap,'' and ''individuals with handicaps'' with the terms ''disability,'' ''individual with a disability,'' and ''individuals with disabilities,'' respectively, in keeping with the most current statutory terms used in the Americans with Disabilities Act.[4] We amend §§ 1.1803 and 1.1810 of the Commission's rules to specify filing and signature formats for persons with disabilities who wish to file using alternative media. We add a new § 1.1805 to our rules to provide for the Federal Communications Commission Section 504 Programs and Activities Accessibility Handbook (Section 504 Handbook). The Section 504 Handbook is intended as a guide to implement the Commission's responsibilities under section 504 of the Rehabilitation Act. [5] This handbook describes the methods and procedures for accommodation available at the Commission to achieve a consistent and complete accommodations policy. It is for internal staff use and public information only, and is not intended to create any rights, responsibilities, or independent causes of action against the Federal Government.

3. In addition, we amend § 1.1803 to define the term ''programs or activities'' as that term is used in subpart N. We amend § 1.1810 to require that the self-evaluation process be held every three years, during which time we will seek public comment on the accessibility of our programs and activities as required by section 504 of the Rehabilitation Act of 1973. Finally, we amend § 1.1849 to add a procedure for individuals who are requesting accessibility to the Commission's programs and facilities. We note that requests for accommodation requiring the assistance of other persons (*e.g.*, an American Sign Language interpreter) can best be provided if the request is made five business days before a Commission event.[6]

4. The modifications to part 1, subpart N undertaken by this Order are rules that pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act are inapplicable.[7] The procedural rule modifications will be effective immediately upon publication in the **Federal Register**.[8]

5. Accordingly, *it is ordered* that, pursuant to section 5 of the

[1] The Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, section 103(d), Pub. L. 99–506, 100 Stat. 1810, creates specific causes of action for persons who are aggrieved by discriminatory treatment as defined in the Act.

[2] *Amendment of Part 1 of the Commission's Rules to Implement Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794,* Gen. Docket No. 84–533, *Report and Order,* 2 FCC Rcd 2199 (1987) (*Report and Order*).

[3] *See Report and Order* at 2199, paragraph 2.

[4] 42 U.S.C. 12101 *et seq.*

[5] The Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, section 103(d), Pub. L. 99–506, 100 Stat. 1810, creates specific causes of action for persons who are aggrieved by discriminatory treatment as defined in the Act.

[6] Even if the request for accommodation is made less than five days before the relevant event, the Commission will make every effort to secure the services of a person to provide the requested assistance.

[7] 5 U.S.C. 553(b)(3)(A).

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

Communications Act of 1934, as amended, 47 U.S.C. 155, part 1, subpart N of the Commission's rules is amended as set forth in the attached Appendix, effective April 28, 2003.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e), and 29 U.S.C. 794.

■ 2. Part 1 subpart N is revised to read as follows:

Subpart N—Enforcement of Nondiscrimination on the Basis of Disability In Programs or Activities Conducted By the Federal Communications Commission

§ 1.1801 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 (section 504) to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1.1802 Applications.

This part applies to all programs or activities conducted by the Federal Communications Commission. The programs or activities of entities that are licensed or certified by the Federal Communications Commission are not covered by these regulations.

§ 1.1803 Definitions.

For purposes of this part, the term—

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TTY/TDDs), interpreters, Computer-aided realtime transcription (CART), captioning, notetakers, written materials, and other similar services and devices.

Commission means Federal Communications Commission.

Complete complaint means a written statement, or a complaint in audio, Braille, electronic, and/or video format, that contains the complainant's name and address and describes the Commission's alleged discriminatory action in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. The signature of the complainant, or signature of someone authorized by the complainant to do so on his or her behalf, shall be provided on print complaints. Complaints in audio, Braille, electronic, and/or video formats shall contain an affirmative identity statement of the individual, which for this purpose shall be considered to be functionally equivalent to a complainant's signature. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property.

General Counsel means the General Counsel of the Federal Communications Commission.

Individual with a disability means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes, but is not limited to—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) Diseases and conditions such as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(2) *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Commission as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Commission as having such impairment.

Managing Director means the individual delegated authority as described in 47 CFR 0.11.

Programs or Activities mean any activity of the Commission permitted or required by its enabling statutes, including but not limited to any licensing or certification program, proceeding, investigation, hearing, meeting, board or committee.

Qualified individual with a disability means—

(1) With respect to any Commission program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with a disability who, with or without reasonable modification to rules, policies, or practices or the provision of auxiliary aids, meets the essential eligibility requirements for participation in the program or activity and can achieve the purpose of the program or activity; or

(2) With respect to any other program or activity, an individual with a disability who, with or without reasonable modification to rules, policies, or practices or the provision of auxiliary aids, meets the essential eligibility requirements for participation

in, or receipt of benefits from, that program or activity; or

(3) The definition of that term as defined for purposes of employment in 29 CFR 1630.2(m), which is made applicable to this part by § 1.1840.

Section 504 means section 504 of the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Public Law 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, sec. 103(d), Public Law 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Section 504 Officer is the Commission employee charged with overseeing the Commission's section 504 programs and activities.

§ 1.1805 Federal Communications Commission Section 504 Programs and Activities Accessibility Handbook.

The Consumer & Governmental Affairs Bureau shall publish a ''Federal Communications Commission Section 504 Programs and Activities Accessibility Handbook'' (''Section 504 Handbook'') for Commission staff, and shall update the Section 504 Handbook as necessary and at least every three years. The Section 504 Handbook shall be available to the public in hard copy upon request and electronically on the Commission's Internet website. The Section 504 Handbook shall contain procedures for releasing documents, holding meetings, receiving comments, and for other aspects of Commission programs and activities to achieve accessibility. These procedures will ensure that the Commission presents a consistent and complete accommodation policy pursuant to 29 U.S.C. 794, as amended. The Section 504 Handbook is for internal staff use and public information only, and is not intended to create any rights, responsibilities, or independent cause of action against the Federal Government.

§ 1.1810 Review of compliance.

(a) The Commission shall, beginning in 2004 and at least every three years thereafter, review its current policies and practices in view of advances in relevant technology and achievability. Based on this review, the Commission shall modify its practices and procedures to ensure that the Commission's programs and activities are fully accessible.

(b) The Commission shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the review process by submitting comments. Written comments shall be signed by the commenter or by someone authorized to do so on his or her behalf. The signature of the commenter, or signature of someone authorized by the commenter to do so on his or her behalf, shall be provided on print comments. Comments in audio, Braille, electronic, and/or video formats shall contain an affirmative identity statement of the individual, which for this purpose shall be considered to be functionally equivalent to a commenter's signature.

(c) The Commission shall maintain on file and make available for public inspection for four years following completion of the compliance review—

(1) A description of areas examined and problems identified;

(2) All comments and complaints filed regarding the Commission's compliance; and

(3) A description of any modifications made.

§ 1.1811 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the regulations set forth in this part, and their applicability to the programs or activities conducted by the Commission. The Commission shall make such information available to such persons in such manner as the Section 504 Officer finds necessary to apprise such persons of the protections against discrimination assured them by section 504.

§ 1.1830 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b) Discriminatory actions prohibited.

(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with a disability the opportunity to participate in any program or activity even where the Commission is also providing equivalent permissibly separate or different programs or activities for persons with disabilities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—

(i) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The Commission may not, in determining the site or location of a facility, make selections—

(i) That have the purpose or effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity conducted by the Commission; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified

individuals with disabilities to discrimination on the basis of disability.

(6) The Commission may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the Commission establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the Commission are not, themselves, covered by this part.

(7) The Commission shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Commission can demonstrate that making the modifications would fundamentally alter the nature of the program, service, or activity.

(c) This part does not prohibit the exclusion of persons without disabilities from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§ 1.1840 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, as established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630, as well as the procedures set forth in the Basic Negotiations Agreement Between the Federal Communications Commission and National Treasury Employees Union, as amended, and Subchapter III of the Civil Service Reform Act of 1978, 5 U.S.C. 7121(d), shall apply to employment in federally conducted programs or activities.

§ 1.1849 Program accessibility: Discrimination prohibited.

(a) Except as otherwise provided in § 1.1850, no qualified individual with a disability shall, because the Commission's facilities are inaccessible to, or unusable, by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b) Individuals shall request accessibility to the Commission's programs and facilities by contacting the Commission's Section 504 Officer. Such contact may be made in the manner indicated in the FCC Section 504 Handbook. The Commission will make every effort to provide accommodations requiring the assistance of other persons (*e.g.,* American Sign Language interpreters, communication access realtime translation (CART) providers, transcribers, captioners, and readers) if the request is made to the Commission's Section 504 Officer a minimum of five business days in advance of the program. If such requests are made fewer than five business days prior to an event, the Commission will make every effort to secure accommodation services, although it may be less likely that the Commission will be able to secure such services.

§ 1.1850 Program accessibility: Existing facilities.

(a) *General.* Except as otherwise provided in this paragraph, the Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity, or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1.1850(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Managing Director, in consultation with the Section 504 Officer, after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as the redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section within sixty (60) days of the effective date of this subpart, except that where structural changes in facilities are undertaken, such changes shall be made within three (3) years of the effective date of this part.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, within six (6) months of the effective date of this subpart, a transition plan setting forth the steps necessary to complete such changes. The Commission shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transitional plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one (1) year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1.1851 Building accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 1.1870 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791.

(c) Complaints alleging violation of section 504 with respect to the Commission's programs and activities shall be addressed to the Managing Director and filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TWB–204, Washington, DC 20554.

(d) *Acceptance of complaint.* (1) The Commission shall accept and investigate all complete complaints, as defined in § 1.1803 of this part, for which it has jurisdiction. All such complaints must be filed within one-hundred eighty (180) days of the alleged act of discrimination. The Commission may extend this time period for good cause.

(2) If the Commission receives a complaint that is not complete as defined in § 1.1803 of this part, the complainant will be notified within thirty (30) days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within thirty (30) days of receipt of this notice, the Commission shall dismiss the complaint without prejudice.

(e) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Commission shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157, is not readily accessible to and usable by individuals with disabilities.

(g) Within one-hundred eighty (180) days of the receipt of a complete complaint, as defined in § 1.1803, for which it has jurisdiction, the Commission shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the Commission of the letter required by § 1.1870(g). The Commission may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TWB–204, Washington, DC 20554.

(j) The Commission shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the appeal request. If the Commission determines that it needs additional information from the complainant, and requests such information, the Commission shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) of this section may be extended with the permission of the General Counsel.

(l) The Commission may delegate its authority for conducting complaint investigations to other federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[FR Doc. 03–10284 Filed 4–25–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–631; MM Docket No. 01–181, RM–10201; MM Docket No. 01–190, RM–10210; MM Docket No. 01–217, RM–10236; MM Docket No. 01–220, RM–10239; MM Docket No. 01–226, RM–10254; MM Docket No. 01–228, RM–10256; MM Docket No. 01–233, RM–10261; MM Docket No. 01–282, RM–10293; MM Docket No. 01–283, RM–10294; MM Docket No. 01–284, RM–10295, MM Docket No. 01–285, RM–10296]

Radio Broadcasting Services; Alton, Missouri; Comanche, Texas; Dickens, Texas; Hamlin, Texas; Hollis, Oklahoma; Junction, Texas; McCamey, Texas; Mooreland, Oklahoma; Santa Anna, Texas; Taos, New Mexico; and Wapanucka, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants eleven proposals that allot new FM channels to Alton, Missouri; Comanche, Texas; Dickens, Texas; Hamlin, Texas; Hollis, Oklahoma; Junction, Texas; McCamey, Texas; Mooreland, Oklahoma; Santa Anna, Texas; Taos, New Mexico; and Wapanucka, Oklahoma. The Audio Division, at the request of Katherine Pyeatt, allots Channel 298A at Wapanucka, Oklahoma, as the community's first local FM service. *See* 66 FR 44586, August 24, 2001. Channel 298A can be allotted to Wapanucka, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 km (1.8 miles) west of Wapanucka. The coordinates for Channel 298A at Wapanucka, Oklahoma, are 34–21–54 North Latitude and 96–23–47 West Longitude. A filing window for Channel 298A at Wapanucka, Oklahoma, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order. See Supplementary Information *infra.*

DATES: Effective May 26, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 01–181,

01–190, 01–217, 01–220, 01–226, 01–228, 01–233, 01–282, 01–283, 01–284, and 01–285, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division further allots, at the request of Jeraldine Anderson, Channel 280A at Comanche, Texas, as the community's second local FM service. *See* 66 FR 44588, August 24, 2001. Channel 280A can be allotted to Comanche, Texas, in compliance with the Commission's minimum distance separation requirements without site restriction at center city coordinates. The coordinates for Channel 280A at Comanche, Texas, are 31–53–50 North Latitude and 98–36–12 West Longitude. A filing window for Channel 280A at Comanche, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Jeraldine Anderson, Channel 274C2 at Hollis, Oklahoma, as the community's second local FM service. *See* 66 FR 47432, September 12, 2001. Channel 274C2 can be allotted to Hollis, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.7 km (9.7 miles) south of Hollis. The coordinates for Channel 274C2 at Hollis, Oklahoma, are 34–32–55 North Latitude and 99–56–12 West Longitude. A filing window for Channel 274C2 at Hollis, Oklahoma, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Jeraldine Anderson, Channel 282A at Santa Anna, Texas, as the community's second local FM service. *See* 66 FR 47432, September 12, 2001. Channel 282A can be allotted to Santa Anna, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 km (2.7 miles) south of Santa Anna. The coordinates for Channel 282A at Santa Anna, Texas, are 31–42–15 North Latitude and 99–20–23 West Longitude. Because the reference coordinates are within 320 kilometers (199 miles) of the U.S.-Mexico border, this change to the FM Table of Allotments is contingent upon concurrence of the Mexican Government in the allotment. A filing window for Channel 282A at Santa Anna, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Katherine Pyeatt, Channel 300C2 at Mooreland, Oklahoma, as the community's second local FM service. *See* 66 FR 48108, September 18, 2001. Channel 300C2 can be allotted to Mooreland, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.4 km (2.8 miles) northwest of Mooreland. The coordinates for Channel 300C2 at Mooreland, Oklahoma, are 36–27–59 North Latitude and 99–14–27 West Longitude. A filing window for Channel 300C2 at Mooreland, Oklahoma, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Jeraldine Anderson, Channel 284A at Junction, Texas, as the community's fourth local FM service. *See* 66 FR 48108, September 18, 2001. Channel 284A can be allotted to Junction, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 km (1.3 miles) southeast of Junction. The coordinates for Channel 284A at Junction, Texas, are 30–28–19 North Latitude and 99–45–47 West Longitude. A filing window for Channel 284A at Junction, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Charles Crawford, Channel 290A at Alton, Missouri, as the community's first local FM service. *See* 66 FR 48108, September 18, 2001. Channel 290A can be allotted to Alton, Missouri, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.6 km (3.5 miles) north of Alton. The coordinates for Channel 290A at Alton, Missouri, are 36–44–39 North Latitude and 91–24–28 West Longitude. A filing window for Channel 290A at Alton, Missouri, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Linda Crawford, Channel 228A at Taos, New Mexico, as the community's fifth local FM service. *See* 66 FR 52735, October 17, 2001. Channel 228A can be allotted to Taos, New Mexico, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.5 km (7.1 miles) northeast of Taos. The coordinates for Channel 228A at Taos, New Mexico, are 36–28–20 North Latitude and 105–28–22 West Longitude. A filing window for Channel 228A at Taos, New Mexico, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Linda Crawford, Channel 233C3 at McCamey, Texas, as the community's second local FM service. *See* 66 FR 52735, October 17, 2001. Channel 233C3 can be allotted to Taos, New Mexico, in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.9 km (12.4 miles) east of McCamey. The coordinates for Channel 233C3 at McCamey, Texas, are 31–11–56 North Latitude and 102–01–42 West Longitude. The Mexican government has concurred in this allotment. A filing window for Channel 233C3 at McCamey, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Linda Crawford, Channel 240A at Dickens, Texas, as the community's second local FM service. *See* 66 FR 52735, October 17, 2001 Channel 240A can be allotted to Dickens, Texas, in compliance with the Commission's minimum distance separation requirements without site restriction at center city coordinates. The coordinates for Channel 240A at Dickens, Texas, are 33–37–18 North Latitude and 100–50–10 West Longitude. A filing window for Channel 240A at Dickens, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Linda Crawford, Channel 283C2 at Hamlin, Texas, as the community's second local FM service. See 66 FR 52735, October 17, 2001. Channel 283C2 can be allotted to Hamlin, Texas, in compliance with the Commission's minimum distance

separation requirements with a site restriction of 8.7 km (5.4 miles) west of Hamlin. The coordinates for Channel 283C2 at Hamlin, Texas, are 32–51–53 North Latitude and 100–13–01 West Longitude. A filing window for Channel 283C2 at Hamlin, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Alton, Channel 290A.

■ 3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 228A at Taos.

■ 4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 274C2 at Hollis, Channel 300C2 at Mooreland, and Wapanucka, Channel 298A.

■ 5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 280A at Comanche, Channel 240A at Dickens, Channel 283C2 at Hamlin, Channel 284A at Junction, Channel 233C3 at McCamey, and Channel 282A at Santa Anna.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–10326 Filed 4–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1117; MB Docket No. 02–374; RM–10598]

Radio Broadcasting Services; Douglas, AZ, Santa Clara, NM and Tombstone, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Cochise Broadcasting LLC, licensee of Station KCDQ, Channel 237A, Douglas, Arizona, this document substitutes Channel 237C for Channel 237A at Douglas, reallots Channel 237C to Tombstone, Arizona, as that community's first local aural transmission service, and modifies the license for Station KCDQ, as requested. Additionally, to accommodate the allotment of Channel 237C at Tombstone, an *Order to Show Cause* was issued to the licensee of Station KNUW(FM), Channel 237C1, Santa Clara, New Mexico, to specify operation on Channel 236C1 at its current transmitter site. Based on an affirmative response, the licensee of Station KNUW(FM) is modified accordingly. *See* 67 FR 78401 (published December 24, 2002). Coordinates used for Channel 237C at Tombstone, Arizona, are 31–49–00 NL and 110–05–30 WL, representing a site located 11.8 kilometers (7.3 miles) north of the community. Coordinates used for Channel 236C1 at Santa Clara, are those at the licensed site of Station KNUW(FM) at 32–51–47 NL and 108–14–28 WL.

Tombstone, Arizona, and Santa Clara, New Mexico, are each located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government is required. No response has been received. Therefore, Channel 237C has been allotted to Tombstone with the following interim condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement'' (''Agreement''). Once an official response from the Mexican government has been obtained, the interim condition may be removed. Channel 236C1 at Santa Clara, New Mexico, occurs at the licensed site of Station KNUW(FM). As there is no change in site or class of channel at Santa Clara, we will notify the Mexican government of the channel substitution once the licensee of Station KNUW(FM) has filed an acceptable application to implement the change.

DATES: Effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket 02–374, adopted April 9, 2003, and released April 11, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 237A at Douglas, and by adding Tombstone, Channel 237C.

■ 3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 237C1 and adding Channel 236C1 at Santa Clara.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–10327 Filed 4–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1016; MB Docket No. 02–186; RM–10494]

Radio Broadcasting Services; Los Banos and Planada, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Buckley Communications, Inc., deletes Channel 284B at Los Banos, California, allots Channel 284B at Planada, California, as the community's first local FM service, and modifies the license of FM Station KHTN, Channel 284B, accordingly. Channel 284B can be allotted to Planada, California, in compliance with the Commission's

minimum distance separation requirements with a site restriction of 22.2 km (13.8 miles) southwest of Planada. The coordinates for Channel 284B at Planada, California, are 37–11–29 North Latitude and 120–32–03 West Longitude.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–186, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 284B at Los Banos and by adding Los Planada, Channel 284B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–10328 Filed 4–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1119; MB Docket No. 02–240, RM–10530; MB Docket No. 02–241, RM–1–531; MB Docket No. 02–242, RM–10532; MB Docket No. 02–244, RM–10534; MB Docket No.02–245, RM–10544; MB Docket No. 02–246, RM–10535; MB Docket No. 02–247, RM–10536; and MB Docket No. 02–249, RM–10538]

Radio Broadcasting Services; Clayton, OK, Guthrie, TX, Hebbronville, TX, Premont, TX, Roaring Springs, TX, Rocksprings, TX, Thomas, OK and Sanderson, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 57779 (September 12, 2002), this document grants eight proposals that allot new FM channels to Clayton and Thomas, Oklahoma; Guthrie, Hebbronville, Premont, Roaring Springs, Rocksprings, and Sanderson, Texas. Filing windows for Channel 241 at Clayton, Oklahoma; Channel 288A at Thomas, Oklahoma; Channel 252A at Guthrie, Texas; Channel 232A at Hebbronville, Texas; Channel 287A at Premont, Texas; Channel 276C3 at Roaring Springs, Texas; Channel 291A at Rocksprings, Texas; and Channel 286C2 at Sanderson, Texas, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MB Docket Nos. 02–240 through 02–242, MB Docket Nos. 02–244 through 02–247, and MB Docket No. 02–249, adopted April 9, 2003, and released April 11, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division, at the request of Jeraldine Anderson, allots Channel 241A at Clayton, Oklahoma, as the community's first local aural transmission service. Channel 241A can be allotted at Clayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) south of Clayton. The coordinates for Channel 241A at Clayton are 34–27–28 North Latitude and 95–22–01 West Longitude.

The Audio Division, at the request of Linda Crawford, allots Channel 252A at Guthrie, Texas, as the community's first local aural transmission service. Channel 252A can be allotted to Guthrie in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest of Guthrie. The coordinates for Channel 252A at Guthrie are 33–41–26 North Latitude and 100–23–15 West Longitude.

The Audio Division, at the request of Linda Crawford, allots Channel 232A at Hebbronville, Texas, as the community's third local aural transmission service. Channel 232 can be allotted to Hebbronville in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northwest of Hebbronville. The coordinates for Channel 232A at Hebbronville, are 27–23–18 North Latitude and 98–44–26 West Longitude. The Mexican Government has concurred in this allotment.

The Audio Division, at the request of Linda Crawford, allots Channel 287A at Premont, Texas, as the community's second local aural transmission service. Channel 287A can be allotted to Premont in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.4 kilometers (8.9 miles) south of Premont. The coordinates for Channel 287A at Premont are 27–14–13 North Latitude and 98–10–27 West Longitude. The Mexican Government is still negotiating the question of whether it will approve this allotment. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: ''Operation with the facilities specified for Premont herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.''

The Audio Division, at the request of Linda Crawford, allots Channel 276C3 at Roaring Springs, Texas, as the community's first local aural transmission service. Channel 276C3 can be allotted to Roaring Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.8 kilometers (4.9 miles) northeast of Roaring Springs. The coordinates for Channel 276C3 at Roaring Springs are 33–55–44 North Latitude and 100–46–48 West Longitude.

The Audio Division, at the request of Charles Crawford, allots Channel 291A at Rocksprings, Texas, as the community's fourth local aural transmission service. Channel 291A can be allotted to Rocksprings in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.4 kilometers (8.9 miles) southwest of Rocksprings. The coordinates for Channel 291A at Rocksprings are 29–57–03 North Latitude and 100–20–02 West Longitude. The Mexican Government has not notified the Commission as to whether it concurs with this allotment. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: ''Operation with the facilities specified for Rocksprings herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.''

The Audio Division, at the request of Linda Crawford, allots Channel 286C2 at Sanderson, Texas, as that community's first local aural transmission service. Channel 286C2 can be allotted to Sanderson in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.6 kilometers (12.8 miles) southwest of Sanderson. The coordinates for Channel 286C2 at Sanderson are 30–03–18 North Latitude and 102–35–01 West Longitude. The Mexican Government has concurred in this allotment.

The Audio Division, at the request of Robert Fabian, allots Channel 288A at Thomas, Oklahoma, as that community's first local aural transmission service. Channel 288A can be allotted to Thomas, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.2 kilometers (5.7 miles) north of Thomas. The coordinates for Channel 288A at Thomas are 35–49–46 North Latitude and 98–45–09 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Clayton, Channel 241A, and Thomas, Channel 288A.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Guthrie, Channel 252A; Channel 232A at Hebbronville; Channel 287A at Premont; Roaring Springs, Channel 276C3; Channel 291A at Rocksprings; and Sanderson, Channel 286C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–10329 Filed 4–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

50 CFR Part 300

National Oceanic and Atmospheric Administration

[Docket No. 030124019–3040–02; I.D. 010703B]

RIN 0648–AQ67

Pacific Halibut Fisheries; Catch Sharing Plan; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on March 7, 2003, for the Pacific halibut fisheries catch sharing plan.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228 or Jamie Goen, 206–526–6140.

SUPPLEMENTARY INFORMATION: The final rule was published in the **Federal Register** on March 7, 2003 (68 FR 10989). The coordinates approximating the 100–fathom depth contour that were published under Section 27., paragraph (3) contained errors that require correction. The coordinates approximating the 100–fathom line in the Pacific halibut final rule should match the 100–fathom line coordinates in the final rule for the 2003 Pacific Coast groundfish specifications and management measures. However, the coordinates in the Pacific halibut final rule do not match the groundfish final rule because revisions were made to the groundfish final rule during the regulatory process without also revising the Pacific halibut final rule. In addition, a correction to the groundfish final rule citation corrected a transposing error by switching two longitude coordinates that were previously out of order in the 100–fathom line. Therefore, the coordinates are corrected to better reflect the 100–fathom depth contour and to match the coordinates published for the Pacific Coast groundfish fishery (68 FR 11182, March 7, 2003 and corrected at 68 FR 18166, April 15, 2003). The coordinates approximating the 100–fathom depth contour are the western boundary for an area closed to commercial fixed gear (longline and pot/trap gear) fisheries for halibut and groundfish off the Pacific Coast. The closed area off Washington, Oregon and northern California (north of 40°10′ N. lat. to the U.S./Canada border) is intended to protect yelloweye rockfish, an overfished species.

This document corrects the errors and republishes the coordinates.

Corrections

In the rule FR Doc. 03–5171, in the issue of Thursday, March 7, 2003 (68 FR 10994), page 11001, under 27. Area 2A Non-Treaty Commercial Fishery Closed Area, paragraph (3) in column 3 is corrected to read as follows:

* * * * *

(3) Between the U.S./Canada border and 40°10′ N. lat., the RCA is defined along a western, offshore boundary approximating 100 fm (183 m). The 100 fm depth contour used north of 40°10′ N. lat. as a western boundary for the RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°15.00′ N. lat., 125°41.00′ W. long.;

(2) 48°14.00′ N. lat., 125°36.00′ W. long.;

(3) 48°09.50′ N. lat., 125°40.50′ W. long.;

(4) 48°08.00′ N. lat., 125°38.00′ W. long.;

(5) 48°05.00′ N. lat., 125°37.25′ W. long.;

(6) 48°02.60′ N. lat., 125°34.70′ W. long.;
(7) 47°59.00′ N. lat., 125°34.00′ W. long.;
(8) 47°57.26′ N. lat., 125°29.82′ W. long.;
(9) 47°59.87′ N. lat., 125°25.81′ W. long.;
(10) 48°01.80′ N. lat., 125°24.53′ W. long.;
(11) 48°02.08′ N. lat., 125°22.98′ W. long.;
(12) 48°02.97′ N. lat., 125°22.89′ W. long.;
(13) 48°04.47′ N. lat., 125°21.75′ W. long.;
(14) 48°06.11′ N. lat., 125°19.33′ W. long.;
(15) 48°07.95′ N. lat., 125°18.55′ W. long.;
(16) 48°09.00′ N. lat., 125°18.00′ W. long.;
(17) 48°11.31′ N. lat., 125°17.55′ W. long.;
(18) 48°14.60′ N. lat., 125°13.46′ W. long.;
(19) 48°16.67′ N. lat., 125°14.34′ W. long.;
(20) 48°18.73′ N. lat., 125°14.41′ W. long.;
(21) 48°19.67′ N. lat., 125°13.70′ W. long.;
(22) 48°19.70′ N. lat., 125°11.13′ W. long.;
(23) 48°22.95′ N. lat., 125°10.79′ W. long.;
(24) 48°21.61′ N. lat., 125°02.54′ W. long.;
(25) 48°23.00′ N. lat., 124°49.34′ W. long.;
(26) 48°17.00′ N. lat., 124°56.50′ W. long.;
(27) 48°06.00′ N. lat., 125°00.00′ W. long.;
(28) 48°04.62′ N. lat., 125°01.73′ W. long.;
(29) 48°04.84′ N. lat., 125°04.03′ W. long.;
(30) 48°06.41′ N. lat., 125°06.51′ W. long.;
(31) 48°06.00′ N. lat., 125°08.00′ W. long.;
(32) 48°07.08′ N. lat., 125°09.34′ W. long.;
(33) 48°07.28′ N. lat., 125°11.14′ W. long.;
(34) 48°03.45′ N. lat., 125°16.66′ W. long.;
(35) 47°59.50′ N. lat., 125°18.88′ W. long.;
(36) 47°58.68′ N. lat., 125°16.19′ W. long.;
(37) 47°56.62′ N. lat., 125°13.50′ W. long.;
(38) 47°53.71′ N. lat., 125°11.96′ W. long.;
(39) 47°51.70′ N. lat., 125°09.38′ W. long.;
(40) 47°49.95′ N. lat., 125°06.07′ W. long.;
(41) 47°49.00′ N. lat., 125°03.00′ W. long.;
(42) 47°46.95′ N. lat., 125°04.00′ W. long.;
(43) 47°46.58′ N. lat., 125°03.15′ W. long.;
(44) 47°44.07′ N. lat., 125°04.28′ W. long.;
(45) 47°43.32′ N. lat., 125°04.41′ W. long.;
(46) 47°40.95′ N. lat., 125°04.14′ W. long.;
(47) 47°39.58′ N. lat., 125°04.97′ W. long.;
(48) 47°36.23′ N. lat., 125°02.77′ W. long.;
(49) 47°34.28′ N. lat., 124°58.66′ W. long.;
(50) 47°32.17′ N. lat., 124°57.77′ W. long.;
(51) 47°30.27′ N. lat., 124°56.16′ W. long.;
(52) 47°30.60′ N. lat., 124°54.80′ W. long.;
(53) 47°29.26′ N. lat., 124°52.21′ W. long.;
(54) 47°28.21′ N. lat., 124°50.65′ W. long.;
(55) 47°27.38′ N. lat., 124°49.34′ W. long.;
(56) 47°25.61′ N. lat., 124°48.26′ W. long.;
(57) 47°23.54′ N. lat., 124°46.42′ W. long.;
(58) 47°20.64′ N. lat., 124°45.91′ W. long.;
(59) 47°17.99′ N. lat., 124°45.59′ W. long.;
(60) 47°18.20′ N. lat., 124°49.12′ W. long.;
(61) 47°15.01′ N. lat., 124°51.09′ W. long.;
(62) 47°12.61′ N. lat., 124°54.89′ W. long.;
(63) 47°08.22′ N. lat., 124°56.53′ W. long.;
(64) 47°08.50′ N. lat., 124°57.74′ W. long.;
(65) 47°01.92′ N. lat., 124°54.95′ W. long.;
(66) 47°01.14′ N. lat., 124°59.35′ W. long.;
(67) 46°58.48′ N. lat., 124°57.81′ W. long.;
(68) 46°56.79′ N. lat., 124°56.03′ W. long.;
(69) 46°58.01′ N. lat., 124°55.09′ W. long.;
(70) 46°55.07′ N. lat., 124°54.14′ W. long.;
(71) 46°59.60′ N. lat., 124°49.79′ W. long.;
(72) 46°58.72′ N. lat., 124°48.78′ W. long.;
(73) 46°54.45′ N. lat., 124°48.36′ W. long.;
(74) 46°53.99′ N. lat., 124°49.95′ W. long.;
(75) 46°54.38′ N. lat., 124°52.73′ W. long.;
(76) 46°52.38′ N. lat., 124°52.02′ W. long.;
(77) 46°48.93′ N. lat., 124°49.17′ W. long.;
(78) 46°41.50′ N. lat., 124°43.00′ W. long.;
(79) 46°34.50′ N. lat., 124°28.50′ W. long.;
(80) 46°29.00′ N. lat., 124°30.00′ W. long.;
(81) 46°20.00′ N. lat., 124°36.50′ W. long.;
(82) 46°18.00′ N. lat., 124°38.00′ W. long.;
(83) 46°17.52′ N. lat., 124°35.35′ W. long.;
(84) 46°17.00′ N. lat., 124°22.50′ W. long.;
(85) 46°15.02′ N. lat., 124°23.77′ W. long.;
(86) 46°12.00′ N. lat., 124°35.00′ W. long.;
(87) 46°10.50′ N. lat., 124°39.00′ W. long.;
(88) 46°08.90′ N. lat., 124°39.11′ W. long.;
(89) 46°00.97′ N. lat., 124°38.56′ W. long.;
(90) 45°57.04′ N. lat., 124°36.42′ W. long.;
(91) 45°54.29′ N. lat., 124°40.02′ W. long.;
(92) 45°47.19′ N. lat., 124°35.58′ W. long.;
(93) 45°41.75′ N. lat., 124°28.32′ W. long.;
(94) 45°34.16′ N. lat., 124°24.23′ W. long.;
(95) 45°27.10′ N. lat., 124°21.74′ W. long.;
(96) 45°17.14′ N. lat., 124°17.85′ W. long.;
(97) 44°59.51′ N. lat., 124°19.34′ W. long.;
(98) 44°49.30′ N. lat., 124°29.97′ W. long.;
(99) 44°45.64′ N. lat., 124°33.89′ W. long.;
(100) 44°33.00′ N. lat., 124°36.88′ W. long.;
(101) 44°28.20′ N. lat., 124°44.72′ W. long.;
(102) 44°13.16′ N. lat., 124°56.36′ W. long.;
(103) 43°56.34′ N. lat., 124°55.74′ W. long.;
(104) 43°56.47′ N. lat., 124°34.61′ W. long.;
(105) 43°42.73′ N. lat., 124°32.41′ W. long.;
(106) 43°30.92′ N. lat., 124°34.43′ W. long.;
(107) 43°17.44′ N. lat., 124°41.16′ W. long.;
(108) 43°07.04′ N. lat., 124°41.25′ W. long.;
(109) 43°03.45′ N. lat., 124°44.36′ W. long.;
(110) 43°03.90′ N. lat., 124°50.81′ W. long.;

(111) 42°55.70′ N. lat., 124°52.79′ W. long.;
(112) 42°54.12′ N. lat., 124°47.36′ W. long.;
(113) 42°43.99′ N. lat., 124°42.38′ W. long.;
(114) 42°38.23′ N. lat., 124°41.25′ W. long.;
(115) 42°33.02′ N. lat., 124°42.38′ W. long.;
(116) 42°31.89′ N. lat., 124°42.04′ W. long.;
(117) 42°30.08′ N. lat., 124°42.67′ W. long.;
(118) 42°28.27′ N. lat., 124°47.08′ W. long.;
(119) 42°25.22′ N. lat., 124°43.51′ W. long.;
(120) 42°19.22′ N. lat., 124°37.92′ W. long.;
(121) 42°16.28′ N. lat., 124°36.11′ W. long.;
(122) 42°05.65′ N. lat., 124°34.92′ W. long.;
(123) 42°00.00′ N. lat., 124°35.27′ W. long.;
(124) 42°00.00′ N. lat., 124°35.26′ W. long.;
(125) 41°47.04′ N. lat., 124°27.64′ W. long.;
(126) 41°32.92′ N. lat., 124°28.79′ W. long.;
(127) 41°24.17′ N. lat., 124°28.46′ W. long.;
(128) 41°10.12′ N. lat., 124°20.50′ W. long.;
(129) 40°51.41′ N. lat., 124°24.38′ W. long.;
(130) 40°43.71′ N. lat., 124°29.89′ W. long.;
(131) 40°40.14′ N. lat., 124°30.90′ W. long.;
(132) 40°37.35′ N. lat., 124°29.05′ W. long.;
(133) 40°34.76′ N. lat., 124°29.82′ W. long.;
(134) 40°36.78′ N. lat., 124°37.06′ W. long.;
(135) 40°32.44′ N. lat., 124°39.58′ W. long.;
(136) 40°24.82′ N. lat., 124°35.12′ W. long.;
(137) 40°23.30′ N. lat., 124°31.60′ W. long.;
(138) 40°23.52′ N. lat., 124°28.78′ W. long.;
(139) 40°22.43′ N. lat., 124°25.00′ W. long.;
(140) 40°21.72′ N. lat., 124°24.94′ W. long.;
(141) 40°21.87′ N. lat., 124°27.96′ W. long.;
(142) 40°21.40′ N. lat., 124°28.74′ W. long.;
(143) 40°19.68′ N. lat., 124°28.49′ W. long.;
(144) 40°17.73′ N. lat., 124°25.43′ W. long.;
(145) 40°18.37′ N. lat., 124°23.35′ W. long.;
(146) 40°15.75′ N. lat., 124°26.05′ W. long.;
(147) 40°16.75′ N. lat., 124°33.71′ W. long.;
(148) 40°16.29′ N. lat., 124°34.36′ W. long.; and
(149) 40°10.00′ N. lat., 124°21.12′ W. long.

* * * * *

Authority: 16 U.S.C. 773–773k.

Dated: April 21, 2003.

Rebecca Lent,

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

[FR Doc. 03–10281 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030225045–3096–02; I.D. 020603A]

RIN 0648–AQ29

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 2

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

ACTION: Final rule.

SUMMARY: NMFS implements measures contained in Framework Adjustment 2 to the Monkfish Fishery Management Plan (FMP). This final rule modifies the monkfish overfishing definition reference points and optimum yield (OY) target control rule to be consistent with the best scientific information available and the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule also implements an expedited process for setting annual target total allowable catch levels (TACs); establishes a method for adjusting monkfish trip limits and days-at-sea (DAS) allocations to achieve the annual target TACs; and establishes target TACs and corresponding trip limits for the 2003 fishing year (FY 2003). As a result, this rule eliminates the default measures adopted in the original FMP that would have resulted in the elimination of the directed monkfish fishery and reduced incidental catch limits. Finally, this final rule clarifies the regulations pertaining to the monkfish area declaration requirements by specifying that vessels intending to fish under either a monkfish, Northeast (NE) multispecies, or scallop DAS, under the less restrictive measures of the Northern Fishery Management Area (NFMA), declare their intent to fish in the NFMA for a minimum of 30 days.

DATES: Effective May 1, 2003.

ADDRESSES: Copies of Framework Adjustment 2 to the FMP, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*. A copy of the Final Regulatory Flexibility Analysis (FRFA) is available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, fax (978) 281–9135, e-mail *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION: The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) (Councils), with the NEFMC having the administrative lead. The FMP currently contains default measures that would eliminate the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS). These measures were scheduled to take effect during Year 4 (beginning May 1, 2002) of the FMP's 10–year rebuilding schedule, but were delayed until May 1, 2003, as a result of the implementation of an emergency interim rule (67 FR 35928; May 22, 2002) and its extension (67 FR 67568; November 6, 2002). Recent analyses have indicated that these default measures are no longer appropriate. Furthermore, recent stock assessments have invalidated the fishing mortality (F) reference points contained in the FMP, and have suggested alternative reference points to be incorporated into the FMP's overfishing definition and control rules. As a result of delays in the development of Amendment 2 to the FMP, the NEFMC initiated Framework Adjustment 2 at its June 24–26, 2002, meeting in order to prevent implementation of the restrictive default measures on May 1, 2003. The NEFMC approved the framework at its November 5–7, 2002, meeting, and the MAFMC approved the framework at its

December 10–12, 2002, meeting. A proposed rule was published in the **Federal Register** on March 7, 2003 (68 FR 11023), with public comment accepted through March 24, 2003. The measures contained in this final rule are unchanged from those published in the proposed rule with the exception of two minor technical changes that were identified during the public comment period, which are described below. A complete discussion of the development of these measures appeared in the preamble of the proposed rule and is not repeated here.

Framework 2 implements revisions to the overfishing definition contained in the FMP. This action revises the threshold fishing mortality rate ($F_{threshold}$), the criterion by which overfishing status is determined, to be consistent with the most recent scientific advice (SAW 34, January 2002). The $F_{threshold}$ reference point is revised by setting $F_{threshold}$ equal to F_{max}. F_{max} is the proxy for the fishing mortality rate that will achieve maximum sustainable yield (MSY) from a rebuilt stock. The 34th Stock Assessment Workshop recently estimated F_{max} to be equivalent to F=0.2. Framework 2 also revises the minimum biomass threshold ($B_{threshold}$), the criterion by which a stock is determined to be overfished, to be consistent with the National Standard Guidelines. Given the poor amount of scientific data on the monkfish resource, Framework 2 revises the $B_{threshold}$ value in the FMP to be equivalent to one-half of the B_{target} established for each management area. As a result, this action establishes a $B_{threshold}$ = 1.25 for the NFMA, and $B_{threshold}$ = 0.93 for the Southern Fishery Management Area (SFMA). The $B_{targets}$ established in the FMP are not revised by this action.

Setting Annual Target TACs and Associated Management Measures

In addition to revising the overfishing definition in the FMP, Framework 2 establishes an expedited process for setting target annual TACs. This action implements a TAC-setting method that is based on the relationship between the 3–year running average of the NMFS fall trawl survey biomass index (observed biomass index) and an established annual biomass index target. The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the B_{target}, which is to be achieved by 2009 according the rebuilding plan established in the FMP. Annual target TACs would be set based on the ratio of the observed biomass index to the annual index target applied to the monkfish landings for the previous fishing year. Once the annual target TACs are established, trip limits and/or DAS will be adjusted accordingly, using a methodology established in this framework.

The Monkfish Monitoring Committee (MFMC) is currently required to meet on or before November 15 each year to review the status of the monkfish resource and develop TACs for the upcoming fishing year. If the results of the most recent NMFS fall trawl survey are available at that time, the MFMC will incorporate these results into the automatic method described in this framework to establish target TACs for the upcoming fishing year. Otherwise, the MFMC will be required to provide target TACs to the Councils and the Regional Administrator (RA) as soon as possible after the availability of the trawl survey indices, but no later than January 7 of the following year.

Under the target TAC-setting method contained in Framework 2, if the observed biomass index is below the annual index target, the target TAC will be set proportionally below the previous year's landings. If the observed biomass index is above the annual index target, the target TAC will be increased from the previous year's landings by one-half of the ratio of the biomass index to the index target, with certain limitations, as described below. In cases where F can be determined, the annual target TAC will always be set at a value that does not exceed $F_{threshold}$ (currently estimated to be F=0.2). For example, if F for the previous fishing year exceeded $F_{threshold}$, but a reduction in the target TAC is not required under the index-based method, the target TAC would be reduced proportionally from the previous year's landings, to end overfishing. When F cannot be determined and the observed biomass index is above the annual index target, the target TAC for the previous year will be increased by the method described above, but not by more than 20 percent of the previous year's landings.

Once the stock in a management area is rebuilt (i.e., the observed biomass index is at or above B_{target}), the target TAC will be adjusted based on the ratio of current F to $F_{threshold}$, allowing for an increase in the target TAC if F is below $F_{threshold}$. This will set the OY target reference point at $F_{threshold}$. However, if F cannot be determined and the observed biomass index is above B_{target}, the target TAC will be set at no more than 20 percent above the previous year's landings.

In the situation where landings decline from the previous fishing year and the observed biomass index is above the annual index target, the MFMC will review the circumstances surrounding the landings decline and recommend to the Councils a target TAC equivalent to either the previous year's landings or target TAC. The Councils, after considering the MFMC's recommendation, will recommend a target TAC to the RA regarding whether the target TAC should be set at the previous year's landings or at the target TAC. If the RA concurs with this recommendation, the target TAC and associated trip limits will be promulgated through rulemaking, consistent with the requirements of the Administrative Procedure Act (APA). Otherwise, the RA would notify the Councils in writing of his or her reasons for non-concurrence.

The intent of the Councils in establishing an expedited method for setting annual target TACs outside the Council framework adjustment process is to enable the RA to set future target TACs and associated management measures in a quicker, but predictable, manner, using the most recent information available. This expedited process for setting annual TACs will be accomplished consistent with the APA. The Framework 2 document also analyzes a range of target TAC alternatives for FY 2004. The intent of this analysis is to facilitate the expedited process for annual adjustments and to provide the public with ample notice of the possible impacts of such adjustments. The expedited annual adjustment process to be established in this framework would not preclude the Councils from initiating a framework adjustment at any time to implement other measures deemed necessary to meet the objectives of the FMP.

FY 2003 TACs and Possession Limits

Framework 2 establishes target TACs for FY 2003 of 10,211 mt in the SFMA and 17,708 mt in the NFMA. As a result, trip limits for monkfish limited access vessels in the SFMA will be increased from FY 2002 (May 1, 2002 - April 30, 2003) levels (550 lb (249.5 kg) tail weight per DAS for Category A and C vessels, and 450 lb (204.1 kg) tail weight per DAS for Category B and D vessels), to 1,250 lb (567 kg) tail weight per DAS for Category A and C vessels, and 1,000 lb (453.6 kg) tail weight per DAS for Category B and D vessels. The trip limits in the NFMA are unchanged by this action. In the NFMA, there is currently no trip limit for monkfish limited access vessels while fishing under either a monkfish or Northeast (NE) multispecies DAS. In addition, this action increases the incidental trip limit

for monkfish open-access Category E vessels fishing exclusively in the NFMA on a NE multispecies DAS from the lesser of 300 lb (136.1 kg) tail weight per DAS or 25 percent of the total weight of fish on board, to the lesser of 400 lb (181.4 kg) tail weight per DAS or 50 percent of total weight of fish on board.

Revision to the Area Declaration Regulations

Regulations implementing the FMP (64 FR 54732; October 7, 1999) specify that a vessel intending to fish for or catch monkfish under a monkfish DAS only in the NFMA must declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area. However, the FMP also requires vessels fishing under a multispecies or scallop DAS to declare into the NFMA in order to fish under the less restrictive measures of this area. Because NMFS inadvertently referenced only limited access monkfish DAS vessels in the regulations implementing the FMP, Framework 2 corrects the area declaration provision by requiring vessels with limited access multispecies and scallop DAS permits, in addition to vessels possessing limited access monkfish DAS permits, to declare into the NFMA for a minimum of 30 days in order to fish under the less restrictive size and trip limits of this management area.

Revisions to Prohibitions

This action also clarifies the monkfish prohibitions found at 50 CFR 648.14(y) by providing appropriate cross-references to the monkfish regulations specified under 50 CFR part 648 subpart F.

Comments and Responses

Two public comments were received in support of Framework 2. An additional comment, from the NEFMC, raised two technical issues with respect to the proposed rule that are addressed in this final rule.

*Comment 1:*The first issue raised by the NEFMC concerns the preamble and regulatory language pertaining to $F_{threshold}$. In Framework 2, the Councils specifically adopted an $F_{threshold}$ equivalent to F_{max}, which is currently estimated to be F=0.2. However, the preamble to the proposed rule and the proposed regulatory language at 50 CFR 648.96(b)(1)(ii)(B) state that $F_{threshold}$ would be set equal to F_{max}=0.2, implying that the Councils adopted a fixed number for $F_{threshold}$. The Councils specifically adopted $F_{threshold}$=Fmax, with the intent that $F_{threshold}$ would change accordingly if a future Stock Assessment Workshop recalculates the value of F_{max}, requiring no action by the Councils.

Response: NMFS acknowledges these oversights in the preamble to the proposed rule and the proposed regulatory text. The preamble to this final rule correctly references the Councils' intent with respect to $F_{threshold}$. In addition, the regulatory language at § 648.96(b)(1)(ii)(B) has been corrected in this final rule to reference that Framework 2 revises the $F_{threshold}$ contained in the FMP to be equivalent to F_{max}, which is currently estimated to be F=0.2.

Comment 2: A second technical issue raised by the NEFMC concerns the timing of the MFMC's calculation of annual target TACs. The preamble to the proposed rule and the regulatory text at § 648.96(b)(1)(i) indicated a December 1 deadline for the MFMC to submit the target TACs to the Councils and the RA. This issue was not specifically discussed by the MFMC or the Councils, being administrative in nature. The NEFMC expressed concerns regarding the ability of the MFMC to consistently meet this deadline, particularly if there are delays in the fall trawl survey due to bad weather. The NEFMC suggested that NMFS revise this deadline to ''as soon as possible after the availability of the trawl survey indices, but no later than January 7.'' The NEFMC noted that January 7 is consistent with the current deadline for submission of an annual framework adjustment that is recommended as a proposed rule.

Response: Although NMFS has some concerns with moving this deadline date to January 7 because it affords less review time by the agency, NMFS feels that the NEFMC's justification is reasonable. As a result, this final rule changes the deadline date for submission of annual target TACs by the MFMC from December 1 to ''as soon as possible after the availability of the trawl survey indices, but no later than January 7.''

Changes From the Proposed Rule

Three changes to the regulatory text in the proposed rule have been made. In § 648.9, paragraph (b)(1)(ii)(B) is revised to clearly reflect the intent of the Councils with respect to the adoption of a revised $F_{threshold}$, i.e., an $F_{threshold}$ that is equivalent to F_{max}, not a specific F value. In § 648.96, paragraph (b)(1)(i) is revised to change the deadline date for submission of annual target TACs by the MFMC. This final rule changes the deadline date of December 1 contained in the proposed rule to be ''as soon as possible after the availability of the trawl survey indices, but no later than January 7,'' as recommended by the NEFMC. In § 648.96, paragraph (b)(2)(ii) is revised to more clearly describe the process by which trip limits would be set for the SFMA to achieve the proposed annual target TAC. This paragraph also incorporates a cross-reference to the analytical procedures outlined in Appendix II to Framework 2.

Classification

The RA, determined that Framework 2 is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

For the reasons stated below, the Assistant Administrator for NOAA (AA) is waiving the 30–day delayed effectiveness period for the management measures contained in Framework 2 pursuant to 5 U.S.C. 553(d)(1). Default management measures scheduled to take effect on May 1, 2003, would eliminate the directed fishery, by allocating zero DAS. These default measures would also reduce incidental monkfish catch limits in other fisheries. However, the results of the most recent stock assessment (SAW 34) indicate that the default management measures scheduled to take effect on May 1, 2003, are unnecessary to achieve the goals of the FMP. Furthermore, the results of the 2002 NMFS fall trawl survey indicate that the monkfish stock in the NFMA is no longer overfished, and that monkfish stock biomass in the SFMA continues to increase, as it has over the past 2 years. The default measures would cause unnecessary, significant negative economic and social impacts to vessels and some communities dependent on the monkfish fishery, based on the findings of the Final Environmental Impact Statement for the FMP and the framework analyses. Moreover, delaying implementation of this rule beyond May 1, 2003, would likely result in increased monkfish bycatch as a result of the reduced incidental catch limits. Therefore, this rule relieves a restriction.

The Council prepared an environmental assessment (EA) for this framework and the AA concluded that there will be no significant impact on the human environment as a result of this rule. This action establishes an automatic method for setting annual TACs that is consistent with the stock rebuilding program in the FMP. As a result of increasing biomass in both management areas, this action increases the target TACs in both areas, resulting in an increase in the trip limits for limited access monkfish vessels fishing

in the SFMA, and an increase in the incidental trip limit for monkfish open-access Category E vessels fishing exclusively in the NFMA on a NE multispecies DAS. Because this action eliminates the default measures contained in the FMP and increases target TACs and trip limits in a manner that is consistent with the stock rebuilding goals of the FMP, this action will allow the continued economic viability of the monkfish fishery.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act (RFA), NMFS prepared an FRFA for Framework 2, which incorporates the IRFA, any comments on the IRFA and the responses to those comments, and a summary of the analyses prepared in support of this final rule. A copy of the FRFA is available from the RA, and a copy of the IRFA is available from the NEFMC (*see* **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here in its entirety. A summary of the FRFA is provided in the following paragraphs.

A description of the reasons why action by the agency is being taken and the objectives of this action are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any reporting, recordkeeping, or other compliance requirements. This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Public Comments

Two public comments were received on the proposed rule; however, none of these comments pertained to the IRFA or the economic impacts of the proposed rule.

Number of Small Entities Impacted

This action could affect any commercial vessel holding an active Federal monkfish permit. However, the vessels most impacted by this action would be limited access monkfish permit holders. Data from the NE permit database show that there are approximately 714 limited access monkfish permit holders and approximately 1,900 open access monkfish permit holders. All of these vessels fall within the Small Business Administration's definition of ''small business,'' and the RFA's definition of ''small entity.''

Minimizing Economic Impacts on Small Entities

The FRFA contains an analysis of the measures being implemented in comparison to other alternatives that were considered. Framework 2 contains six alternatives, including the no action and status quo alternatives. Each alternative contains a method for setting annual target TACs, and five of these alternatives include changes to the overfishing definition in the FMP. The measures being implemented in this final rule consist of the measures contained in the alternative recommended by both Councils.

Due to limited biological information on the monkfish resource, F cannot be reliably estimated at this time. As a result, three of the six alternatives contained in Framework 2 were rejected by both Councils because that they were contingent on the ability to reliably estimate F on an annual basis. The remaining three alternatives consist of an automatic means for setting annual target TACs. The alternative recommended by both Councils that is being implemented through this final rule is less precautionary than the other alternatives, but minimizes the overall impacts to small entities to the greatest extent. This action provides the Councils with the ability to increase the target TAC reflective of an increase in monkfish stock biomass in the absence of a reliable estimate of F, but with a cap on that increase. As a result, this action maximizes benefits to the fishing industry. Given the fact that the stock in the NFMA is no longer overfished, and that stock biomass in the SFMA has increased over the past 2 years, NMFS believes that it is appropriate to maximize benefits to the industry through an increase in the target TAC because the monkfish resource can withstand a modest increase in removals under the index-based target TAC setting method being implemented through this final rule.

The management measures contained in Framework 2 substantially increase the trip limits for limited access monkfish vessels fishing in the SFMA. Framework 2 increases the SFMA trip limits to 1,250 lb (567 kg) of tail weight per monkfish DAS for limited access Category A and C vessels, and 1,000 lb (453.6 kg) of tail weight per monkfish DAS for limited access Category B and D vessels. In addition, Framework 2 increases the incidental catch limit for open access (Category E) monkfish vessels while fishing under a NE multispecies DAS in the NFMA to the lesser of 400 lb (181.4 kg) of tail weight per DAS, or 50 percent of the total weight of fish on board. An analysis of projected change in fishing performance under the proposed TACs and trip limits for FY 2003, as compared to FY 2002, indicates that the median vessel will realize a 23–percent increase in net returns on monkfish-only trips. According to this analysis, the change in net returns resulting from the proposed trip limit increase ranged from no change to an improvement of 78 percent. A limited access monkfish vessel would realize no change in net revenues under the proposed trip limit increase for the SFMA if the vessel did not fish at a level exceeding the trip limits established for FY 2002, which are approximately half the level of the proposed trip limits. With regard to the increase in the incidental catch limit in the NFMA, the analysis indicates that open access Category E vessels fishing in the NFMA will be generally unaffected by the proposed incidental catch limit increase since they land, on average, only about 20 percent of the current limit.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the monkfish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the RA (*see* **ADDRESSES**) and area also available at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 22, 2003.

Rebecca Lent,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.14, paragraphs (y) introductory text, (y)(1), (y)(4), (y)(6), (y)(9) through (y)(11), (y)(13), and (y)(17) through (y)(21) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(y) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9); or

(ii) The monkfish were harvested by a vessel not issued a Federal monkfish permit that fishes for or possesses monkfish exclusively in state waters; or

(iii) The monkfish were harvested in or from the EEZ by a vessel not issued a Federal monkfish permit that engaged in recreational fishing.

* * * * *

(4) Operate or act as an operator of a vessel fishing for, possessing, retaining, or landing monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

* * * * *

(6) Violate any provision of the monkfish incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) or 648.94(c).

* * * * *

(9) Fail to comply with the monkfish size limit restrictions of § 648.93 when issued a valid monkfish permit under § 648.4(a)(9).

(10) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under § 648.94 when issued a valid monkfish permit under § 648.4(a)(9).

(11) Fail to comply with the monkfish DAS provisions specified at § 648.92 when issued a valid limited access monkfish permit, and fishing for, possessing, or landing monkfish in excess of the incidental catch limits specified at § 648.94 (c).

* * * * *

(13) Combine, transfer, or consolidate monkfish DAS allocations.

* * * * *

(17) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) Fail to produce gillnet tags when requested by an authorized officer.

(19) Tagging a gillnet with or otherwise using or possessing a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or using or possessing a false gillnet tag.

(20) Selling, transferring, or giving away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(21) Fail to comply with the area declaration requirements specified at § § 648.93(b)(2) and 648.94(f) when fishing under a scallop, multispecies or monkfish DAS exclusively in the NFMA under the less restrictive monkfish size and possession limits of that area.

* * * * *

■ 3. In § 648.92, paragraph (b)(1) is revised to read as follows:

§ 648.92 Effort control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders.* All limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year, unless modified according to the provisions specified at § 648.96(b)(3). Limited access multispecies and limited access scallop permit holders who also possess a valid limited access monkfish permit must use a multispecies or scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section.

* * * * *

■ 4. In § 648.93, the introductory heading for paragraph (a), and paragraphs (a)(1) and (b) are revised to read as follows:

§ 648.93 Monkfish minimum fish sizes.

(a) *General provisions.* (1) All monkfish caught by vessels issued a valid Federal monkfish permit must meet the minimum fish size requirements established in this section.

* * * * *

(b) *Minimum fish sizes.* (1) The minimum fish size for vessels fishing in the SFMA, or for vessels not declared into the NFMA as specified in paragraph (b)(2) of this section, is 21 inches (53.3 cm) total length/14 inches (35.6 cm) tail length.

(2) *Vessels fishing exclusively in the NFMA.* The minimum fish size for vessels fishing exclusively in the NFMA is 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length. In order for this size limit to be applicable, a vessel intending to fish for monkfish under a scallop, multispecies, or monkfish DAS exclusively in the NFMA must declare into the NFMA for a period of not less than 30 days, pursuant to the provisions specified at § 648.94(f). A vessel that has not declared into the NFMA under § 648.94(f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provisions described in § 648.94(e), and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

■ 5. In § 648.94, paragraph (b)(7) is removed and reserved; and paragraphs (b)(1), (b)(2), introductory heading of paragraph (b)(3), and paragraphs (b)(4) through (b)(6), (c)(1)(i), (c)(2), (c)(3)(i) and (f) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the NFMA.* There is no monkfish trip limit for vessels issued a limited access Category A, B, C, or D permit that are fishing under a monkfish DAS exclusively in the NFMA.

(2) *Vessels fishing under the monkfish DAS program in the SFMA.*—(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 1,250 lb (567 kg) tail-weight or 4,150 lb (1,882 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(iii) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(i) and (ii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C and D vessels fishing under the multispecies DAS program.*

* * * * *

(4) *Category C and D vessels fishing under the scallop DAS program.* A

Category C or D vessel fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32). All monkfish permitted vessels are prohibited from fishing for, landing, or possessing monkfish while in possession of dredge gear unless fishing under a scallop DAS.

(5) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board, or not under the net exemption provision.* Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have a dredge on board, or are not fishing with a net under the net exemption provision specified in § 648.51(f), are subject to the same landing limits as specified in paragraphs (b)(1) and (b)(2) of this section. Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(6) *Vessels not fishing under a multispecies, scallop or monkfish DAS.* The possession limits for all limited access monkfish vessels when not fishing under a multispecies, scallop, or monkfish DAS are the same as the possession limits for a vessel issued a monkfish incidental catch permit specified under paragraph (c)(3) of this section.

* * * * *

(c) * * *

(1) * * *

(i) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA may land up to 400 lb (181 kg) tail weight or 1,328 lb (602 kg) whole weight of monkfish per DAS, or 50 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board, whichever is less. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(2) *Scallop dredge vessels fishing under a scallop DAS.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

* * * * *

(3) * * *

(i) *Vessels fishing with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM, GB, SNE, or MA RMAs with mesh no smaller than specified at § 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i), and § 648.104(a)(1), respectively, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purposes of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 30 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provisions described in § 648.94(e), and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

* * * * *

■ 6. In § 648.96, the section heading and paragraphs (a), (b) and (c) are revised to read as follows:

§ 648.96 Monkfish annual adjustment process and framework specifications.

(a) *General.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year in accordance with paragraph (b)(1) of this section, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(b) *Annual Adjustment Procedures.*—(1) *Setting annual target TACs.* (i) The MFMC shall submit to the Councils and Regional Administrator the target monkfish TACs for the upcoming fishing year as soon as possible after the availability of the NMFS fall trawl survey indices, but no later than January 7, based on the control rule formula described in paragraph (b)(1)(ii) of this section. The Regional Administrator shall then promulgate any changes to existing management measures, pursuant to the methods specified in paragraphs (b)(2) and (3) of this section, resulting from the updated target TAC through rulemaking consistent with the Administrative Procedure Act. If the annual target TAC generated through the control rule formula described in paragraph (b)(1)(ii) of this section does not require any changes to existing management measures, then no action shall be required by the Regional Administrator. If the action is submitted after January 7, then the target TACs and associated management measures for the prior fishing year shall remain in place until new target TACs are implemented.

(ii) *Control rule method for setting annual targets TACs.* The current 3–year running average of the NMFS fall trawl survey index of monkfish biomass shall be compared to the established annual biomass index target, and target annual TACs will be set in accordance with paragraphs (b)(1)(ii)(A) - (F) of this section. The annual biomass index targets established in Framework Adjustment 2 to the FMP are provided in the following table (kg/tow).

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2007	FY 2008	FY 2009
NFMA	1.33	1.49	1.66	1.83	2.00	2.16	2.33	2.50
SFMA	0.88	1.02	1.15	1.29	1.43	1.57	1.71	1.85

(A) Unless the provisions of paragraphs (b)(1)(ii)(C) or (D) of this section apply, if the current 3–year running average of the NMFS fall trawl survey biomass index is below the annual index target, the target TAC for the subsequent fishing year shall be set equivalent to the monkfish landings for the previous fishing year, minus the percentage difference between the 3–year average biomass index and the annual index target.

(B) If the 3–year running average of the NMFS fall trawl survey biomass index is above the annual index target, and the current estimate of F is below $F_{threshold}=F_{max}$, the target TAC for the subsequent fishing year shall be set equivalent to the previous year's landings, plus one-half the percentage difference between the 3–year average biomass index and the annual index target, but not to exceed an amount calculated to generate an F in excess of $F_{threshold}$. If current F cannot be determined, the target TAC shall be set at not more than 20 percent above the previous year's landings.

(C) If the current estimate of F exceeds $F_{threshold}$, the target TAC shall be reduced proportionally to stop overfishing, even if a reduction is not called for based on biomass index status as described in paragraph (b)(1)(ii)(A) of this section. For example, if F=0.24, and $F_{threshold}$=0.2, then the target TAC shall be reduced to 20 percent below the previous year's landings.

(D) If the 3–year average biomass index is below the annual index target, and F is above $F_{threshold}$, the method (F-based or biomass index based) that results in the greater reduction from the previous year's landings shall determine the target TAC for the subsequent fishing year.

(E) If the observed index is above the 2009 index targets, the target TAC for the subsequent fishing year shall be based on the ratio of current F to F=0.2, applied to the previous year's landings. If current F cannot be determined, the target TAC shall be set at not more than 20 percent above previous year's landings.

(F) If landings decline from the previous year and the current 3–year average biomass index is above the annual index target, whether or not F can be determined, the MFMC shall include in its report, prepared under paragraph (a) of this section, after taking into account circumstances surrounding the landings decline, a recommendation to the Councils on whether the target TAC should be set at the previous year's landings or previous year's target TAC. The Councils shall consider the MFMC recommendation, and then recommend to the Regional Administrator whether the target TAC should be set at the previous year's landings or previous year's target TAC. If such a recommendation is made, the Regional Administrator must decide whether to promulgate measures consistent with the recommendation as provided for in paragraph (b)(4) of this section.

(2) *Setting trip limits for the SFMA.* (i) Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set at 8,000 mt or higher, the Regional Administrator shall adjust the trip limits according to the method described in paragraph (b)(2)(ii) of this section.

(ii) *Trip limit analysis procedures.* Trip limits shall be determined annually by the process specified in Appendix II of Framework Adjustment 2 to the Monkfish FMP, using information from the mandatory fishing vessel trip reports (FVTR). This process is summarized in paragraphs (b)(2)(ii) (A) through (C) of this section.

(A) The 1999 fishing year shall be used as the baseline year for this analysis, since it represents monkfish landings under relatively unconstrained conditions. The first step shall be to calculate the expected distribution of monkfish landings from the SFMA by permit category group (A and C, and B and D) under the proposed target TAC for the SFMA for the upcoming fishing year. This calculation shall be based on the distribution of monkfish landings for the most recent fishing year for which there is complete FVTR information (most recent fishing year). For example, for each permit category group, the distribution of landings under the proposed target SFMA TAC for the 2004 fishing year would be based on the distribution of landings from the SFMA for the 2002 fishing year, the most recent fishing year for which complete FVTR would be available.

(B) The second step shall be to compare the monkfish landings for the SFMA from the baseline year, assuming a trip limit was in place that is identical to the trip limit in the most recent fishing year, to the monkfish landings for the most recent fishing year, and to calculate a ratio estimator for each permit category group. This ratio shall then be multiplied by the trip level monkfish landings from the SFMA for the baseline year for each permit category group to simulate the monkfish landings that would have occurred during the most recent fishing year under an unconstrained landings-per-DAS limit. For example, the ratio calculated by comparing the SFMA monkfish landings by permit category group for the1999 fishing year to the most recent fishing year, fishing year 2002, would be applied to the SFMA trip level monkfish landings for the 1999 fishing year to produce estimated trip level monkfish landings for the 2002 fishing year under an unconstrained landings-per-DAS limit.

(C) Using the estimated trip level monkfish landings for the most recent fishing year, expected monkfish landings under a range of potential trip limits shall be calculated for each permit category group for the upcoming fishing year as follows: Trips that landed monkfish from the SFMA in excess of a particular potential trip limit shall have monkfish landings reduced to that trip limit, and trips that landed monkfish from the SFMA in an amount equal to or lower than that particular trip limit shall remain at the actual amount of monkfish landed. Expected monkfish landings under each potential trip limit shall then be calculated for each permit category group by summing the adjusted monkfish landings of all trips that exceeded the potential trip limit and the monkfish landings of all trips that did not exceed the potential trip limit. The resulting data shall then be used to determine a functional relationship between potential trip limits and expected monkfish landings for each permit category group. These empirical functions shall then be used to calculate a landing-per-DAS limit for each permit category group for the upcoming fishing year, based on the expected distribution of monkfish landings by permit category group for the upcoming fishing year, as calculated under paragraph (b)(2)(ii)(A) of this section.

(3) *Setting DAS allocations for the SFMA.* Under the method described in paragraph (b)(1)(ii) of this section, if the SFMA target TAC is set below 8,000 mt, the Regional Administrator shall set the trip limits as specified in paragraphs (b)(3)(i) and (ii) of this section, and adjust the DAS allocations according to the method described in paragraph (b)(3)(iii) of this section.

(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (249 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any

prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32).

(iii) *DAS analysis.* This procedure involves setting a maximum DAS usage for all permit holders of 40 DAS; proportionally adjusting the landings to a given DAS value based on the trip limits specified under paragraphs (b)(3)(i) and (ii) of this section; and adjusting the landings according to the same methodology used in the trip limit analysis described in paragraph (b)(2)(ii) of this section.

(A) Because limited access monkfish permit holders are allowed to carry over up to 10 DAS from the previous fishing year to the current fishing year, adjustments to DAS usage shall be made by first reducing the landings for all permit holders who used more than 40 DAS by the proportion of DAS exceeding 40, and then resetting the upperlimit of DAS usage to 40.

(B) The expected landings at the adjusted DAS shall be calculated by adding the landings of all permit holders who used less than the proposed DAS limit to the landings of those who used more than the proposed DAS limit, where landings are reduced by the proportion of the proposed DAS limit to the actual DAS used by vessels during the baseline fishing year, 1999.

(C) Landings shall be prorated between permit categories in the same manner used in the trip limit analysis procedures described under paragraph (b)(2)(iii) of this section.

(4) *Council TAC recommendations.* As described in paragraph (b)(1)(ii)(F) of this section, if the Councils recommend a target TAC to the Regional Administrator, and the Regional Administrator concurs with this recommendation, the Regional Administrator shall promulgate the target TAC and associated management measures through rulemaking consistent with the APA. If the Regional Administrator does not concur with the Councils' recommendation, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(c) *Annual and in-season framework adjustments to management measures.*—(1) *Annual framework process.* (i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, other options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: Closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures included in § § 648.55 and 648.90.

(ii) The Councils shall review the options developed by the MFMC and other relevant information, consider public comment, and submit a recommendation to the Regional Administrator that meets the Monkfish FMP's objectives, consistent with other applicable law. The Councils' recommendation to the Regional Administrator shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments made to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(A) The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils.

(B) If the Councils do not submit a recommendation that meets the Monkfish FMP's goals and objectives, and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC, unless rejected by either Council, provided such option meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(iii) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action shall provide a public comment period in accordance with the Administrative Procedure Act. The Councils may instead submit their recommendation on or before February 1, if they choose to follow the framework process outlined in paragraph (c)(3) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's goals and objectives, and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's goals and objectives, is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that year.

(iv) Following publication of a proposed rule and after receiving public comment, if the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the **Federal Register** prior to the start of the next fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the goals and objectives of the Monkfish FMP, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided the option meets the goals and objectives of the Monkfish FMP, and is consistent with other applicable law.

(2) *In-season Action.* At any time, the Councils or the Joint Monkfish Oversight Committee (subject to the approval of the Councils' Chairmen) may initiate action to add or adjust management measures, if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP. Recommended adjustments to management measures must come from the categories specified under paragraph (c)(1)(i) of this section. In addition, the

procedures for framework adjustments specified under paragraph (c)(3) of this section must be followed.

(3) *Framework Adjustment Procedures*. Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(i) *Councils' recommendation*. After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(A) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(B) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(C) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(D) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(ii) *Action by NMFS*. (A) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(B) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(C) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(iii) *Adjustments for gear conflicts*. The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030210027–3097–02; I.D. 012103E]

RIN 0648- AQ35

50 CFR Part 648

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 37 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 37 (Framework 37) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to eliminate the Year 4 default measure for whiting in both stock areas; reinstate the Cultivator Shoal whiting fishery (CSWF) season through October 31 each year; eliminate the 10–percent restriction on red hake incidental catch in the CSWF; adjust the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarify the transfer-at-sea provisions for small-mesh multispecies for use as bait; modify slightly the Cape Cod Bay raised footrope trawl fishery area; and retain the 30,000–lb (13.6–mt) trip limit for the CSWF.

DATES: Effective May 1, 2003.

ADDRESSES: Copies of the Framework 37 document, its Regulatory Impact Review (RIR), the Environmental Assessment and other supporting documents for the framework adjustment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

This action is also based upon analyses conducted in support of Amendment 12 to the FMP. Copies of the Amendment 12 document, its RIR, IRFA and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement, and other supporting documents for Amendment 12 are available from Paul J. Howard (See address above). The Final Regulatory Flexibility Analysis (FRFA) for Amendment 12 consisted of the IRFA, public comments and responses contained in the final rule implementing Amendment 12 (65 FR 16766, March 29, 2000), and the summary of impacts and alternatives in that final rule.

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

SUPPLEMENTARY INFORMATION: This final rule implements measures contained in Framework 37 to the FMP. Details concerning the justification for and development of Framework 37 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 8731, February 25, 2003) and are not repeated here.

This framework adjustment eliminates the Year 4 default measure in both whiting stock areas and implements adjustments to allow for moderate increases in effort on small-mesh multispecies in the northern stock area. This adjustment is necessary because current regulations specify that the Year 4 default measure will become effective in both stock areas on May 1, 2003, unless modified or eliminated by a New England Fishery Management Council (Council) action.

This final rule also reinstates the CSWF season through October 31 each

year; eliminates the 10–percent restriction on red hake incidental catch in the CSWF; adjusts the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarifies the transfer-at-sea provisions for small-mesh multispecies for use as bait; modifies slightly the Cape Cod Bay raised footrope trawl fishery area; and continues the status quo 30,000–lb (13.6–mt) trip limit for the CSWF.

Prior to Amendment 12 to the FMP, the season for the CSWF was June 15–October 31. Amendment 12 shortened the season to end on September 30 as an effort reduction measure. This action reinstates the month of October to the CSWF, which will provide increased economic opportunity for participating vessels. Further discussion appears in the Classification section of this preamble.

Currently, participants in the CSWF are limited in their red hake landings to 10 percent, by weight, of all other fish on board. According to the Whiting Monitoring Committee, there is no biological reason to restrict the catch of red hake at this time. The current restriction on red hake landings may cause discards in the CSWF. Because of market limitations, it is unlikely that this action will encourage directed fishing on red hake. This action also will simplify and improve the consistency of regulations for exempted fisheries in the northern stock area, since no other exempted small mesh fishery in the northern area includes such a restriction on red hake landings.

Three of the four exempted whiting fisheries in the northern area currently require the use of a raised footrope trawl to minimize bycatch of groundfish. However, the incidental catch allowances for these three fisheries are not consistent with each other. The incidental catch allowances for the Cape Cod Bay raised footrope trawl fishery were established to discourage vessels from rigging their gear improperly and allowing it to fish on the ocean bottom. As a result, bottom-dwelling species, such as lobster and monkfish, are prohibited in the Cape Cod Bay raised footrope trawl fishery. Because Small Mesh Areas 1 and 2 require use of the raised footrope trawl, the Council felt it appropriate to allow the same incidental catch species for Small Mesh Areas 1 and 2 and to provide the same incentives for fishing the required gear properly. Specifically, monkfish, lobster, ocean pout, and sculpin will no longer be allowed to be taken as incidental catch in Small Mesh Areas 1 and 2. The following species will be the only allowable incidentally caught species in these areas: Red hake, squid, butterfish, mackerel, dogfish, herring, and scup.

Clarification of the transfer at sea provisions for small-mesh multispecies reflects the status quo for vessels that are currently engaged in this activity. The Whiting Monitoring Committee has indicated that there is no biological reason to restrict the catch of northern red hake. Vessels will be allowed to transfer up to 500 lb (226.8 kg) of whiting and unlimited amounts of red hake at sea for use as bait.

The slight area modification to the Cape Cod Bay raised footrope trawl fishery will provide Provincetown fishermen with improved access to this fishery in times of inclement and unpredictable weather, thereby promoting the safety of the Provincetown vessels, which tend to be smaller and older than vessels from other ports. Specifically, the southern boundary of the area will move from the Loran 44100 line to the 42o N. lat. line, creating a ''lee'' by opening a triangle-shaped area totaling 5.5 square miles (14.3 sq. km).

Comments and Responses

Two sets of written comments on the proposed rule were received during the comment period, which ended March 27, 2003. A comment was also received prior to the comment period. All three comments addressing the proposed rule were considered in implementation of the management measures in the final rule and are responded to here.

Comment 1: Both commenters believe that the current trip limit in the CSWF is unnecessarily restrictive and each commenter disagrees with the Council's decision not to increase the trip limit in accord with one of the alternatives considered and analyzed by the Council as set forth in Framework 37. Both commenters urge that the Regional Administrator either increase or eliminate the trip limit in the CSWF.

Response: Under the default measures, the trip limit for all whiting trips, including trips in CSWF, would have been 10,000 lb (4.5 mt), thereby reducing the status quo CSWF trip limit from 30,000 lb to 10,000 lb (13.6 mt to 4.5 mt). In developing Framework 37, the Council considered increasing the CSWF trip limit to several levels above the 30,000–lb (13.6–mt) CSWF trip limit, but ultimately decided to retain the status quo trip limit of 30,000 lb (13.6 mt). NMFS has determined that there are valid reasons for keeping the trip limit at 30,000 lb (13.6 mt), as discussed in the FRFA. Under the Magnuson-Stevens Fishery Conservation and Management Act, NMFS may only approve, disapprove, or partially approve an action proposed by the Council. Disapproval of the Framework 37 trip limits would, in this case, be less desirable, as the more restrictive Year 4 default measures (CSWF trip limit of 10,000 lb (4.5 mt)) would be implemented, resulting in significant adverse economic impacts on all sectors of the small-mesh multispecies fishery. This result would run counter to the commenters' concerns about the CSWF trip limit being too small. Approving the Framework 37 trip limits, therefore, is more consistent with commenters' concerns than disapproving them, which is the only other option available. Commenters may raise their concerns about the CSWF trip limit to the Council for possible future action.

Comment 2: Both commenters supported the Council's decision that the Year 4 default measures contained in Amendment 12 were not necessary, and one commenter further supported all of the measures contained within Framework 37.

Response: Elimination of the Amendment 12 Year 4 default measure and its replacement with the measures contained in Framework 37 is generally supported by the fishing community. In addition, NMFS believes these measures contained in Framework 37 are necessary and are consistent with the national standards and other provisions of the Magnuson-Stevens Act.

Comment 3: A commenter voiced concern over potential economic impacts associated with the proposed modification to incidental catch allowances in Small Mesh Areas 1 and 2. This modification will prohibit the retention of monkfish and lobsters in these areas and may generate regulatory discards and affect profitability for some vessels.

Response: The modification to incidental catch allowances in Small Mesh Areas 1 and 2 will provide the same incentives for fishing the required gear properly (e.g., discourage improper rigging, which could allow gear to fish on the ocean bottom) as it does in the Cape Cod Bay raised footrope trawl fishery. This modification brings the incidental catch allowances for all three raised footrope trawl fisheries into consistency with each other. The amount of monkfish and lobster currently retained by vessels in Small Mesh Areas 1 and 2 is small (<15 lb (6.8 kg) per trip, on average, in 2001), and landings of these species do not contribute significantly to vessel revenues (<$20 per trip, on average, in 2001).

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), waives the 30–day delayed effectiveness period of the implementing regulations contained within this final rule, pursuant to 5 U.S.C. 553(d)(1). These management measures relieve a restriction by replacing the unnecessarily restrictive Year 4 default measures, which are otherwise scheduled to be implemented on May 1, 2003. This final rule will eliminate the Year 4 default measure for whiting in both stock areas; reinstate the CSWF season through October 31 each year; eliminate the 10–percent restriction on red hake incidental catch in the CSWF; and slightly modify the Cape Cod Bay raised footrope trawl fishery area, thus replacing unnecessary restrictive year 4 default measures. Implementation of this final rule will preclude the default measures and their negative economic impacts on the industry and fishing communities. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(1) to waive the 30–day delayed effectiveness period of the implementing regulations.

The Year 4 default measures would prohibit vessels from using nets with mesh size less than 3 inches (7.62 cm) (square or diamond) in most fisheries operating within the three Regulated Mesh Areas in New England and Mid-Atlantic waters and impose a 10,000–lb (4,536–kg) combined possession limit in most fisheries on whiting and offshore hake. In addition, the existing possession limit for whiting and offshore hake in the Small Mesh Northern Shrimp Fishery would be reduced from an amount equal to the total weight of shrimp on board (not to exceed 3,500 lb (1,588 kg)) to 100 lb (45.3 kg). Under the regulations that implement Amendment 12, these measures would become effective May 1, 2003, unless superseded by revised measures, such as those in Framework 37.

The analyses in Amendment 12 indicated that substantial negative economic and social impacts would be likely to result from implementing the Year 4 default measures. The default measures would be expected to generate large losses of not only small-mesh multispecies, but also other small mesh species, such as squid. Shinnecock, NY is projected to experience the largest reductions in landings of all species combined from the Year 4 default measures (39.4 percent), followed by Greenport, NY (36.7 percent), Point Judith, RI (32.8 percent), Montauk, NY (25.9 percent), Gloucester, MA (16.4 percent), Portland, ME (14.8 percent), Provincetown, MA (11.5 percent), Cape May, NJ (9.7 percent), Point Pleasant, NJ (8.0 percent), and Belford, NJ (7.2 percent). Although Connecticut ports could not be analyzed due to data limitations, it is likely that the default measures would produce similar impacts in the ports of Stonington and New London.

Included in this final rule is the Final Regulatory Flexibility Analysis prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a supplement to the IRFA prepared by NMFS in consultation with the Council, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated in its entirety here.

Summary of Significant Issues Raised in Public Comments

Two comments, only one of which pertained to the IRFA, were received during the comment period on the proposed rule. The comment relating to the IRFA addressed the issue of the current trip limit in the CSWF. The commenters stated that the current trip limit in the CSWF is unnecessarily restrictive and disagreed with the Councils decision not to increase the trip limit in accord with one of the alternatives considered and analyzed by the Council as set forth in Framework 37. The commenters urged further, that the Regional Administrator either increase or eliminate the trip limit in the CSWF. See Comment 1 and NMFS' response.

An additional comment was received prior to the comment period and this commenter voiced concern over potential economic impacts associated with the proposed modification to incidental catch allowances in Small Mesh Areas 1 and 2. See Comment 3 and NMFS' response. NMFS determined, after consideration of the public comments, that no changes to the proposed rule were required to be made as a result of the comments.

Description and Estimate of Number of Small Entities to which Rule will Apply

The IRFA identified 1,156 individual vessels that reported landing one or more combined pounds of whiting, red hake, and offshore hake during calendar years 1995 to 1997. From 1995 to 2001, no more than 676 vessels reported landing small mesh multispecies in any one year. All of these vessels are small entities as defined in 5 U.S.C. 601(3) and, therefore, all alternatives and analyses contained in Framework 37 necessarily reflect impacts on small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Framework 37 does not contain any new recordkeeping, reporting, or compliance requirements.

Steps Taken to Minimize Economic Impacts on Small Entities

NMFS and the Council prepared an economic analysis for Amendment 12 that indicated that implementation of the amendment, including the restrictive Year 4 default measures, would have a significant economic impact on a substantial number of small entities. Since costs of individual vessel operations were not available, gross revenues were used as a proxy for profitability. The management measures proposed for Years 1–3 were estimated to ''substantially'' reduce gross revenues from all species for 81 vessels. If the Year 4 default measures were to be implemented, 222 vessels would be likely to experience a substantial reduction in annual gross revenues.

Framework 37 will eliminate the Year 4 default measures for small-mesh multispecies in both the northern and southern whiting stock areas, and adjust measures to allow increased opportunities to fish for small-mesh multispecies in the northern area. A summary of the economic impacts of the measures to be substituted for the Year 4 default measures follow.

Impacts of Reinstating the CSWF Season

Adjustments to measures in the CSWF increase economic opportunities for affected entities. An average of 16 vessels participated in the CSWF from 1995–2001; 25 vessels participated in the fishery during 2001. Reinstating October to the CSWF season will have beneficial economic effects for vessels that had traditionally prosecuted the fishery during October and will increase economic opportunity for other vessels that are able to participate. Maintaining the current CSWF season (through

September 30) would result in fewer opportunities to harvest whiting and lost economic opportunities for fishermen who otherwise would participate in the CSWF during October.

Impacts of Eliminating the Restriction on Red Hake Incidental Catch Allowance in the CSWF

Landings data for red hake do not indicate that the current incidental catch allowance is a constraint to increased retention of red hake. Elimination of the red hake incidental catch allowance in the CSWF will permit vessels to increase trip profits on the occasions where the current incidental catch allowance will be exceeded. For this reason, removal of the incidental catch allowance will not likely result in any market effects but will permit vessels to increase trip income on the occasions where the current allowance will be exceeded.

Impacts of Modifying Incidental Catch Allowances for Small Mesh Areas 1 and 2

The proposed modifications to the incidental catch allowances in Small Mesh Areas 1 and 2 may have some negative economic impacts, since retention of monkfish and lobster will be prohibited (78 vessels fished in Small Mesh Areas 1 and 2 during 2000). For the period 1998–2001, the landed value of lobster and monkfish from these fisheries has averaged about $30,000 annually, based on an average of 1,800 trips per year. Given the low level of revenues from these species in Small Mesh Areas 1 and 2, it is expected that this action will have only a minimal impact on vessel profitability. It is unlikely that the proposed change in catch allowances will have any substantial impact on gross revenues from all sources of fishing income for vessels participating in this fishery. However, there may be some occasions where revenues from monkfish or lobster could affect vessel profitability for a given trip. In these cases, eliminating the incidental catch allowance may have a negative economic impact, as the trip may be abandoned, but the precise magnitude of such impacts cannot be accurately predicted.

Impacts of Clarifying the Transfer at Sea Provisions for Small-Mesh Multispecies

Clarification of the transfer at sea provisions for small-mesh multispecies will allow vessels to transfer 500 lb (226.8 kg) of whiting and unlimited amounts of red hake at sea for use as bait and will represent the status quo for vessels that are currently engaged in this activity. No impacts are expected.

Impacts of Area Modification to the Cape Cod Bay Raised Footrope Trawl Fishery

The southern boundary of the Cape Cod Bay Raised Footrope Trawl Fishery area will move from the Loran 44100 line to the 42o N. lat. line, creating a ''lee'' by opening a triangle-shaped area totaling 5.5 square miles (14.3 sq. km). This slight area modification will likely produce small, but positive, economic impacts to vessels utilizing the expanded area.

Impacts of Retention of the 30,000 Possession Limit for the CSWF

The Council concluded that the proposed retention of the status quo 30,000–lb (13.6–mt) possession limit for the CSWF will have no economic impact to present participants in the fishery, since gross revenues are not expected to change under this trip limit. The Council also considered, but rejected, four alternatives to the proposed possession limit, including a default possession limit of 10,000 lb (4.5 mt) and three higher possession limits, ranging from 50,000 to 90,000 lb (22.7 to 40.8 mt). The Council determined that the 10,000–lb (4.5–mt) default possession limit, which was previously analyzed in Amendment 12 to the FMP, would have substantially negative impacts resulting from an estimated 20,000–lb (9–mt) or 67–percent reduction in the possession limit. Some fishing vessel owners believe that retention of the current 30,000–lb (13.6–mt) possession limit will continue to serve as a disincentive for them to participate in the CSWF, by restricting their potential profitability.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and may be found at the following web site: http://www.nmfs.gov/ro/doc/nero.html.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: April 22, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory programs, National Marine fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.13, paragraph (b)(2) introductory text is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(b) * * *

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer from one vessel to another, for use as bait, up to 500 lb (226.8 kg) of silver hake and unlimited amounts of red hake, per trip, provided:

* * * * *

■ 3. In § 648.14, paragraph (z)(2) is removed and reserved.

§ 648.14 Prohibitions.

* * * * *

(z) * * *

(2) [Reserved]

* * * * *

■ 4. In § 648.80,

a. Revise paragraphs (a)(5)(i), (a)(6)(i), (a)(8)(i) and (a)(8)(ii), (a)(9)(i) and (a)(9)(ii) introductory text, (a)(10)(i)(D), and (a)(15) introductory text and (a)(15)(i)(B). Paragraph (a)(15)(i)(C) is removed and reserved.

b. Revise paragraph (b)(3)(i) to read as follows:

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

* * * * *

(a) * * *

(5) * * *

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as

allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(6) * * *

(i) *Requirements*. (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

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

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3–inch (7.6–cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (a)(2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (a)(4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in this paragraph (a)(6)(i) for the entire trip.

* * * * *

(8) * * *

(i) *Regulated multispecies*. An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species.

* * * * *

(9) * * *

(i) *Description*. (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (a)(4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii), or (a)(9)(ii) of this section and of § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1, and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake--up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; scup; squid; and red hake.

(B) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

SMALL MESH AREA I

Point	N. Lat.	W. Long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70o41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA II

Point	N. Lat.	W. Long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69° 43.3′
SM15	°49.5′	69° 40′
SM16	42° 41.5′	69°40′
SM17	42° 36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl*. Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

* * * * *

(10) * * *

(i) * * *

(D) *Incidental species provisions*. The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin;

silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

* * * * *

(15) *Raised Footrope Trawl Exempted Whiting Fishery*. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (a)(4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA (SEPTEMBER 1 THROUGH NOVEMBER 20)

Point	N. Lat.	W. Long.
RF1	42°14.05′	70°08.8′
RF2	42°09.2′	69°47.8′
RF3	41°54.85′	69°35.2′
RF4	41°41.5′	69°32.85′
RF5	41°39′	69°44.3′
RF6	41°45.6′	69°51.8′
RF7	41°52.3′	69°52.55′
RF8	41°55.5′	69°53.45′
RF9	42°08.35′	70°04.05′
RF10	42°04.75′	70°16.95′
RF11	42°00′	70°13.2′
RF12	42°00′	70°24.1′
RF13	42°07.85′	70°30.1′
RF1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA (NOVEMBER 21 THROUGH DECEMBER 31)

Point	N. Lat.	W. Long.
RF1	42°14.05′	70°08.8′
RF2	42°09.2′	69°47.8′
RF3	41°54.85′	69°35.2′°
RF4	41°41.5′	69°32.85′
RF5	41°39′	69°44.3′
RF6	41°45.6′	69°51.8′
RF7	41°52.3′	69°52.55′
RF8	41°55.5′	69°53.45′
RF9	42°08.35′	70°04.05′
RF1	42°14.05′	70°08.8′
	.....	.....
	.....	.....

* * * * *

(i) * * *

(B) All nets must be no smaller than a minimum mesh size of 2.5–inch (6.35–cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(C) [Reserved]

* * * * *

(b) * * *

(3) *Exemptions*—(i) *Species exemptions*. Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

* * * * *

[FR Doc. 03–10410 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 81
Monday, April 28, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–50–AD]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 Propeller Assemblies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Dowty Aerospace Propellers Type R334/4–82–F/13 propeller assemblies. That AD currently requires a one-time ultrasonic inspection of propeller hubs part number (P/N) 660709201 for cracks. This proposal would require initial and repetitive ultrasonic inspections of propeller hubs P/N 660709201, that are installed on airplanes, and for hubs and propellers in storage, initial ultrasonic inspection of propeller hubs before placing in service. Propeller hubs P/N 660709201 are installed on Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies. This proposal is prompted by the manufacturer's reevaluation of potential hub failure on Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies. The actions specified by the proposed AD are intended to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

DATES: Comments must be received by June 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–50–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone 44 (0) 1452 716000; fax: 44 (0) 1452 716001. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, telephone (781) 238–7158, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–50–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–50–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On January 18, 2002, the FAA issued AD 2002–01–28, Amendment 39–12623 (67 FR 4351, January 30, 2002), to require a one-time ultrasonic inspection for cracks of the rear wall of the rear half of propeller hubs P/N 660709201, installed in Type R334/4–82–F/13 propeller assemblies. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on Dowty Aerospace Propellers Type R334/4–82–F/13 propeller assemblies. The CAA advises that two different events occurred where the complete R334/4–82–F/13 propeller separated from the engine flange, on Construcciones Aeronauticas, S.A. (CASA) 212 airplanes.

Since AD 2001–01–28 was issued, the manufacturer has reevaluated the potential for P/N 660709201 hub failure on Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies.

Manufacturer's Service Information

Dowty Aerospace Propellers has issued Mandatory Service Bulletin (MSB) No. 61–1119, Revision 3, dated March 8, 2002, MSB No. 61–1124, Revision 1, dated October 8, 2002, MSB No. 61–1125, Revision 1, dated October 9, 2002, and MSB No. 61–1126, Revision 1, dated October 9, 2002, that specify initial and repetitive ultrasonic inspections of the rear wall of the rear half of the propeller hub for cracks on Types R334/4–82–F/13, R333/4–82–F/12, R321/4–82–F/8, and R324/4–82–F/9 propeller assemblies, respectively. The CAA classified these service bulletins as mandatory and issued CAA UK AD No. 003–11–2001, dated November 30, 2001, in order to assure the airworthiness of

these Dowty Aerospace Propellers in the UK.

Differences Between This AD and the Manufacturer's Service Information

Although Appendix A of MSB No. 61–1119, Revision 3, dated March 8, 2002, MSB No. 61–1124, Revision 1, dated October 8, 2002, MSB No. 61–1125, Revision 1, dated October 9, 2002, and MSB No. 61–1126, Revision 1, dated October 9, 2002, require reporting the inspection data to Dowty Aerospace Propellers, this AD requires that the data be reported to the Boston Aircraft Certification Office of the FAA.

Bilateral Agreement Information

These propeller models are manufactured in the UK and are Type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this Type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies of the same Type design that are used on airplanes registered in the United States, the proposed AD would require initial and repetitive ultrasonic inspections of propeller hubs P/N 660709201, that are installed on airplanes, and for hubs and propellers in storage, initial ultrasonic inspection of propeller hubs before placing in service. Propeller hubs P/N 660709201 are installed on Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies. The actions would be required to be done in accordance with the mandatory service bulletins described previously.

Economic Analysis

There are approximately 116 airplanes with propellers of the affected design in the worldwide fleet. The FAA estimates that 10 airplanes with Type R334/4–82–F/13 propeller assemblies installed on airplanes of U.S. registry would be affected by this proposed AD. It is unknown how many Type R321/4–82–F/8, R324/4–82–F/9, and R333/4–82–F/12 propeller assemblies are installed on airplanes of U.S. registry. The FAA also estimates that it would take approximately 11 work hours per propeller to perform one inspection and replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,650 per propeller. Based on these figures, the total cost of the proposed AD to known U.S. operators is estimated to be $46,200.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12623, (67 4351, January 30, 2002), and by adding a new airworthiness directive:

Dowty Aerospace Propellers: Docket No. 2001–NE–50–AD. Supersedes AD 2002–01–28, Amendment 39–12623.

Applicability: This airworthiness directive (AD) is applicable to Dowty Aerospace Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies with propeller hubs part number (P/N) 660709201. These propeller assemblies are installed on, but not limited to, Construcciones Aeronauticas, S.A. (CASA) 212, British Aerospace Regional Aircraft Jetstream Models 3101 and 3201, Merlin IIIC, and Merlin IVC/Metro III airplanes.

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

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

To prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane, do the following:

Initial Ultrasonic Inspection

(a) Within 50 flight hours time-in-service (TIS) after the effective date of this AD, or within 60 days after the effective date of this AD, whichever occurs earlier, perform an initial ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks in accordance with Appendix A of the applicable Dowty Aerospace Propellers Mandatory Service Bulletin (MSB) listed in the following Table 1:

TABLE 1.—APPLICABLE MSB FOR PROPELLER TYPE

Propeller assembly type	Applicable MSB
(1) R334/4–82–F/13.	MSB No. 61–1119, Revision 3, dated March 8, 2002.
(2) R333/4–82–F/12.	MSB No. 61–1124, Revision 1, dated October 8, 2002.
(3) R321/4–82–F/8.	MSB No. 61–1125, Revision 1, dated October 9, 2002.
(4) R324/4–82–F/9.	MSB No. 61–1126, Revision 1, dated October 9, 2002.

(b) For hubs and propellers in storage, perform an initial ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks, before placing in service, in accordance with Appendix A of the applicable Dowty Aerospace Propellers Mandatory Service Bulletin (MSB) listed in Table 1 of this AD.

(c) Propeller hubs P/N 660709201 used on Type R334/4–82–F/13 propeller assemblies

that have been previously inspected using Dowty Aerospace Propellers MSB No. 61–1119, Revision 3, dated March 8, 2002, or earlier issue, are considered to be in compliance with paragraph (a) of this AD.

Repetitive Ultrasonic Inspections

(d) Thereafter, within 1,000 flight hours TIS after each ultrasonic inspection, perform an ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks in accordance with Appendix A of the applicable Dowty Aerospace Propellers MSB listed in Table 1 of this AD.

Inspection Reporting Requirements

(e) For each inspection, record the inspection data on a copy of Appendix B of the applicable MSB listed in Table 1 of this AD, and report the findings to the Manager, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299 within 10 days after the inspection. Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in CAA UK AD 003–11–2001, dated November 30, 2001.

Issued in Burlington, Massachusetts, on April 22, 2003.

Robert Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–10334 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 106 and 107

[Docket No. 95N–0309]

RIN 0910–AA04

Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports for the Production of Infant Formula; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 27, 2003, the comment period for the proposed rule, published in the **Federal Register** of July 9, 1996 (61 FR 36154), revising its infant formula regulations in 21 CFR parts 106 and 107. The proposed rule would establish requirements for current good manufacturing practice (CGMP) and audits, establish requirements for quality factors, and amend its quality control procedures, notification, and records and reports requirements for infant formula. FDA is reopening the comment period to update comments and to receive any new information.

DATES: Submit written or electronic comments by June 27, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Shellee Anderson, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1491, or e-mail: *Shellee.Anderson@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Reopening of Comment Period

In the **Federal Register** of July 9, 1996 (61 FR 36154), FDA proposed regulations (the 1996 proposal) to revise its infant formula regulations to establish requirements for quality factors and CGMP; to amend its quality control procedure, notification, and records and report requirements for infant formulas; to require that infant formulas contain, and be tested for, required nutrients and for any nutrient added by the manufacturer throughout their shelf life, and that they be produced under strict microbiological controls; and to require that manufacturers implement the CGMP and quality control procedure requirements by establishing a production and in-process control system of their own design. The agency proposed these requirements to implement provisions of the Drug Enforcement, Education and Control Act of 1986 (Public Law 99–570) that amended section 412 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a).

Interested persons were originally given until October 7, 1996, to comment on the 1996 proposal. However, at the request of a trade organization, the comment period was extended to December 6, 1996 (61 FR 49714, September 23, 1996).

FDA's Food Advisory Committee (FAC) met on April 4 and 5, 2002, to discuss general scientific principles related to quality factors for infant formula. The committee was also asked to discuss the scientific issues related to the generalization of findings from a clinical study using preterm infant formula consumed by preterm infants to a term infant formula intended for use by term infants. On November 18 and 19, 2002, the Infant Formula Subcommittee (IFS) of the FAC met to discuss the scientific issues and principles involved in assessing and evaluating whether a ''new'' infant formula supports normal physical growth in infants when consumed as a sole source of nutrition. The Contaminants and Natural Toxicants Subcommittee (CNTS) of the FAC met on March 18 and 19, 2003, to discuss the scientific issues and principles involved in assessing and evaluating *Enterobacter sakazakii* contamination in powdered infant formula, risk reduction strategies based on available data, and research questions and priorities. Information on these three meetings, including the agenda, questions asked, guest speakers, committee roster, briefing information, and transcripts of the meetings can be found at *http://www.fda.gov/ohrms/dockets/ac/cfsan02.htm*.

II. Request for Comments

Because of the length of time that has elapsed since publication of the 1996 proposal and the occurrence of the FAC, IFS, and CNTS meetings, FDA is interested in updating comments and receiving any new information before issuing a final rule. Accordingly, the agency is requesting comments on all

issues in the proposed rule. Comments previously submitted to the Dockets Management Branch do not need to be resubmitted because all comments submitted to the docket number will be considered in any final rule to the 1996 proposal. Since the 1996 proposal was published, several issues within the scope of that proposal have come to the agency's attention and are set forth in this document for comment.

(Issue 1) In April 2001, an outbreak of *E. sakazakii* occurred in 10 infants in the neonatal intensive care unit of a hospital in Tennessee (Ref. 1). One of these infants died. The ill infants had consumed formula that was made from sterile water and a specific batch of powdered infant formula. Samples from both opened and unopened cans of the implicated brand of powdered infant formula were cultured. *E. sakazakii* was found in all samples from one particular batch of the product. Because of its concerns with *E. sakazakii*, FDA requests comment on whether there is a need to include a microbiological requirement for *E. sakazakii* and, if so, what requirement the agency should consider to ensure the safety of powdered infant formula and prevent future outbreaks. The agency requests comment on what other changes, if any, in the proposed microbiological requirements would be appropriate to ensure the safety of powdered infant formula and to prevent outbreaks of illness. FDA also requests comment on whether powdered infant formula to be consumed by premature and newborn infants should meet stricter microbiological requirements than formula intended for older infants. The agency specifically requests comments on issues discussed at the CNTS meeting that are relevant to this rulemaking.

(Issue 2) On March 19, 2002, FDA issued a letter (Ref. 2) in response to a notice of a manufacturer's conclusion that *Bifidobacterium lactis* strain Bb12 and *Streptococcus thermophilus* strain Th4 are generally recognized as safe (GRAS) for their intended use as ingredients in milk based infant formula that is intended for consumption by infants 4 months and older, at levels not to exceed CGMP. The agency has no questions about the manufacturer's conclusion at this time. In the 1996 proposal, FDA provided controls in proposed § 106.55 for powdered infant formula to prevent adulteration from microorganisms, including a proposed limit on the maximum allowable number of microorganisms in the aerobic plate count. The agency requests comment on what changes, if any, in the proposed microbiological requirements would be appropriate to provide for powdered infant formula and to ensure its safety if microorganisms are intentionally added to infant formulas. Would infant formula containing these added microorganisms exceed the maximum allowable number in the aerobic plate count? How can manufacturers ensure that a high aerobic plate count is due to the intentional addition of microorganisms and not contamination?

(Issue 3) The agency requests comments on which provisions of the proposed rule would require manufacturers to change their current activities. What new activities would manufacturers have to undertake to comply with the proposed regulations? What activities would manufacturers have to discontinue to comply with the proposed regulations? What are the costs of these changes? For example:

(Issue 3a) Proposed § 106.20(a) requires that buildings used in the manufacture of infant formula allot space for the separation of incompatible operations, such as the handling of raw materials, the manufacture of the product, and packaging and labeling operations. FDA requests comment on the types of control systems that manufacturers use to separate raw, in-process, and finished materials and the costs of making changes.

(Issue 3b) Proposed § 106.20(d) would require manufacturers to use air filtration systems, including prefilters and particulate matter air filters, on air supplies to production areas where ingredients or infant formula are directly exposed to the atmosphere. FDA requests comment on the types and costs of air filtration systems used by infant formula manufacturers and the costs of making changes.

(Issue 4) One comment to the 1996 proposal stated that the validation section in proposed § 106.35 is so vague and the impact so enormous that implementing it would be counterproductive. In proposed § 106.35(a)(4) the agency proposed that, for purposes of the section, ''validation'' means establishing documented evidence that provides a high degree of assurance that a system will consistently produce a product meeting its predetermined specifications and quality characteristics. In proposed § 106.35(b)(1), FDA proposed that all automatic systems be designed, installed, tested, and maintained in a manner that will ensure that they are capable of performing their intended function. The agency proposed in proposed § 106.35(b)(4) that automatic systems be validated before their first use to manufacture commercial product. Proposed § 106.35(b)(5) states that the infant formula manufacturer shall ensure that any automatic system that is modified be validated after the modification and before use of the modified system to manufacture commercial product. FDA requests comments on the proposed validation requirements. The agency specifically requests comments on current validation activities of infant formula facilities and how often manufacturers validate their systems.

(Issue 5) Several provisions of the 1996 proposal (e.g., §§ 106.30(d)(1) and 106.35(b)(2)) would require that manufacturers calibrate instruments and controls. In these proposed provisions the agency specifies that calibration occur at routine intervals. FDA requests comments on how often and under what conditions manufacturers now calibrate instruments and controls against a known standard and the adequacy of current procedures.

(Issue 6) FDA proposed to establish two quality factor measures for infant formula, protein quality and normal physical growth. Quality factors are those factors necessary to demonstrate that the infant formula, as prepared for market, provides nutrients in a form that is bioavailable and safe as shown by evidence that demonstrates that the formula supports healthy growth when fed as a sole source of nutrition. The agency requests comments on the appropriateness of these quality factors and any information on other quality factors that could be implemented to be consistent with current scientific knowledge as required under section 412(b)(1) of the act. FDA specifically requests comments on issues relevant to this rulemaking that were discussed at the two FAC meetings and on the following quality factor issues:

(Issue 6a) What requirements should the agency establish to determine when manufacturers must conduct clinical growth studies for a new or reformulated infant formula?

(Issue 6b) In proposed § 106.97, FDA would require that manufacturers compare their clinical study growth data with the National Center for Health Statistics (NCHS) growth charts. The IFS of the FAC considered other sources of reference data in addition to the NCHS and recommended the Iowa reference data as the most appropriate reference data for comparison because they are longitudinal, collected over the time period of interest for clinical studies of infant growth, and collected in a research setting. FDA requests comments on whether the Iowa reference data should be the standard

for clinical study growth data rather than the NCHS growth charts.

(Issue 6c) In proposed § 106.97(a)(1)(i)(A), the agency would require that manufacturers conduct clinical studies that are no less than 4 months in duration, enrolling infants no more than 1 month old at time of entry into the study. The IFS of the FAC recommended that infants be enrolled by 14 days of age. FDA requests comments on the appropriate age for infants enrollment into clinical studies and on the duration of the studies.

(Issue 7) In proposed § 106.97(a)(1)(ii), the agency states provisions that it recommends manufacturers include in a clinical study protocol. Proposed § 106.97(a)(1)(ii)(C) discusses review and approval by an Institutional Review Board (IRB) in accordance with part 56 (21 CFR part 56), and the need for obtaining written informed consent from parents or legal representatives of the infants in accordance with part 50 (21 CFR part 50). Subsequent to the publication of the 1996 proposal, the agency issued an interim final rule entitled ''Additional Safeguards for Children in Clinical Investigations of FDA-Regulated Products'' (66 FR 20589, April 24, 2001), which amended parts 50 and 56 to include, within the scope of that rule, data and information about a clinical study of an infant formula when submitted as part of an infant formula notification under section 412(c) of the act. Thus, requirements related to IRB review and informed consent for such clinical studies are dealt with in that interim final rule, and therefore, reference to IRB review and informed consent will be removed from the 1996 proposal. With respect to the other clinical study protocol provisions in proposed § 106.97(a)(1)(ii), the agency intends to remove them from the proposed rule and develop a guidance document on what it recommends be included in a clinical study protocol for infant formula that is submitted as part of an infant formula notification under section 412(c) of the act.

III. How to Submit Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

FDA has placed the following references on display in the Dockets Management Branch (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Centers for Disease Control and Prevention, ''*Enterobacter sakazakii* Infections Associated With the Use of Powdered Infant Formula–Tennessee, 2001,'' 51(14):297, *Morbidity and Mortality Weekly Report*, April 12, 2002.

2. FDA, Agency response letter to GRAS notice number GRN 00049, March 19, 2002.

Dated: April 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–10301 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2003–P–001]

RIN 0651–AB57

Changes To Implement the 2002 *Inter Partes* Reexamination and Other Technical Amendments to the Patent Statute

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The 21st Century Department of Justice Appropriations Authorization Act contains a title relating to intellectual property. The patent-related provisions in the intellectual property title of the 21st Century Department of Justice Appropriations Authorization Act include provisions permitting a third party requester in an *inter partes* reexamination proceeding to appeal a final decision by the Board of Patent Appeals and Interferences (BPAI) to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and to participate in the patent owner's appeal of a final decision by the BPAI to the Federal Circuit. Also included are technical amendments to statutory provisions directed to *inter partes* reexamination, 18-month publication of patent applications and provisional rights, and issuance of patents. The United States Patent and Trademark Office (Office) is in this notice proposing changes to the rules of practice to implement the patent-related provisions of the 21st Century Department of Justice Appropriations Authorization Act, and other miscellaneous changes related to appeals in reexamination proceedings.

DATES: To be ensured of consideration, written comments must be received on or before June 27, 2003. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB57Comments@uspto.gov.* Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9408, marked to the attention of Kenneth M. Schor, Senior Legal Advisor. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Crystal Park 2, Suite 910, 2121 Crystal Drive, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Schor or Gerald A. Dost, Senior Legal Advisors. Kenneth M. Schor may be contacted by telephone at (703) 308–6710; by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, marked to the attention of Kenneth M. Schor; by facsimile transmission to (703) 872–9408, marked to the attention of Kenneth M. Schor; or by electronic mail message over the Internet addressed to *kenneth.schor@uspto.gov.* Gerald A. Dost may be contacted by telephone at (703) 305–8610; by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, marked to the attention of Gerald A. Dost; by facsimile transmission to (703) 308–6916, marked to the attention of Gerald A. Dost; or by electronic mail message over the Internet addressed to *gerald.dost@uspto.gov.*

SUPPLEMENTARY INFORMATION: The American Inventors Protection Act of 1999 (AIPA), enacted on November 29,

1999, contained a number of changes to title 35, United States Code (U.S.C.). *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999). The 21st Century Department of Justice Appropriations Authorization Act, enacted on November 2, 2002, contained technical corrections to the AIPA as well as other technical amendments to title 35, U.S.C. *See* Pub. L. 107–273, 116 Stat. 1758, 1899–1906 (2002). This notice proposes changes to the rules of practice in title 37 CFR to implement the patent-related provisions of the 21st Century Department of Justice Appropriations Authorization Act (and other related miscellaneous changes).

I. Third Party Requester Appeal Rights to United States Court of Appeals for the Federal Circuit: Optional *inter partes* reexamination was newly enacted in the AIPA. The AIPA provided that the patent owner in an *inter partes* reexamination could appeal a decision of the BPAI (adverse to patent owner) to the Federal Circuit. The third party requester of the *inter partes* reexamination, however, was specifically precluded from appealing a decision of the BPAI to the Federal Circuit. 35 U.S.C. 134(c). In addition, no provision was made in the statute for the third party requester to be a party to, *i.e.,* participate in, an appeal taken by the patent owner to the Federal Circuit.

The Office published a final rule in December of 2000 revising the rules of practice in patent cases to implement the optional *inter partes* reexamination provisions of the AIPA. *See Rules to Implement Optional Inter Partes Reexamination Proceedings,* 65 FR 76755 (Dec. 7, 2000), 1242 *Off. Gaz. Pat. Office* 12 (Jan. 2, 2001) (final rule). In this final rule, § 1.983 was promulgated to track the patent owner's statutory right, under 35 U.S.C. 141, to appeal to the Federal Circuit in *inter partes* reexamination proceedings. Because the third-party requester of an *inter partes* reexamination was explicitly precluded under 35 U.S.C. 134(c) from appealing the decision of the BPAI to the Federal Circuit, no such provision of the rules was provided. Likewise, because there was no authority in the statute for the third party requester to participate in an appeal taken by the patent owner to the Federal Circuit, no such provision of the rules was provided. Finally, because the third-party requester of an *inter partes* reexamination was precluded under 35 U.S.C. 134(c) from appealing the decision of the BPAI to the Federal Circuit, no provision in the rules concerning patent owner participation in a third-party requester appeal was provided.

Section 13106 of Public Law 107–273 grants the *inter partes* reexamination third party requester the right to appeal an adverse decision of the BPAI to the Federal Circuit. 35 U.S.C. 315(b)(1). It further authorizes the third party requester to be a party to any appeal taken by the patent owner to the Federal Circuit. 35 U.S.C. 315(b)(1). Moreover, section 13106 also permits the patent owner to be a party to an appeal taken by the third party requester to the Federal Circuit. This is so because 35 U.S.C. 315(a)(2) as enacted by the AIPA states that the patent owner involved in an *inter partes* reexamination proceeding ''may be a party to any appeal taken by a third-party requester under subsection (b).''

It is being proposed that § 1.983 be amended to implement this statutory revision, and conforming/ancillary amendments be made to §§ 1.301, 1.304, and 1.979.

II. *Technical amendments to the inter partes reexamination provisions of the American Inventors Protection Act of 1999:* Section 13202 of Public Law 107–273 made technical corrections to statutory provisions directed to *inter partes* and *ex parte* reexamination. Amendments to §§ 1.191, 1.303, and 1.913 are being proposed to address the *inter partes* and *ex parte* reexamination technical corrections.

III. Other miscellaneous changes made as to reexamination: Additionally, revision of the *inter partes* reexamination rules is being proposed to avoid the loss of appeal rights during appeals to the BPAI due to certain inadvertent errors on the part of the patent owner or third party requester. Revision of the *inter partes* reexamination rules is also being proposed to expedite the prosecution leading to the appeal stage. Finally, revision is proposed for clarifying the *inter partes* and *ex parte* reexamination appeal rules. Amendments to these ends are proposed below for §§ 1.302, 1.949, 1.953, 1.959, 1.965, 1.967, 1.971, and 1.977.

IV. Patent and Trademark Efficiency Act Amendments: Section 13203 of Public Law 107–273 is directed to efficiency amendments to the statute. It is proposed that § 1.13(b) be amended to eliminate its requirement for an attestation for certified copies of documents, similar to the elimination of the attestation requirement in 35 U.S.C. 153 as provided in section 13203(c) of Public Law 107–273.

V. Technical amendment related to eighteen-month publication of applications and provisional rights: Sections 13203(c), 13204 and 13205 of Public Law 107–273 made technical corrections to provisions directed to the eighteen-month publication of patent applications and provisional rights, and the issuance of patents. The proposed changes to §§ 1.14, 1.78, 1.417, and 1.495 are directed to implementation of the statutory revisions made by these sections of Public Law 107–273.

Section-by-Section Discussion

Section 1.1: It is proposed that § 1.1(c) be amended to provide separate mail stops for *ex parte* reexamination proceedings and for *inter partes* reexamination proceedings. It is also proposed that § 1.1(c) be amended to make it clear that the mail stop for *ex parte* reexamination proceedings is only for the original request papers for *ex parte* reexamination. The new mail stop for *inter partes* reexamination would be for original request papers and all subsequent correspondence filed in the Office (other than correspondence to the Office of the Solicitor pursuant to § 1.1(a)(3) and § 1.302(c)), since the nature of such proceedings is complex and correspondence is best handled at a central location, where the personnel have specific expertise in *inter partes* reexamination.

Section 1.13: It is proposed that § 1.13(b) be amended to delete ''attested by an officer of the United States Patent and Trademark Office authorized by the Director.'' Section 13203(c) of Public Law 107–273 eliminated the requirement in 35 U.S.C. 153 that the signature of the Director for issued patents be attested to by an officer of the Office. To achieve further efficiencies, it is proposed that certified copies of documents would no longer include an attestation for the Director's signature. Accordingly, it is proposed that § 1.13(b) be amended to eliminate the requirement for an attestation for certified copies of documents.

Section 1.14: It is proposed that § 1.14(i)(2) be amended by inserting ''of the publication'' after ''English language translation'' in the sole sentence of the paragraph. Section 13204 of Public Law 107–273 made a technical change to the provisional rights provisions of the patent statute as to international applications to clarify that a translation of the international publication, as opposed to the international application, is required to be filed in order for a patent owner to obtain provisional rights pursuant to 35 U.S.C. 154(d). In view of this change to the statute, the corresponding reference to the translation in § 1.14 is proposed to be changed to add ''the publication of an international application'' after ''English language translation of.'' In addition, it is proposed that the

parenthetical phrase at the end of paragraph (i)(2), referencing the fee for a copy of a document in a file, be corrected to refer to § 1.19(b)(4) rather than § 1.19(b)(2) or (3).

Section 1.78: It is proposed that § 1.78, paragraph (a)(3), be amended by deleting the phrase ''in a nonprovisional application'' in the first sentence of the paragraph.

Section 4508 of the AIPA as originally enacted did not make the 18-month publication amendments to 35 U.S.C. 119 and 120 applicable to an international application unless and until it enters the national stage under 35 U.S.C. 371. *See* Public Law 106–113, 113 Stat. at 1501A–566 through 1501A–567. Section 13205 of Public Law 107–273 amended section 4508 of the AIPA to make the 18-month publication amendments to 35 U.S.C. 119 and 120 also applicable during the international stage of an international application. With regard to international applications, § 1.78(a)(2)(ii) requires that the reference required by § 1.78(a)(2)(i) be submitted: (1) During the pendency of the later-filed application; and (2) within the later of (A) four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or (B) 16 months from the filing date of the prior-filed application. An abandoned international application is not a nonprovisional application; thus, as § 1.78(a)(3) currently reads, the petition procedure set forth in § 1.78(a)(3) would not be applicable to a delayed priority claim in an abandoned international application. If the presently proposed amendment to § 1.78(a)(3) is adopted, then the petition procedure set forth in § 1.78(a)(3) would be applicable to submitting a delayed priority claim in an abandoned international application including an international application that has not entered the national stage under 35 U.S.C. 371. In view of the statutory change to the applicability of the 18-month publication amendments to 35 U.S.C. 119 and 120 and the presently proposed change to § 1.78(a)(3), when filing a ''bypass'' continuation application under 35 U.S.C. 111(a) that claims the benefit of the international application with a filing date on or after November 29, 2000, that could have but did not claim the benefit of an earlier U.S. application and the benefit claim is to be added, a petition under § 1.78(a)(3) will be required in the international application. A ''bypass'' continuation application is an application for patent filed under 35 U.S.C. 111(a) that claims the benefit of the filing date of an earlier international application that did not enter the national stage under 35 U.S.C. 371. *See* H.R. Rep. No. 107–685, at 222 (2002). Thus, applicants should no longer rely upon the advice that to amend a later-filed abandoned international application to add a claim to the benefit of a prior-filed nonprovisional application, or a prior-filed international application designating the United States, an applicant need only file a petition under § 1.182 to amend an abandoned application (the later-filed international application) with the claim to the benefit of a prior-filed application. *See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications,* 66 FR 67087, 67092 (Dec. 28, 2001), 1254 *Off. Gaz. Pat. Office* 121, 125 (Jan. 22, 2002) (final rule) (response to comment 6).

Section 1.191: It is proposed that § 1.191 be amended by revising paragraph (a) to delete each appearance of ''for a patent that issued from an original application filed in the United States.'' Section 13202(d) of Public Law 107–273 provided a technical correction for the effective date set forth in the AIPA for appeals to the BPAI as follows:

> Effective Date—The amendments made by section 4605(b), (c), and (e) of the Intellectual Property and Communications Omnibus Reform Act, as enacted by section 1000(a)(9) of Public Law 106–113, shall apply to any reexamination filed in the United States Patent and Trademark Office on or after the date of enactment of Public Law 106–113.

The effective date language in section 4608 of the AIPA limited the applicability of the conforming amendments to 35 U.S.C. 134 to a reexamination of a patent that issued from an original application which was filed on or after November 29, 1999. Thus, the conforming amendments to 35 U.S.C. 134 applied only to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issued from an original application which was filed on or after November 29, 1999. Public Law 107–273 revised the applicability of the conforming amendments to 35 U.S.C. 134 such that the conforming amendments are applicable to a reexamination of a patent where the request for *ex parte* reexamination was filed on or after November 29, 1999. Accordingly, § 1.191 is proposed to be amended to track the statutory revision of effective date.

Section 1.197: It is proposed that § 1.197(c) be amended to provide that an appeal to the Federal Circuit is terminated when the mandate is issued by the Court, rather than when the mandate is received by the Office. This proposed change to § 1.197(c) is for consistency with a 1998 amendment to rule 41 of the Federal Rules of Appellate Procedure. The commentary on the addition of subdivision (c) to rule 41 of the Federal Rules of Appellate Procedure indicates that this provision is intended to make clear that the court's mandate is effective upon issuance, and that its effectiveness is not delayed until receipt of the mandate by the trial court or agency, or until the trial court or agency acts upon the mandate.

Section 1.301: It is proposed that the last sentence of § 1.301 be amended by inserting ''appeals by patent owners and third party requesters in'' before ''*inter partes* reexamination proceedings.'' The revision would make it clear that appeals by third party requesters of *inter partes* reexamination proceedings are controlled by § 1.983.

Section 1.302: It is proposed that § 1.302 be revised by adding new paragraphs (c) and (d), and redesignating existing paragraph (c) as paragraph (e). New paragraph (c) would point out that when an appeal is taken to the Federal Circuit in an *ex parte* reexamination proceeding, the appellant must serve notice as provided in § 1.550(f). New paragraph (d) would point out that when an appeal is taken to the Federal Circuit in an *inter partes* reexamination proceeding, the appellant must serve notice as provided in § 1.903. The proposed revisions are made to focus parties on the unique service that must be made in *ex parte* and *inter partes* reexamination proceedings, when appealing to the Federal Circuit.

Section 1.303: It is proposed that § 1.303 be amended by revising paragraphs (a), (b) and (d) to delete the appearance of ''for a patent that issued from an original application filed in the United States'' in each paragraph. This proposed revision is made for the reasons stated in the above discussion of the proposed revision of § 1.191.

Section 1.304: It is proposed that § 1.304 be amended by revising paragraph (a)(1) to add after the second sentence, the following sentence: ''If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.979(a), the time for filing an appeal shall expire two months after action on the last such request made by the parties.'' In addition, reference to § 1.979(a) in the second sentence would be deleted. Further, it is proposed that all of the current provisions relating to interferences be included in § 1.304(i), and that § 1.304(ii) provide that in *inter partes* reexaminations, the time for

filing a cross-appeal expires: (1) 14 days after service of the notice of appeal; or (2) two months after the date of decision of the BPAI, whichever is later.

The proposed revision to § 1.304(a)(1) provides that an *inter partes* third party requester can appeal to the Federal Circuit and can participate in the patent owner's appeal to the Federal Circuit. The time for filing an appeal to the Federal Circuit will expire two months after ''action on the last such request made by the parties,'' as opposed to the sentence which precedes the added sentence where time for filing an appeal to the Federal Circuit is stated to expire two months after ''action on the request.'' Thus, the potential for rehearing or reconsideration by more than one party is factored into the time for appeal to the Federal Circuit. Since a party may not challenge a BPAI decision in an *inter partes* reexamination in a civil action under 35 U.S.C. 145, § 1.304(a)(1) provides that ''the time for filing an appeal shall expire * * *'' and not ''the time for filing an appeal or commencing a civil action * * *'' (which appears in the sentence which precedes the added sentence).

The proposed revision to § 1.304(a)(1) also conforms to the change proposed for § 1.983, by addressing the potential for cross appeal to the Federal Circuit in an *inter partes* reexamination (in addition to that in an interference).

Section 1.417: As pointed out in the discussion above of the proposed revision to § 1.14, the statute has been revised to clarify that a translation of the international publication, as opposed to the international application, must be filed in order for a patent owner to obtain the provisional right of a reasonable royalty under 35 U.S.C. 154(d). Accordingly, it is proposed that § 1.417 be amended: (1) To delete ''the international publication or''; (2) to add ''of the publication'' after ''English language translation''; and (3) to delete '', unless it is being submitted pursuant to § 1.495,''.

Section 1.495: It is proposed that § 1.495(c) be amended to change ''if it was originally filed in another language (35 U.S.C. 371(c)(2)'' to ''if the international application was originally filed in another language and if any English language translation of the publication of the international application previously submitted under 35 U.S.C. 154(d) (§ 1.417) is not also a translation of the international application as filed (35 U.S.C. 371(c)(2)).'' The purpose of this revision is to clarify that if an English language translation of the publication has already been filed and the publication was also a translation of the international application, a second translation is not required. Instead, the translation required by 35 U.S.C. 154(d) will satisfy the requirement for a translation under 35 U.S.C. 371(c)(2). In § 1.495(g), it is proposed to delete '', except for a copy of the international publication or translation of the international application that is identified as provided in § 1.417,'' because the phrase is unnecessary, since it merely repeats a provision of § 1.417.

Section 1.913: It is proposed that § 1.913 be amended to add ''other than the patent owner or its privies'' after ''any person,'' as section 13202 of Public Law 107–273 now clarifies that there is statutory basis only for the third party requester to file a request for *inter partes* reexamination, and there is no such basis for a patent owner to do so. This position is consistent with the initial position taken by the Office during the implementation of optional *inter partes* reexamination. *See Rules to Implement Optional Inter Partes Reexamination Proceedings,* 65 FR 18153, 18178 (Apr. 6, 2000), 1234 *Off. Gaz. Pat. Office* 93, 116 (May 23, 2000) (proposed rule).

Sections 1.949 and 1.953: It is proposed that the clause ''or upon a determination of patentability of all claims'' be deleted from the first sentence of § 1.949, and the clause ''or upon a determination of patentability of all claims in the proceeding'' be added to § 1.953(a), so that § 1.953(a) would read as follows: ''Upon considering the comments of the patent owner and the third party requester subsequent to the Office action closing prosecution in an *inter partes* reexamination, or upon expiration of the time for submitting such comments, or upon a determination of patentability of all claims in the proceeding, the examiner shall issue a Right of Appeal Notice (RAN), unless the examiner reopens prosecution and issues another Office action on the merits'' (emphasis added in bold). This proposed change would be directed to streamlining prosecution in an *inter partes* reexamination by issuing a RAN under § 1.953 as soon as all claims in the proceeding are found patentable. This would be in contrast to the current procedure where an Action Closing Prosecution (ACP) under § 1.949 is issued upon a determination of patentability of all claims, and later a RAN must be issued. Thus, an extra Office action would be avoided by the current proposal.

Currently, where the examiner finds all claims to be patentable, an ACP would be issued even though the Office action being issued is the first action on the merits. The purpose in going directly to an ACP even in a first Office action is that the patent owner has nothing to respond to, upon learning that the claims are all patentable. Further, since the patent owner will not respond, the third party requester has nothing to comment upon, and is barred from filing a paper as to the merits. Statutory provision for requester's participation in the proceeding (prior to appeal) is only made for requester comments on a patent owner response. 35 U.S.C. 314(b)(3). Therefore, no reason exists to delay the closing of prosecution where all claims are found patentable, and the examiner thus issues an ACP directly. In implementing the optional *inter partes* reexamination proceedings provisions of the AIPA, the Office proposed that the examiner should not go directly to the RAN where all claims are found patentable, because that would deprive the third party requester of the right of filing comments on the examiner's Office actions prior to appeal (§ 1.951(a) as proposed provided that ''(a) After an action closing prosecution in an *inter partes* reexamination, a third-party requester may once file comments limited to the issues raised in the Office action closing prosecution''). *See Rules to Implement Optional Inter Partes Reexamination Proceedings,* 65 FR at 18180, 1234 *Off. Gaz. Pat. Office* at 117.

This third party requester's right to file original comments on the examiner's ACP pursuant to § 1.951(a), however, was not adopted in the final rule to implement optional *inter partes* reexamination proceedings. The requester's right to file original comments on the examiner's ACP was deleted in response to a comment on § 1.951(a) which pointed out that ''such 'direct' requester comments are not consistent with the statute as the statute makes it clear that the third party requester's right to comment only matures with the filing of a patent owner response to an Office action on the merits, and nowhere in the statute does it permit third party requester comments without there first being a patent owner response.'' *See Rules to Implement Optional Inter Partes Reexamination Proceedings,* 65 FR at 76768, 1242 *Off. Gaz. Pat. Office* at 22–23.

Given that the third party requester does not have a right to file original comments on the examiner's ACP, the above-discussed reason for issuing an ACP prior to a RAN where all claims are found patentable (*i.e.*, to give the requester at least one chance for input prior to appeal) no longer exists. There is no reason to issue an unnecessary ACP in this instance, since the patent

owner has no incentive to reply to the finding of all claims patentable, and thus, presumably will not file a response to the ACP. The patent owner would not argue against the allowance of all the claims, and the patent owner would not be expected to comment on any stated reasons for allowance at this point, since he or she may do so after a Notice of Intent to Issue a Reexamination Certificate is issued, while a comment at this stage would give requester an extra opportunity to participate in the proceeding. Accordingly, the present proposal would eliminate the need for an ACP where all claims are found patentable by going directly to the issuance of a RAN, and thus streamline and expedite the *inter partes* reexamination process.

Section 1.959: It is proposed that § 1.959 be revised by adding a new paragraph (f). New paragraph (f) would provide a non-extendable one-month period for correcting an inadvertent failure to comply with any requirement of § 1.959, when a notice of appeal or cross appeal is submitted. The proposed revision of § 1.959 would permit a remedy of inadvertent defects in a notice of appeal or cross appeal.

Section 1.959 relates to appeals and cross appeals to the BPAI in *inter partes* reexamination proceedings. The requirements for acceptance by the Office of a notice of appeal and cross appeal to the BPAI are: (1) Payment of the appeal fee set forth in § 1.17(b) (§§ 1.959(a) and (b)); identification of the appealed claim(s) (§ 1.959(c)); and (3) signature by the patent owner, the third party requester, or their duly authorized attorney or agent (§ 1.959(c)).

It is proposed to revise § 1.959 by providing the third party requester one opportunity to supply, within one month, the missing fee or missing portion of the fee that was inadvertently not supplied. Section 1.957(a) provides that if ''the third party requester files an untimely or inappropriate comment [or] notice of appeal * * * in an *inter partes* reexamination, the paper will be refused consideration.'' Thus, if the third party requester inadvertently fails to pay the appeal fee or makes a payment which is deficient as to the amount specified in § 1.17(b), the requester's notice of appeal (or cross appeal) will not be considered and requester's appeal would otherwise be barred. The failure to submit the complete appeal fee cannot be considered a ''*bona fide* attempt to respond and to advance the prosecution'' where ''some requirement has been inadvertently omitted'' under § 1.957(d) (with requester then given a chance to rectify the inadvertency), since § 1.957(d) applies only to a patent owner and not to a third party requester. In addition, the third party requester does not have the opportunity to ''revive'' the appeal, as does the patent owner under § 1.137 (further, an extension of the time for filing the notice of appeal (or cross appeal) is not provided for by § 1.956, even if the requester becomes aware of the inadvertency on the last day to remedy it). Thus, the third party requester would be barred from appealing the case when a sufficient payment of the fee is inadvertently not made in the absence of the proposed revision to § 1.959. Yet, estoppel attaches to the third party requester which precludes further resolution of the issues that the requester wishes to appeal. Under the statute, requester is estopped from later asserting in any civil action, or in a subsequent *inter partes* reexamination, the invalidity/unpatentability of any claim finally determined to be valid and patentable on any ground the third party requester raised or could have raised in the *inter partes* reexamination. Requester is further estopped from later challenging in a civil action any fact determined in the *inter partes* reexamination. Accordingly, requester's loss of appeal rights because of an inadvertency is considered an unduly harsh and extreme measure. Accordingly, it is proposed to revise § 1.959 by providing the third party requester one opportunity to supply, within one month, the missing fee or missing portion of the fee that was inadvertently not supplied. As to the requirements that the notice of appeal (or cross appeal) identify the appealed claim(s) and be signed by the appellant, it may be that an opportunity to remedy the inadvertent failure to comply with same is not precluded by § 1.957(a). The refusal of consideration mandated by that section is directed only to ''untimely or inappropriate'' notices of appeal (and cross appeal). If so, the failure to sign or identify as required might not render the notice untimely, and the paper might be an ''appropriate'' paper, *i.e.*, the type of paper that is entitled to entry in an *inter partes* reexamination, but is not a complete paper. However, to cover the possibility that failure to comply with the signature or identification of claims requirement of § 1.959(c) could permanently bar the requester's appeal, the proposed new § 1.959(f) has been made broad enough to explicitly encompass these potential defects in a notice of appeal (or cross appeal). Further, the proposed new § 1.959(f) is drafted to encompass patent owner inadvertencies as well as those of the third party requester.

Sections 1.965 and 1.967: It is proposed that § 1.965, paragraph (d), be revised to insert ''paragraphs (a) and (c)'' in place of ''paragraph (c).'' It is proposed that § 1.967, paragraph (c), be revised to insert ''paragraphs (a) and (b)'' in place of ''paragraph (b).''

As § 1.965 currently reads, an inadvertent failure to comply with a § 1.965(a) requirement would permanently bar the requester's appeal from going forward. As § 1.967 currently reads, an inadvertent failure to comply with a § 1.967(a) requirement would bar the requester's participation via respondent brief in the patent owner's appeal. It is proposed to revise §§ 1.965 and 1.967 to provide the appellant and respondent, respectively, with a non-extendable one-month period for correcting an inadvertent failure to comply with a requirement of §§ 1.965(a) and 1.967(a), respectively. This revision of §§ 1.965 and 1.967 is proposed for reasons analogous to those set forth above for the proposed revision of § 1.959. Again, the loss of requester's appeal rights because of a § 1.965(a) inadvertency, and the loss of requester's participation rights because of a § 1.967(a) inadvertency, are considered to be unduly harsh and extreme measures.

It is noted that § 1.965(b) states: ''A party's appeal shall stand dismissed upon failure of that party to file an appellant's brief, accompanied by the requisite fee, within the time allowed.'' If the proposed revision to § 1.965(d) is made, the phrase ''within the time allowed'' in § 1.965(b) would be interpreted to include the filing of an ''appellant's brief, accompanied by the requisite fee'' within the one-month period for correcting an inadvertency (in failure to comply with a requirement of § 1.965(a) and/or (c)) set forth in § 1.965(d).

Section 1.971: It is proposed that § 1.971 be amended by designating the sole current paragraph of the section as paragraph (a), and adding new paragraph (b). New paragraph (b) would provide a non-extendable one-month period for correcting an inadvertent failure to comply with any requirement of paragraph (a) of § 1.971, when a rebuttal brief is submitted. Sections 1.965(d) and 1.967(c) currently provide relief for certain non-compliance inadvertencies in appellant and respondent briefs, respectively. There is no such relief provided for rebuttal briefs; yet, no reason exists as to why the relief is provided for both appellant and respondent briefs, but not for rebuttal briefs. It is proposed to revise

§ 1.971 to provide relief granted for inadvertencies in the rebuttal brief that would parallel the relief granted for inadvertencies in appellant and respondent briefs. This would be effected by providing, in § 1.971, a new paragraph (b), which is analogous to §§ 1.965(d) and 1.967(c).

Section 1.977: It is proposed that § 1.977, paragraph (g), be amended by inserting ‘‘, when the owner is responding under paragraph (b)(1) of this section’’ at the end of the first sentence of the paragraph, and by adding the following new sentence as the second sentence: ‘‘The time period set forth in paragraph (b) of this section may not be extended when the owner is responding under paragraph (b)(2) of this section.’’

Current § 1.977(g) provides that ‘‘[t]he time period set forth in paragraph (b) of this section is subject to the extension of time provisions of § 1.956.’’ Thus, an extension of time could be obtained for the filing of a patent owner amendment or showing of facts presented under § 1.977(b)(1), or the filing of a patent owner request for rehearing of the decision of the BPAI made under § 1.977(b)(2). However, § 1.979(g) states that the times for requesting rehearing under § 1.979(a) may not be extended, and a patent owner request for rehearing of the decision of the BPAI made under § 1.977(b)(2) is included as § 1.979(a)(2). Thus, the time for filing a patent owner request for rehearing under § 1.977(b)(2) cannot be extended. The proposed revision would revise § 1.977(g) to make it consistent with the language of § 1.979(g). Note further that this revision is consistent with the policy for a streamlined appeal procedure, which is reflected, for example, in § 1.959 (no extension of the time for filing the notice of appeal or cross appeal), § 1.963 (no extension of the time for filing appellant, respondent, and rebuttal briefs), and § 1.979(g) (no extension of the time for filing *any* rehearing request). Thus, it is appropriate that an extension of time cannot be obtained for the filing of a patent owner request for rehearing of the decision of the BPAI made under § 1.977(b)(2), while an extension can be obtained for the filing of a patent owner amendment or showing of facts presented under § 1.977(b)(1), which may be considered a reopening of the examination process, as opposed to the appeal process.

Section 1.979: It is first proposed that § 1.979 be amended by revising its paragraphs (e) and (f) to replace ‘‘patent owner’’ with ‘‘parties to an appeal to the Board of Patent Appeals and Interferences,’’ ‘‘party,’’ ‘‘any party,’’ and ‘‘party’s,’’ where each replacement is applicable, and to delete ‘‘patent owner’s’’ where it appears. It is also proposed that § 1.979 be amended by deleting the first and second sentences of paragraph (f). It is also proposed that the third sentence of § 1.979(f) be amended to add ‘‘to the Board of Patent Appeals and Interferences’’ after ‘‘An appeal’’ to provide additional clarity. Section 1.979 is currently drafted to address the situation where appeal to the Federal Circuit is possible only for the patent owner. The first proposed revision would modify the language of § 1.979 to make it applicable to all parties to the *inter partes* reexamination proceeding, *i.e.,* the patent owner and any *inter partes* reexamination third party requester, who are the parties to the appeal to the BPAI. The second proposed revision would delete the current provision for termination of the third party requester's appeal, which was (before the enactment of Public Law 107–273) under criteria different than that of the patent owner (since a third party requester could not appeal to the courts under the statute prior to Public Law 107–273). The first proposed revision to the text of § 1.979(f) make the criteria for termination the same for all parties to the appeal. Finally, it is proposed that § 1.979(f) be amended to provide that an appeal to the Federal Circuit is terminated when the mandate is issued by the Court for consistency with a 1998 amendment to rule 41 of the Federal Rules of Appellate Procedure.

Undesignated center heading immediately preceding § 1.983: It is proposed that the undesignated center heading immediately preceding § 1.983 be revised to delete ‘‘PATENT OWNER’’ before ‘‘APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.’’ The undesignated center heading immediately preceding § 1.983 is currently drafted to address the situation where appeal to the Federal Circuit is possible only for the patent owner. The proposed revision would modify the language to make it applicable to all parties to the *inter partes* reexamination proceeding who are the parties to the appeal to the BPAI.

Section 1.983: Section 13106 of Public Law 107–273 grants the *inter partes* reexamination third party requester the right to appeal an adverse decision of the BPAI to the Federal Circuit. 35 U.S.C. 315(b)(1). It further authorizes the third party requester to be a party to any appeal taken by the patent owner to the Federal Circuit. 35 U.S.C. 315(b)(1). Also, as pointed out above, section 13106 of Public Law 107–273 implicitly permits the patent owner to be a party to the newly provided-for appeal taken by the third party requester to the Federal Circuit. It is proposed that § 1.983 be amended to track this newly enacted legislation by revising its heading, dividing the existing text into paragraphs (a) and (b); revising the text of newly designated paragraphs (a) and (b), and adding new paragraphs (c) through (f).

It is proposed that the title of § 1.983 be revised by changing ‘‘Patent owner appeal’’ to ‘‘Appeal.’’

It is proposed that § 1.983(a) be revised to permit the patent owner and any third party requester who is a party to an appeal to the BPAI to (1) appeal the BPAI's decision to the Federal Circuit, and (2) to be a party to any appeal to the Federal Circuit taken from the Board's decision.

It is proposed that § 1.983(b) be revised to clarify that service of the notice of appeal or cross appeal must be made on every other party in the reexamination proceeding as required in § 1.903. The explicit statement of requirement for service on other parties also provides antecedent for the 14-day period recited in paragraph (e) of § 1.983 that follows.

It is proposed that paragraphs (c) and (d) be added to § 1.983 to provide for a cross appeal within 14 days of service of an opposing party's notice of appeal. This is analogous to the cross appeal (within 14 days of service of the notice of appeal) provided for in § 1.304(a)(1) for interferences. The interferences model is used, because an interference is the only other *inter partes* proceeding appealed to the court from the decision of the BPAI. It is to be noted that if the two-month time period from the BPAI's decision will expire after the 14-day period set for a cross appeal, then the later-expiring two-month period will control. Thus, where a first party files an appeal to the court (the Federal Circuit) 14 days after the BPAI's decision, an opposing party need not file a cross appeal 15 days later (29 days after the BPAI's decision), but rather has the remainder of the two-month period to do so.

A new paragraph (e) is proposed to be added to § 1.983, to prescribe the action a party must take in order to participate in an appellant's appeal (including cross appeal). Participation in the appellant's appeal is directed to providing argument supporting the decision of the BPAI. Such participation is in contrast to the cross appeal which would be provided for in paragraphs (c) and (d) of § 1.983, where a party challenges a decision of the BPAI adverse to that party.

New paragraph (f): Section 13106(d) of Public Law 107–273 provides the

effective date for the revision to the statute made in section 13106 as follows: ''The amendments made by this Section apply with respect to any reexamination proceeding commenced on or after the date of enactment of this Act.''

Accordingly, it is proposed that § 1.983 be amended to add a new paragraph (f) stating: ''(f) Notwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the BPAI to the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the Court.''

Rulemaking Considerations

Administrative Procedure Act: The changes proposed in this notice conform the patent-related rules of practice in 37 CFR to the changes to title 35 U.S.C. contained in Public Law 107–273. Therefore, these changes involve interpretive rules or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001); *Paralyzed Veterans of America* v. *West* 138 F.3d 1434, 1436 (Fed. Cir. 1998); and *Komjathy* v. *National Transportation Safety Board,* 832 F.2d 1294, 1296–97 (D.C. Cir. 1987). Therefore, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). Nevertheless, the Office is providing this opportunity for public comment on the changes proposed in this notice because the Office desires the benefit of public comment on these proposed changes.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132: This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0021, 0651–0031, 0651–0032, and 0651–0033. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The changes in this notice conform the patent-related rules of practice in 37 CFR to the changes to title 35 U.S.C. contained in Public Law 107–273.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328, PTO/SB/61/PCT, PTO/SB/64/PCT.

Type of Review: Approved through December of 2003.

Affected Public: Individuals or households, business or other for-profit, Federal agencies or employees, not-for-profit institutions, small businesses or organizations, farms, and State, local or tribal government.

Estimated Number of Respondents: 331,407.

Estimated Time Per Response: 15 minutes to 4 hours.

Estimated Total Annual Burden Hours: 401,202 hours.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A/08B/21/22/23/24/25/26/27/30/31/32/35/37/36/42/43/61 61/PCT/62/63/64 64/PCT/67/68/91/92/96/97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B.

Type of Review: Approved through April of 2003.

Affected Public: Individuals or households, State or local governments, farms, business or other for-profit institutions, not-for-profit institutions, small businesses or organizations, and Federal government.

Estimated Number of Respondents: 2,247,270.

Estimated Time Per Response: 1 minute 48 seconds to 4 hours.

Estimated Total Annual Burden Hours: 1,021,822 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07/13PCT/16–19/29/101–110.

Type of Review: Approved through April of 2003.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, Federal government, and State, local, or tribal governments.

Estimated Number of Respondents: 319,350.

Estimated Time Per Response: 24 minutes to 11 hours and 18 minutes.

Estimated Total Annual Burden Hours: 2,984,360 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Coversheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/44/50/51, 51S/52/53/55/56/57/58, PTOL–85B.

Type of Review: Approved through January of 2004.

Affected Public: Individuals or households, business or other for-profit

institutions, not-for-profit institutions, farms, State, local and tribal governments, and Federal government.

Estimated Number of Respondents: 205,480.

Estimated Time Per Response: 2 minutes to 2 hours.

Estimated Total Annual Burden Hours: 63,640 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

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 OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES 1.

The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.1 is amended by revising paragraph (c) to read:

§ 1.1 Addresses for correspondence with the United States Patent and Trademark Office.

* * * * *

(c) *For reexamination proceedings.* (1) Requests for *ex parte* reexamination (*original* request papers only) should be additionally marked ''Mail Stop *Ex Parte* Reexam.''

(2) Requests for *inter partes* reexamination for original request papers and all subsequent correspondence filed in the Office, other than correspondence to the Office of the Solicitor pursuant to § 1.1(a)(3) and § 1.302(c), should be additionally marked ''Mail Stop *Inter Partes* Reexam.''

* * * * *

3. Section 1.13 is amended by revising paragraph (b) to read:

§ 1.13 Copies and certified copies.

* * * * *

(b) Certified copies of patents, patent application publications, and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his or her name, upon payment of the fee for the certified copy.

4. Section 1.14 is amended by revising paragraph (i)(2) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(i) * * *

(2) A copy of an English language translation of the publication of an international application which has been filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. 154(d)(4) will be furnished upon written request including a showing that the publication of the application in accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(4)).

* * * * *

5. Section 1.78 is amended by revising paragraph (a)(3) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

* * * * *

6. Section 1.191 is amended by revising paragraph (a) to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, and every owner of a patent under *ex parte* reexamination filed under § 1.510 before November 29, 1999, any of whose claims has been twice or finally (§ 1.113) rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee set forth in § 1.17(b) within the time period provided under §§ 1.134 and 1.136 for reply. Notwithstanding the above, for an *ex parte* reexamination proceeding filed under § 1.510 on or after November 29, 1999, no appeal may be filed until the claims have been finally rejected (§ 1.113). Appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981. Sections 1.191 through 1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913.

* * * * *

7. Section 1.197 is amended by revising paragraph (c) to read as follows:

§ 1.197 Action following decision.

* * * * *

(c) Termination of proceedings.—(1) Proceedings are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except:

(i) Where claims stand allowed in an application; or

(ii) Where the nature of the decision requires further action by the examiner.

(2) The date of termination of proceedings is the date on which the appeal is dismissed or the date on which the time for appeal to the court or review by civil action (§ 1.304) expires. If an appeal to the court or a civil action has been filed, proceedings are considered terminated when the appeal or civil action is terminated. An appeal to the U.S. Court of Appeals for the Federal Circuit is terminated when the mandate is issued by the Court. A civil action is terminated when the time to appeal the judgment expires.

8. Section 1.301 is revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in any *ex parte* reexamination proceeding filed under § 1.510, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the U.S. Patent and Trademark Office, file a written notice of appeal directed to the Director (see §§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. For appeals by patent owners and third party requesters in *inter partes* reexamination proceedings filed under § 1.913, § 1.983 is controlling.

9. Section 1.302 is revised to read as follows:

§ 1.302 Notice of appeal.

(a) When an appeal is taken to the U.S. Court of Appeals for the Federal Circuit, the appellant shall give notice thereof to the Director within the time specified in § 1.304.

(b) In interferences, the notice must be served as provided in § 1.646.

(c) In *ex parte* reexamination proceedings, the notice must be served as provided in § 1.550(f).

(d) In *inter partes* reexamination proceedings, the notice must be served as provided in § 1.903.

(e) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

10. Section 1.303 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant or any owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 before November 29, 1999, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may, instead of appealing to the U.S. Court of Appeals for the Federal Circuit (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an *ex parte* case or an owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 before November 29, 1999, has taken an appeal to the U.S. Court of Appeals for the Federal Circuit, he or she thereby waives his or her right to proceed under 35 U.S.C. 145.

* * * * *

(d) For an *ex parte* reexamination proceeding filed under § 1.510 on or after November 29, 1999, and for an *inter partes* reexamination proceeding filed under § 1.913, no remedy by civil action under 35 U.S.C. 145 is available.

11. Section 1.304 is amended by revising paragraph (a)(1) to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is 2 months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.197(b), or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire 2 months after action on the request. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.979(a), the time for filing an appeal shall expire 2 months after action on the last such request made by the parties.

(i) In interferences, the time for filing a cross-appeal or cross-action expires:

(A) Fourteen days after service of the notice of appeal or the summons and complaint; or

(B) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

(ii) In *inter partes* reexaminations, the time for filing a cross-appeal expires:

(A) Fourteen days after service of the notice of appeal; or

(B) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

* * * * *

12. Section 1.417 is revised to read as follows:

§ 1.417 Submission of translation of international publication.

The submission of an English language translation of the publication of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked ''Box PCT.''

13. Section 1.495 is amended by revising paragraphs (c) and (g) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits either a translation of the international application, as filed, into the English language, if the international application was originally filed in another language and if any English language translation of the publication of the international application previously submitted under 35 U.S.C. 154(d) (§ 1.417) is not also a translation of the international application as filed (35 U.S.C. 371(c)(2)), or the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter*.1, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English

translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date. A ''Sequence Listing'' need not be translated if the ''Sequence Listing'' complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

(g) The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

* * * * *

14. Section 1.913 is revised to read as follows:

§ 1.913 Persons eligible to file request for *inter partes* reexamination

Except as provided for in § 1.907, any person other than the patent owner or its privies may, at any time during the period of enforceability of a patent which issued from an original application filed in the United States on or after November 29, 1999, file a request for *inter partes* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501.

15. Section 1.949 is revised to read as follows:

§ 1.949 Examiner's Office action closing prosecution in *inter partes* reexamination.

Upon consideration of the issues a second or subsequent time, the examiner shall issue an Office action treating all claims present in the *inter partes* reexamination, which may be an action closing prosecution. The Office action shall set forth all rejections and determinations not to make a proposed rejection, and the grounds therefor. An Office action will not usually close prosecution if it includes a new ground of rejection which was not previously addressed by the patent owner, unless the new ground was necessitated by an amendment.

16. Section 1.953 is amended by revising paragraph (a) to read as follows:

§ 1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

(a) Upon considering the comments of the patent owner and the third party requester subsequent to the Office action closing prosecution in an *inter partes* reexamination, or upon expiration of the time for submitting such comments, or upon a determination of patentability of all claims in the proceeding, the examiner shall issue a Right of Appeal Notice, unless the examiner reopens prosecution and issues another Office action on the merits.

* * * * *

17. Section 1.959 is amended by adding a new paragraph (f) to read as follows:

§ 1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in *inter partes* reexamination.

* * * * *

(f) If a notice of appeal or cross appeal is timely filed but does not comply with any requirement of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended notice of appeal or cross appeal. If the appellant does not then file an amended notice of appeal or cross appeal within the one-month period, or files a notice which does not overcome all the reasons for non-compliance stated in the notification of the reasons for non-compliance, that appellant's appeal or cross appeal will stand dismissed.

18. Section 1.965 is amended by revising paragraph (d) to read as follows:

§ 1.965 Appellant's brief *inter partes* reexamination.

* * * * *

(d) If a brief is filed which does not comply with all the requirements of paragraphs (a) and (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's appeal will stand dismissed.

19. Section 1.967 is amended by revising paragraph (c) to read as follows:

§ 1.967 Respondent's brief in *inter partes* reexamination.

* * * * *

(c) If a respondent brief is filed which does not comply with all the requirements of paragraphs (a) and (b) of this section, respondent will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the respondent does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the respondent brief will not be considered.

20. Section 1.971 is revised to read as follows:

§ 1.971 Rebuttal brief in *inter partes* reexamination.

(a) Within one month of the examiner's answer in an *inter partes* reexamination appeal, any appellant may once file a rebuttal brief in triplicate. The rebuttal brief of the patent owner may be directed to the examiner's answer and/or any respondent brief. The rebuttal brief of any third party requester may be directed to the examiner's answer and/or the respondent brief of the patent owner. The rebuttal brief of a third party requester may not be directed to the respondent brief of any other third party requester. No new ground of rejection can be proposed by a third party requester. The time for filing a rebuttal brief may not be extended. The rebuttal brief must include a certification that a copy of the rebuttal brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(b) If a rebuttal brief is filed which does not comply with all the requirements of paragraph (a) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended rebuttal brief. If the appellant does not file an amended rebuttal brief during the one-month period, or files an amended rebuttal brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's rebuttal brief will not be considered.

21. Section 1.977 is amended by revising paragraph (g) to read as follows:

§ 1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in *inter partes* reexamination.

* * * * *

(g) The time period set forth in paragraph (b) of this section is subject to the extension of time provisions of § 1.956, when the owner is responding under paragraph (b)(1) of this section. The time period set forth in paragraph (b) of this section may not be extended when the owner is responding under paragraph (b)(2) of this section. The time periods set forth in paragraphs (c) and (e) of this section may not be extended.

22. Section 1.979 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.

* * * * *

(e) The parties to an appeal to the Board of Patent Appeals and Interferences may not appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983 until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board of Patent Appeals and Interferences is final and appealable by any party to an appeal to the Board of Patent Appeals and Interferences who is dissatisfied with the final decision of the Board of Patent Appeals and Interferences.

(f) An appeal to the Board of Patent Appeals and Interferences by a party is considered terminated by the dismissal of that party's appeal, the failure of the party to timely request rehearing under § 1.979(a) or (c), or the failure of the party to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983. The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the time for the appeal to the U.S. Court of Appeals for the Federal Circuit expires. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, the appeal is considered terminated when the mandate is issued by the Court. Upon termination of an appeal, if no other appeal is present, the reexamination proceeding will be terminated and the Director will issue a certificate under § 1.997.

* * * * *

23. The undesignated center heading immediately preceding § 1.983 is revised to read as follows:

Appeal to the United States Court of Appeals for the Federal Circuit in *Inter Partes* Reexamination

24. Section 1.983 is revised to read as follows:

§ 1.983 Appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

(a) The patent owner or third party requester in an *inter partes* reexamination proceeding who is a party to an appeal to the Board of Patent Appeals and Interferences and who is dissatisfied with the decision of the Board of Patent Appeals and Interferences may, subject to § 1.979(e), appeal to the U.S. Court of Appeals for the Federal Circuit and may be a party to any appeal thereto taken from a reexamination decision of the Board of Patent Appeals and Interferences.

(b) The appellant must take the following steps in such an appeal:

(1) In the U. S. Patent and Trademark Office, timely file a written notice of appeal directed to the Director in accordance with §§ 1.302 and 1.304;

(2) In the Court, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the Court; and

(3) Serve a copy of the notice of appeal on every other party in the reexamination proceeding in the manner provided in § 1.248.

(c) If the patent owner has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the third party may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Board of Patent Appeals and Interferences.

(d) If the third party has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the patent owner may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Board of Patent Appeals and Interferences.

(e) A party electing to participate in an appellant's appeal must, within 14 days of service of the appellant's notice of appeal under paragraph (b) of this section, or notice of cross appeal under paragraphs (c) or (d) of this section, take the following steps:

(1) In the U. S. Patent and Trademark Office, timely file a written notice directed to the Director electing to participate in the appellant's appeal to the Court by mail to or hand service on the General Counsel as provided in § 104.2;

(2) In the Court, file a copy of the notice electing to participate in accordance with the rules of the Court; and

(3) Serve a copy of the notice electing to participate on every other party in the reexamination proceeding in the manner provided in § 1.248.

(f) Notwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the Board of Patent Appeals and Interferences to the U.S. Court of Appeals for the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the Court.

Dated: April 22, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–10412 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI48

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl (*Glaucidium brasilianum cactorum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Arizona distinct population segment of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), and for the draft economic analysis for the proposed designation. Additional information from the administrative record concerning the locations of pygmy-owls recently has become available to the public, and therefore we are reopening the comment period for the proposal and for the draft economic analysis to allow all interested parties additional time to review the available information and provide comments. Comments previously submitted need not be resubmitted, because they will be incorporated into the public record as part of this reopening of the comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the proposed critical habitat designation and the draft economic analysis until June 27, 2003.

ADDRESSES: Send comments and information concerning the proposed critical habitat designation and draft economic analysis to the Field Supervisor, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. You also may send written comments by facsimile to 602/242–2513. For

instructions on submitting comments by electronic mail (e-mail), see Public Comments Solicited in the **SUPPLEMENTARY INFORMATION** section of this notice.

Information from the administrative record, including the information that recently has become available to the public concerning the location of pygmy-owls, as well as comments and materials received, are available for public inspection, by appointment, during normal business hours at the above address. You may also write the Field Supervisor at the address above, or call 602/242–0210 to request that a copy of material be mailed to you or made available for you to pick up at the address above. You may also obtain a copy of the draft economic analysis on the Internet at *http://arizonaes.fws.gov/cactus.htm.*

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor (*see* **ADDRESSES**), at telephone 602/242–0210; or by facsimile at 602/242–2513.

SUPPLEMENTARY INFORMATION: Our proposal to designate critical habitat for the Arizona distinct population segment of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) was published on November 27, 2002 (67 FR 71032). In the November proposal we also announced the availability of the draft economic analysis for the proposed designation of critical habitat. The public comment period on the proposal and the draft economic analysis was scheduled to close on February 25, 2003. On that date, we published a notice in the **Federal Register** (68 FR 8730) extending the public comment period until April 25, 2003. The extension was based on a February 3, 2003, order from the United States District Court for the District of Arizona to allow the Plaintiffs and Intervenors in *National Home Builders Association* v. *Norton*, Civ. No. 000903–PHX–SRB (D.Az.), 60 additional days to review and comment on materials used by us to develop our critical habitat determination for the pygmy-owl.

Recently, additional information from the administrative record concerning the locations of pygmy-owls has become available to the public, in part as a result of a court ruling in *National Association of Home Builders* v. *Norton,* 309 F.3d 26 (D.C. Cir. 2002). In order to provide all interested parties adequate time to review and comment on the recently available information and other materials used by the Service to develop the proposed rule to designate critical habitat for the pygmy-owl, we are reopening the comment period on the proposal and the draft economic analysis for an additional 60 days.

Public Comments Solicited

We are reopening the comment period in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat designation for the pygmy-owl and the draft economic analysis of the proposal. The Public Comments Solicited section of the preamble to our proposed rule (67 FR 71032) includes a list of topics for which we are particularly seeking comments. Previously submitted comments need not be resubmitted. You may submit written comments by any of several methods:

You may mail or hand-deliver written comments to the Field Supervisor, Arizona Ecological Services Office (*see* **ADDRESSES** section). Hand deliveries must be made during normal business hours.

You may send comments by e-mail to *cfpo_habitat@fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message.

You may send written comments by facsimile to 602/242–2513.

Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period. You may inspect comments and materials received, as well as supporting documentation used by us in preparation of the proposal to designate critical habitat, by appointment during normal business hours at our office listed in the **ADDRESSES** section.

Authority

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

Dated: April 21, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–10531 Filed 4–24–03; 12:48 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 81

Monday, April 28, 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

Commodity Credit Corporation

Domestic Sugar Program—Revisions of 2002-Crop Cane Sugar Marketing Allotments and Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to advise the public that CCC has reassigned the unused cane sugar allocations from processors in Hawaii and Puerto Rico to processors in Florida, Louisiana and Texas. State cane allotments were updated to be consistent with revised 2002-crop cane sugar production forecasts. Hurricanes in Louisiana last October caused distortions in mill production levels relative to processor allocations and unexpectedly prevented the marketing of sugar. To correct these distortions and resume marketing Louisiana cane sugar, CCC realigned mill allocations earlier than the May 1 regulatory deadline. CCC also distributed the Talisman allocation among the Florida processors according to the statutory requirement.

The Hawaiian cane allotment was reduced 22,951 short tons, raw value (STRV); Puerto Rico's allotment was reduced 5,946 STRV. Florida gained 15,864 STRV, Louisiana gained 9,280 STRV and Texas gained 3,753 STRV. In addition, the entire Talisman allocation of 58,713 STRV was reassigned to three Florida processors.

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: Section 359e(a) of the Farm Security and Rural Investment Act of 2002 requires the Secretary to periodically determine whether (in view of current sugar inventories, estimated sugar production, expected marketings and other pertinent factors) any processor will be unable to market the sugar covered by the portion of the State cane sugar allotment allocated to the processor. Section 359e(b)(1)(B) further directs the Secretary to reassign the estimated quantity of a State deficit proportionately to the allotments for other cane sugar States (depending on each State's capacity to market) when a State does not have the capacity to absorb its allocation among its own processors.

In February 2003, the Department of Agriculture surveyed cane sugar processors asking for revisions to 2002-crop production and ending stock estimates for the purpose of calculating reassignments. The allotments/allocations were calculated in two steps:

Step 1: Because 50 percent of cane sugar State allotments and processor allocations are based on the estimate of current crop production, updated production estimates from the February survey yielded new allotments/allocations (column C of the attached table).

Step 2: Survey results revealed 28,897 STRV in unused allocations to Hawaiian and Puerto Rican processors. This amount was proportionately redistributed only to those cane processors in the Mainland States, who revealed in the same survey, a shortfall in allocation for the current crop year (column D of the attached table).

Section 359d(b)(C) requires CCC to distribute the closed Talisman factory's allocation among Florida processors in accordance with the agreements of March 25 and 26, 1999, between the affected processors and the Secretary of the Interior. CCC distributed Talisman's allocation based on the distribution of Talisman's acreage between the affected processors in the 1999 agreements. The Talisman distribution was calculated after the above reassignments (column E of the attached table).

USDA will continue to closely monitor market performance and critical program variables throughout the year to ensure meeting program objectives and maintaining market balance. Cane sugar allotment/allocation reassignments will be reevaluated periodically as production estimates improve.

This notice is being issued in addition to the USDA press release entitled ''USDA Announces Revisions to 2002-Crop Cane Sugar Marketing Allotments and Allocations,'' which was issued on March 13, 2003, and is only intended to supplement and not supplant what was announced in that release. These actions apply to all domestic cane sugar marketed for human consumption in the United States from October 1, 2002, through September 30, 2003. The revised 2002-crop cane sugar marketing allotments and allocations (in short tons, raw value) are listed in the following table:

FISCAL YEAR 2003 SUGAR MARKETING ALLOTMENTS AND ALLOCATIONS

[Revised March, 2003]

A	B Jan 03 revised allotment/ allocation	C Change in allotment/allocation due ONLY to new processor production estimates	D Change in allotment/allocation due ONLY to reassignments	E Talisman distribution	F New allotment/ allocation
	(short tons, raw value)				
Overall Beet/Cane Allotments:					
Beet Sugar	4,456,700	0	0	0	4,456,700
Cane Sugar (Includes P. Rico)	3,743,300	0	0	0	3,743,300
Total (Overall Allotment Quantity)	8,200,000	0	0	0	8,200,000
State Cane Sugar Allotments:					
Florida	1,929,516	−6,424	22,288	0	1,945,380
Louisiana	1,330,912	4,673	4,607	0	1,340,192
Texas	157,872	1,750	2,002	0	161,625
Hawaii	318,829	49	−23,000	0	295,878
Puerto Rico	6,171	−49	−5,897	0	225
Total Cane Sugar	3,743,300	0	0	0	3,743,300
Florida:					
Atlantic Sugar Assoc.	144,869	2,573	930	0	148,371
Growers Co-op. of FL	350,846	−7,135	701	3,564	347,976
Okeelanta Corp.	389,302	−9,128	7,602	32,912	420,688
Osceola Farms Co.	227,315	−2,212	4,472	0	229,575
Talisman Sugar Corp.	59,660	−947	0	−58,713	0
U.S. Sugar Corp.	757,524	10,425	8,584	22,237	798,769
Florida Total	1,929,516	−6,424	22,288	0	1,945,380
Louisiana:					
Alma Plantation	77,818	−6,006	823	0	72,635
Caire & Graugnard	5,597	495	0	0	6,091
Cajun Sugar Co-op.	97,645	2,940	471	0	101,056
Cora-Texas Mfg. Co.	116,530	2,388	379	0	119,297
Evan Hall Factory	2,797	121	−2,918	0	0
Harry Laws & Co.	58,181	−4,054	921	0	55,048
Iberia Sugar Co-op.	62,798	1,746	0	0	64,543
Jeanerette Sugar Co.	63,305	−1,283	400	0	62,422
Lafourche Sugars Corp.	72,494	−8,059	5	0	64,441
Louisiana Sugarcane Co-op.	82,781	−1,858	83	0	81,006
Lula Westfield, LLC	143,145	4,678	3	0	147,826
M.A. Patout & Sons	173,937	5,992	3,361	0	183,290
Raceland Sugars	78,082	4,323	111	0	82,516
St. Mary Sugar Co-op.	92,875	−4,531	325	0	88,669
So. Louisiana Sugars Co-op.	115,098	3,268	0	0	118,366
Sterling Sugars	87,830	4,512	644	0	92,986
Louisiana Total	1,330,912	4,673	4,607	0	1,340,192
Texas: Rio Grande Valley	157,872	1,750	2,002	0	161,625
Hawaii:					
Gay & Robinson, Inc.	62,163	2,135	0	0	64,298
Hawaiian Commercial & Sugar Company	256,666	−2,086	−23,000	0	231,580
Hawaii Total	318,829	49	−23,000	0	295,878
Puerto Rico:					
Agraso	3,984	−32	−3,727	0	225
Roig	2,187	−17	−2,170	0	0
Puerto Rico Total	6,171	−49	−5,897	0	225

Signed in Washington, DC on April 11, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–10391 Filed 4–25–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–009N]

Using Applied Epidemiology and Other Tools To Protect the Public Health

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on the use of epidemiological data, principles, and techniques, and of other public health tools, to help it achieve its public health goals. The Agency will describe how it responds to epidemiological evidence developed by States or other federal agencies; how it uses that evidence; how it conducts food safety investigations; and, in appropriate circumstances, initiates regulatory actions based on such evidence. This meeting is the second in a series of meetings that will aid FSIS in developing a framework for Agency public heatlh investigations and integration of the scientific principles of applied epidemiology into its food safety activities. This meeting is also one of a number of public meetings FSIS is conducting at which new approaches for increasing food safety are to be discussed. This meeting is the second in an on-going series of meetings that will aid FSIS in developing a framework for how the Agency will conduct public health investigations and integrate the scientific principles of applied epidemiology into its food safety activities. It is also one of a number of public meetings FSIS has been holding in which new approaches for increasing food safety are discussed.

DATES: The public meeting is scheduled for April 29, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at The Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005. A tentative agenda will be available in the FSIS Docket Room and on the FSIS Web site at *http://www.fsis.usda.gov/.* The official transcript of the meeting, when it becomes available, will be kept in the FSIS Docket Room at room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, and will represent public comments. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Clerk, Docket #03–009N, Room 102, Cotton Annex, Washington, DC 20250–3700. All comments and the official transcript, when it becomes available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Derfler at (202) 720–2709. Pre-registration for this meeting is suggested but not required. To register for the meeting, please contact Sheila Johnson at (202) 690–6498, fax: (202) 690–6500, or e-mail: *Sheila.johnson@fsis.usda.gov.* You may also register on-site. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Johnson at the above numbers or e-mail address as soon as possible.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in domestic or foreign commerce, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, as human food, including products that may transmit diseases or that may be otherwise injurious to health.

In recent years, the Agency has placed increased emphasis on its public health protection role. FSIS has consistently sought to enhance the public health by minimizing foodborne illness from meat, poultry, and egg products. The Agency has worked toward achieving this goal by implementing measures intended to reduce pathogens on raw products, by strengthening relationships with public health agencies at the Federal and State levels; by making food safety information and training available to people at every point in the food production and marketing chain; and by promoting international cooperation in food safety. FSIS also protects the public health by investigating and curtailing foodborne illness outbreaks associated with meat, poultry, or egg products.

For many years, FSIS has used epidemiology and other methods as tools in tracking the source of outbreaks of foodborne illness. Recent improvements in outbreak investigation and genetic fingerprinting of pathogens from persons and food products have facilitated enhancements in how the Agency uses epidemiology. It is now possible to identify otherwise unrecognized outbreaks and to develop substantive evidence to link products to illnesses. The Agency has begun using the techniques of epidemiology during in-plant assessments to help identify the source of on-going plant contamination. FSIS has also based recall requests on epidemiological data that indicated that product from a particular establishment is adulterated, but without a positive laboratory finding of product adulteration.

Public Meeting

At the public meeting, FSIS officials will discuss the Agency's utilization of investigations of foodborne illnesses associated with meat, poultry, and egg products. Epidemiological, environmental, microbiological, and other data gathered in the course of such investigations, as well as other public health tools, are used to determine what actions, if any, the Agency should take, including whether to request a recall of FSIS regulated products. The meeting will focus on: The progress the Agency has made using epidemiology as a basis of regulatory decisionmaking since the first epidemiologic meeting, which was held in January 2002; points to consider in reviewing epidemiologic findings; and FSIS's thinking on food safety investigations initiated in response to epidemiological evidence. FSIS will also present a hypothetical scenario based on recent cases of foodborne illnesses and in-plant contamination and describe its response to the scenario. A panel of food safety experts will then discuss the Agency's approaches. Finally, the Agency will open the discussion to include, and solicit comment from, the attendees. FSIS believes that this type of public process will assist it in achieving its goals and will enhance the understanding of the public health community.

Additional Public Information

Public awareness of all segments of policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at

http://www.fsis.usda.gov/oa/update/update.htm. The update is used to provide information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and others that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on April 21, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–10393 Filed 4–25–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: 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. 106–363) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on May 5 in Rexford Montana, June 2 and July 7, 2003 at 6:30 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: May 3, June 2, and July 7, 2003.

ADDRESSES: The May meeting will be held at the Old Rexford School, 122 Gateway Road, Rexford Montana and the June and July Meetings will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or email *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include informational presentations, status of approved projects, accepting project proposals for consideration and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: April 21, 2003.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 03–10332 Filed 4–25–03; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Access Board Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Bethesda, MD, on Tuesday and Wednesday, May 13–14, 2003, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, May 13, 2003

9–Noon Passenger Vessels Ad Hoc Committee (closed).

1:30–5 p.m. Public Rights-of-Way Ad Hoc Committee (closed).

Wednesday, May 14, 2003

9–11 a.m. Planning and Budget Committee.

11–11:45 a.m. Technical Programs Committee.

11:45–12:30 p.m. Executive Committee (closed).

2–3:30 p.m. Board Meeting.

ADDRESSES: The meetings will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

Open Meeting

- Approval of the March 12, 2003, Board Meeting Minutes.
- Planning and Budget Committee Report.
- Technical Programs Committee Report.

Closed Meeting

- Passenger Vessels Accessibility Guidelines.
- Public Rights-of-Way Accessibility Guidelines.
- Executive Committee Report.
- Draft Regulatory Assessment of Final Revised Guidelines for the Americans with Disabilities Act and Architectural Barriers Act (closed).

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

James J. Raggio,

General Counsel.

[FR Doc. 03–10398 Filed 4–25–03; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–810]

Stainless Steel Bar from India: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 18, 2003, in *Carpenter Technology Corp. v. United States*, Consol. Court No. 00–09–00447, Slip. Op. 03–28 (CIT 2003), a lawsuit challenging the Department of Commerce's (''the Department'') *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Recession of Administrative Review*, 65 FR 48965 (August 10, 2000) and accompanying Issues and Decision Memorandum (August 4, 2000) (''*Issues and Decision Memorandum*'') (collectively, ''*Final Results*''), the Court of International Trade (''CIT'') affirmed the Department's remand determination and entered a judgment order. In the remand determination, the Department clarified two aspects of the *Final Results* relating to the banding of sales and the dissimilar treatment of two respondents. In addition, the Department recalculated the antidumping duty rate for Viraj Impoexpo Ltd. (Viraj'') employing a modified calculation of neutral facts available. As a result of the remand determination, the antidumping duty rate for Viraj has decreased from 2.5 percent to the *de minimis* rate of 0.19 percent.

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to revise the cash deposit rate and liquidate all relevant entries covering the subject merchandise for Viraj.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Langan or Cole Kyle, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Results*, Carpenter Technology Corp. (''Carpenter''), the petitioner in this case, and Viraj, a respondent in this case, filed lawsuits with the CIT challenging the Department's *Final Results*.

In the *Final Results*, in accordance with section 773(a)(1)(C) of the Tariff Act of 1930, as amended effective January 1, 1995 (''the Act'') by the Uruguay Round Agreements Act (''URAA''), the Department calculated Viraj's antidumping duty margin using third country sales data for normal value because Viraj's home market sales information was incomplete. In using the third country database, the Department was unable to make adjustments for differences in merchandise because, although Viraj cooperated to the best of its ability, it did not report variable cost of manufacture (''VCOM'') data in its third country and U.S. sales databases. See section 773(a)(6)(C) of the Act. Therefore, the Department relied on facts otherwise available to account for these differences. In doing so, the Department matched U.S. sales to third country sales according to size ranges (''banding'') for price comparison purposes. Where banding did not result in an identical match, the Department applied the ''all others'' rate of 12.45 percent calculated in *Stainless Steel Bar from India; Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994) (''*LTFV investigation*''). The ''all others'' rate was calculated in accordance with the Tariff Act of 1930, as amended, pre-URAA.

The Court remanded the use of banding to the Department for further explanation. The Court did not find the Department's matching methodology unreasonable or inconsistent with law and recognized the Department's broad authority to determine and apply a model-matching methodology to determine a relevant ''foreign like product'' under sections 773 and 771(16) of the Act. However, the Court noted the apparent disparate treatment between Viraj and another respondent, Panchmahal Steel, Ltd. The Court found that this ''disparity'' and the Department's language in its *Issues and Decision Memorandum* necessitated a further explanation from the Department of its rationale for banding Viraj's sales.

Additionally, the Court questioned the Department's use of the ''all others'' rate applied to Viraj's unmatched U.S. sales. The Court found that the Department's use of a pre-URAA weighted-average ''all others'' rate that contained one margin based entirely on adverse facts available did not constitute non-adverse facts available. As such, the Court concluded that the Department could not apply this ''all others'' rate to Viraj, a cooperative respondent. *See* section 776(b) of the Act.

The *Draft Redetermination Pursuant to Court Remand* (''*Draft Results*'') was released to the parties on September 5, 2002. In its *Draft Results*, the Department clarified to the court its use of banding and the dissimilar treatment of Viraj and Panchmahal Steel, Ltd. We also reconsidered our use of the ''all others'' rate from the *LTFV investigation* as neutral facts otherwise available where Viraj's U.S. sales did not have an identical match under the banding methodology. We modified our application of neutral facts otherwise available in the margin calculations by substituting for the ''all others'' rate the weighted-average dumping margin from Viraj's matched banded sales in order to conform with the Court's conclusion that the ''all others'' rate included adverse inferences.

Comments on the *Draft Results* were received from Carpenter on September 13, 2002, and Viraj submitted rebuttal comments on September 18, 2002. On September 30, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand (''*Final Results of Redetermination*''). The Department's *Final Results of Redetermination* was identical to the *Draft Results*.

The CIT affirmed the Department's *Final Results of Redetermination* on March 18, 2003. *See Carpenter Technology Corp. v. United States*, Consol. Court No. 00–09–00447, Slip. Op. 03–28 (CIT 2003).

Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit (''Federal Circuit''), in *Timken*, held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not ''in harmony'' with the Department's *Final Results*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's May 17, 2003, decision or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct the Customs Service to revise cash deposit rates and liquidate relevant entries covering the subject merchandise effective April 28, 2003, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the Court of Appeals for the Federal Circuit.

Dated: April 21, 2003.

Joesph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–10368 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122–815]

Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty New Shipper Review.

SUMMARY: On January 28, 2003, the Department published the preliminary results of this new shipper review of the countervailing duty order on alloy magnesium from Canada. This new shipper review covers imports of subject merchandise from Magnola Metallurgy, Inc.

The period for which we are measuring subsidies, or the period of review, is from January 1 through December 21, 2001.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made no changes to our calculations. Therefore, the final results do not differ from the preliminary results. The final net subsidy rate for Magnola is listed in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Office 1, Group 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

Since the publication of the preliminary results of new shipper review on January 28, 2003, (*see Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty New Shipper Review*, 68 FR 4175 (January 28, 2003) (''*Preliminary Results*'')), the following events have occurred. On February 27, 2003, we received case briefs from the Government of Quebec (''GOQ'') and Magnola Metallurgy, Inc. (''Magnola''), (collectively, ''the respondents''), and U.S. Magnesium, LLC., the petitioner. The respondents and the petitioner submitted rebuttal briefs on March 4, 2003.

Scope of the Review

The products covered by this review are shipments of alloy magnesium from Canada. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. The alloy magnesium subject to review is currently classifiable under item 8104.19.0000 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Secondary and granular magnesium are not included in the scope of this order. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' from Susan H. Kuhbach, Acting Deputy Assistant Secretary, Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated April 21, 2003 (''*Decision Memorandum*''), which is hereby adopted by this notice. Attached to this notice as Appendix I is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (''CRU'') in Room B-099 of the main Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading ''Canada.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

We have made no changes to our preliminary findings as a result of either our analysis of the comments received or of any new information or evidence of changed circumstances. Therefore, the final results do not differ from the preliminary results of this review.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5)(i), we calculated a subsidy rate for Magnola, the sole producer/exporter subject to this new shipper review. For the period January 1, 2001, through December 31, 2001, we determine the net subsidy rate for Magnola as stated below.

NET SUBSIDY RATE

Manufacturer/Exporter	Percent
Magnola Metallurgy, Inc.	7.00 percent

We will disclose our calculations to the interested parties in accordance with section 351.224(b) of the regulations.

Assessment Rates

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results. For the period January 1, 2001, through December 31, 2001, the assessment rates applicable to all non-reviewed companies are the cash deposit rates in effect at the time of entry.

Cash Deposit Requirements

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 7.00 percent on the f.o.b. value of all shipments of the subject merchandise from Magnola entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results.

The cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated.

This notice 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 19 CFR 351.305(a)(3). Timely written notification of 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.

We are issuing and publishing this administrative review and notice in accordance sections 751(a)(2)(B) and 777(i) of the Act.

Dated: April 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX I

List of Comments and Issues in the Decision Memorandum

Comment 1: Emploi-Québec Manpower Training Program is an export subsidy

Comment 2: The Manpower Training Program is not countervailable

Comment 3: Magnola Metallurgy's company specific Average Useful Life (''AUL'')

Comment 4: Magnola Metallurgy's discount rate

[FR Doc. 03–10369 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit and Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

April 22, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a limit and sublimit.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit and sublimit for Categories 338/339/638/639 and 338-S/339-S/638-S/639-S are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63626, published on October 15, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 22, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003,

Effective on April 28, 2003, you are directed to increase the current limit and sublimit for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
338/339/638/639	2,345,488 dozen, of which not more than 1,954,577 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers in Category 638 except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers in Category 639 except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–10362 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

April 22, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used, swing, special shift and the adjustment allowed to certain apparel categories for traditional folklore products made of hand-loomed fabric.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63627, published on October 15, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 22, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on April 28, 2003, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
219	14,644,198 square meters.
313–O [2]	28,310,118 square meters.
314–O [3]	88,292,290 square meters.
315–O [4]	35,870,611 square meters.
317–O [5]/617/326–O [6]	30,793,601 square meters of which not more than 6,072,930 square meters shall be in Category 326–O.
334/335	377,330 dozen.
336/636	1,081,993 dozen.
338/339	1,120,093 dozen.
340/640	2,443,874 dozen.
341	1,618,606 dozen.
342/642	612,970 dozen.
345	715,692 dozen.
347/348	2,950,087 dozen.
351/651	796,860 dozen.
359–S/659–S [7]	2,461,151 kilograms.
433	12,338 dozen.
443	91,534 numbers.
447	19,397 dozen.
448	23,883 dozen.
611–O [8]	4,886,642 square meters.
613/614/615	33,987,416 square meters.
618–O [9]	7,200,572 square meters.
625/626/627/628/629–O [10]	42,162,898 square meters.
634/635	490,376 dozen.
638/639	2,789,177 dozen.
641	3,858,707 dozen.
644	727,932 numbers.
647/648	5,092,740 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.
[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.
[3] Category 314–O: all HTS numbers except 5209.51.6015.
[4] Category 315–O: all HTS numbers except 5208.52.4055.
[5] Category 317–O: all HTS numbers except 5208.59.2085.
[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.
[7] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
[8] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.
[9] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.
[10] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–10361 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Qatar

April 22, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a limit.

EFFECTIVE DATE: April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68574, published on November 12, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 22, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Effective on April 29, 2003, you are directed to reduce the current limit for Categories 347/348 to 783,285 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–10364 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2002.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

April 22, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57410, published on September 10, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 22, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on April 29, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	2,304,779 dozen of which not more than 1,346,934 dozen shall be in Category 338 and not more than 1,497,623 dozen shall be in Category 339.
347/348	1,574,557 dozen of which not more than 984,096 dozen shall be in Category 347 and not more than 765,411 dozen shall be in Category 348.
639	4,552,479 dozen.
642	488,991 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–10360 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations Under the Textile and Apparel Commercial Availability Provisions of the Caribbean Basin Trade Partnership Act (CBTPA)

April 22, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (The Committee).

ACTION: Designation.

SUMMARY: The Committee has determined that certain fabrics, classified in subheadings 5210.21 and 5210.31 of the Harmonized Tariff Schedule of the United States (HTSUS), not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, used in the production of women's and girls' blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA. The Committee hereby designates such apparel articles that are both cut and sewn or otherwise assembled in an eligible CBTPA beneficiary country from these fabrics as eligible for quota-free and duty-free treatment under the commercial availability provisions of the CBTPA, and eligible under the HTSUS subheading 9820.11.27 to enter free of quotas and duties, provided all other fabrics are U.S. formed from yarns wholly formed in the U.S.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA countries from fabric or yarn that is not formed in the United States or a beneficiary CBTPA country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this

treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether particular yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

On December 18, 2002, the Committee received a request alleging that certain fabrics, classified in subheadings 5210.21 and 5210.31 of the Harmonized Tariff Schedule of the United States (HTSUS), not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, used in the production of women's and girls' blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and requesting that women's and girls' blouses from such fabrics be eligible for preferential treatment under the CBTPA. On December 24, 2002, the Committee requested public comment on the petition (67 FR 78424). On January 9, 2003, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On January 9, 2003, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On January 29, 2003, the U.S. International Trade Commission provided advice on the request. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabrics set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On February 14, 2003, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the CBTPA.

The Committee hereby designates as eligible for preferential treatment under subheading 9820.11.27 of the HTSUS, women's and girls' blouses, that are both cut and sewn or otherwise assembled in one or more eligible beneficiary CBTPA countries, from fabrics, classified in subheadings 5210.21 and 5210.31 of the HTSUS, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, that are imported directly into the customs territory of the United States from an eligible beneficiary CBTPA country. An article otherwise eligible for preferential treatment under this designation shall not be ineligible for such treatment because the article contains findings, trimmings, certain interlinings or de minimis foreign yarn, as specified in Section 213(b)(2)(A)(vii)(I), (II), and (III) of the CBTPA.

An ''eligible beneficiary CBTPA country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of chapter 98 of the HTSUS.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–10363 Filed 4–25–03; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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. 3508 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed revision of its AmeriCorps*NCCC Service Project Application form. Copies of the information collection requests can be obtained by contacting the office below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section on or before June 27, 2003.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Mr. William M. Ward, AmeriCorps*NCCC, 1201 New York Ave., NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: William M. Ward, e-mail *Wward@cns.gov*, (202) 606–5000, ext. 375, TDD (202) 565–2799.

SUPPLEMENTARY INFORMATION: The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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.

Background

This form has been used by community non-profit organizations, small community and faith based organizations, government agencies, and other prospective service project sponsors in the submission of proposed service projects for consideration by the AmeriCorps*National Civilian Community Corps.

Current Action

The Corporation seeks renewal of the current form. The revised form will incorporate lessons learned since program inception and will be used for the same purpose as the existing form. The current form is due to expire December 31, 2003.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*NCCC Service Project Application.

OMB Number: 3045–0010.

Agency Number: N/A.

Affected Public: Various non-profit organizations/project sponsors.

Total Respondents: 900.

Frequency: Annually.

Average Time Per Response: 4 hours.

Estimated Total Burden Hours: 3600 hours.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost (operating/maintenance): N/A.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 22, 2003.

Wendy Zenker,

*Director, AmeriCorps*NCCC.*

[FR Doc. 03–10303 Filed 4–25–03; 8:45 am]

BILLING CODE 6050–$$–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Thursday, May 8, 2003. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: an update on development of the Water Resources Plan for the Delaware River Basin, including feedback from the commissioners regarding member ''sign-on;'' a report by a representative of The Nature Conservancy concerning development of an ecological flow strategy for the Upper Delaware River Basin; a report on Flow Management Technical Advisory Committee activities; a report on the PCB Expert Panel and Toxics Advisory Committee meetings of March 20–21, 2003 and the TMDL stakeholder briefing of April 29, 2003; a presentation on New Jersey's Blueprint for Intelligent Growth (BIG) map and its relationship to water resources management; and a proposal for renewal of the Commission's contract with the Northeast-Midwest Institute.

The dockets scheduled for the public hearing to be held during the 1 p.m. business meeting are as follows:

1. *Baer Aggregates, Inc. D–90–18 RENEWAL.* A renewal of a ground water withdrawal project to supply up to 38 million gallons (mg)/30 days of water to the applicant's manufacturing plant from existing Wells Nos. 1, 2, 3 and 4. Well No. 1 is completed in glacial drift sediments; Wells Nos. 2, 3 and 4 are completed in the Kittatinny Limestone Formation. No increase in allocation is proposed. The project is located in Pohatcong Township, Warren County, New Jersey.

2. *Grand View Hospital D–92–63 CP RENEWAL.* A renewal of a ground water withdrawal project with an increase from 3.6 mg/30 days to 4.32 mg/30 days to supply the applicant's health care facility from existing Wells Nos. 1, 3, 4 and 5 in the Brunswick formation. The project is located in the East Branch Perkiomen Creek Watershed, in West Rockhill Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

3. *Westampton Property Associates D–94–6 RENEWAL.* A renewal of a ground water and surface water withdrawal project to continue withdrawal of 6.7 mg/30 days to supply the applicant's Deerwood Country Club golf course from existing Wells Nos. 1 and 2 and proposed Well No. 3 (all in the Englishtown Formation) to be conjunctively used with 3 existing surface water intakes, all in the Assiscunk Creek Watershed. The project is located in Westampton Township, Burlington County, New Jersey.

4. *Township of West Deptford D–99–56 CP.* A project to withdraw up to 17 mg/30 days of surface water from an intake on the tidal Delaware River in Water Quality Zone 4 to provide water for the development known as The Riverwinds at West Deptford, located in West Deptford Township, Gloucester County, New Jersey. The applicant proposes to withdraw this water for a residential and commercial development, including an 18-hole public golf course.

5. *Aventis Pasteur Inc. D–99–71.* A project to expand the capacity of the applicant's existing 0.2 million gallon per day (mgd) industrial wastewater treatment plant (IWTP) to 0.35 mgd utilizing Best Available Technology economically achievable. The original application was for an expansion to 0.45 mgd, but a reduction of flow was realized mainly due to conservation measures. The IWTP will continue to serve the applicant's vaccine production facility located off State Route 314 in Pocono Township, Monroe County, Pennsylvania. Treated effluent will continue to be discharged to Swiftwater Creek, a tributary of Paradise Creek in the Brodhead Creek Watershed, and to a proposed on-site seasonal spray irrigation disposal area.

6. *Consumers New Jersey Water Company D–2000–37 CP.* A ground water withdrawal project to supply 30 mg/30 days on a permanent basis, with an additional, temporary (approximately five years) ground water supply allocation of 61 mg/30 days to the applicant's Woolwich public water distribution system. The temporary allocation of 61 mg/30 days is valid until December 31, 2007 or until an alternate supply of surface water is made available under a Consumers New Jersey Water Company (NJWC)/New Jersey American Water Company (NJAWC) agreement. The ground water will be provided through Wells Nos. 1 through 7 in the Upper Potomac-Raritan-Magothy Aquifer in the Racoon Creek and Oldman's Creek Watersheds. The project is located in Woolwich Township, Gloucester County, New Jersey.

7. *Philadelphia Suburban Water Company D–2002–1 (CP).* A ground water withdrawal project to supply up to 17.4 mg/30 days of water to the applicant's public water supply system from new Well No. EP–A in the Triassic Limestone Fanglomerate Formation. The project is located in the Schuylkill River Watershed in Cumru Township, Berks County, Pennsylvania.

8. *Nature's Way Purewater Systems, Inc. D–2002–44.* A ground water withdrawal project to supply up to 4.189 mg/30 days of water for exportation to the applicant's bottling facility from new Wells Nos. BH–1 and BH–2 in the Mauch Chunk Formation. The project is located in the Linesville Creek Watershed in Foster Township, Luzerne County, Pennsylvania.

9. *Nestlè Waters North America, Inc. D–2002–45.* A ground water withdrawal project to supply up to 7.0 mg/30 days of water to the applicant's bottled water facility from new Well No. PW–1 in the Epler Formation. The project is located in the Iron Run Watershed in Upper Macungie Township, Lehigh County, Pennsylvania.

10. *Camp French Woods D–2003–1.* A project to expand a 33,750 gallon per day (gpd) Sewage Treatment Plant (STP) to process 48,000 gpd, while continuing to provide tertiary level of treatment. The project is necessary to serve the increased number of seasonal residents

at the applicant's camp for children, located about 2 miles northwest of the intersection of Bouchoux Brook Road and Gilleran Road, in the Town of Hancock, Delaware County, New York. STP effluent will continue to be discharged to Sand Pond on an intermittent tributary of Bouchoux Brook, in the Special Protection Waters drainage area.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the March 19, 2003 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; and a resolution authorizing the executive director to renew the Delaware River Basin Commission's May 2002 contract with the Northeast-Midwest Institute.

Draft dockets and other items scheduled for public hearing on March 19, 2003 are posted on the Commission's Web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: April 22, 2003.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 03–10323 Filed 4–25–03; 8:45 am]

BILLING CODE 6360–01–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 May 28, 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: April 22, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Direct Loan Program's General Forbearance Request Form.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,074,000.

Burden Hours: 214,800.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to request forbearance on their loans when they are willing but unable to make their currently scheduled monthly payments because of a temporary financial hardship.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2228. 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 *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet 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 (202) 708–9266. 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. 03–10320 Filed 4–25–03; 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 May 28, 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: April 22, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Reporting Forms on Teacher Quality and Preparation.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 1,309.

Burden Hours: 127,624.

Abstract: The Higher Education Act of 1998 calls for annual reports from states and institutions of higher education on the quality of teacher education and related matters (Pub. L. 105–244, Section 207:20 U.S.C. 1027). The purpose of the reports is to provide greater accountability in the preparation of America's teaching forces and to provide information and incentives for its improvement. Most institutions of higher education that have teacher preparation programs must report annually to their states on the performance of their program completers on teacher certification tests. States, in turn, must report test performance information, institution by institution, to the Secretary of Education, along with institutional ranking. They must also report on their requirements for licensing teachers, state standards, alternative routes to certification, waivers, and related items. Annually reports form institutions are due to the states, beginning April 7 each year; reports from the states are due annually to the Secretary, beginning October 7 each year; the Secretary's report is due annually to Congress, beginning April 7 each year.[1]

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2220. 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 *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet 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 (202) 708–9266 or via 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. 03–10321 Filed 4–25–03; 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 May 28, 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: April 23, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Fulbright-Hays Seminars Abroad.

Frequency: One time per application.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 800. Burden Hours: 2,400.

Abstract: Forms to be used by applicants under the Fulbright-Hays Seminars Abroad Program which provides opportunities for U.S. educators to participate in short-term study seminars abroad in the subject areas of the social sciences, social studies and the humanities.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the

[1] These dates are 1 year later than the dates in the legislation.

''Browse Pending Collections'' link and by clicking on link number 2270. 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 *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet 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 (202) 708–9266 or to 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. 03–10325 Filed 4–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Change in National Environmental Policy Act (NEPA) Compliance Approach for the Depleted Uranium Hexafluoride (DUF6) Conversion Facilities Project

AGENCY: Department of Energy.

ACTION: Notice of revised approach.

SUMMARY: On September 18, 2001, the U.S. Department of Energy (DOE) published a Notice of Intent (NOI) in the **Federal Register**, announcing its intention to prepare an Environmental Impact Statement (EIS) for a proposed action to construct, operate, maintain, and decontaminate and decommission two depleted uranium hexafluoride (DUF6) conversion facilities at Portsmouth, Ohio, and Paducah, Kentucky. DOE held three scoping meetings to provide the public with an opportunity to present comments on the scope of the EIS, and to ask questions and discuss concerns with DOE officials regarding the EIS. The scoping meetings were held in Piketon, Ohio on November 28, 2001; in Oak Ridge, Tennessee on December 4, 2001, and in Paducah, Kentucky, on December 6, 2001. The purpose of this Notice is to inform the public of the change in the approach for the NEPA review for the DUF6 conversion projects for Paducah and Portsmouth, and to invite public comments on the revised approach.

DATES: Comments received by May 30, 2003, will be considered in the preparation of the draft EISs. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments and suggestions can be forwarded to Gary Hartman, U.S. Department of Energy—Oak Ridge Operations Office, Oak Ridge, Tennessee 37831, telephone (865) 576–0273, fax: (865) 576–0746, e-mail: *hartmangs@oro.doe.gov.* Also contact Mr. Hartman with any questions regarding the DOE DUF6 conversion project.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: On September 18, 2001, the U.S. Department of Energy (DOE) published a Notice of Intent (NOI) in the **Federal Register** (66 FR 48123), announcing its intention to prepare an Environmental Impact Statement (EIS) for a proposed action to construct, operate, maintain, and decontaminate and decommission two depleted uranium hexafluoride (DUF6) conversion facilities at Portsmouth, Ohio, and Paducah, Kentucky. DOE held three scoping meetings to provide the public with an opportunity to present comments on the scope of the EIS, and to ask questions and discuss concerns with DOE officials regarding the EIS. The scoping meetings were held in Piketon, Ohio on November 28, 2001; in Oak Ridge, Tennessee on December 4, 2001, and in Paducah, Kentucky, on December 6, 2001. The alternatives identified in the NOI included a two-plant alternative (two conversion plants would be built, one at the Paducah Gaseous Diffusion Plant site and another at the Portsmouth Gaseous Diffusion Plant site), a one-plant alternative (only one plant would be built either at the Paducah or the Portsmouth site), a use of existing UF6 conversion capacity alternative (DOE would consider using already-existing UF6 conversion capacity at commercial nuclear fuel fabrication facilities in lieu of constructing one or two new plants), and the no action alternative. For alternatives that involved constructing one or two new plants, DOE planned to consider alternative conversion technologies, local siting alternatives within the Paducah and Portsmouth plant boundaries, and the shipment of DUF6 cylinders stored at the East Tennessee Technology Park (ETTP) near Oak Ridge, Tennessee, to either the Portsmouth or Paducah sites. The technologies to be considered in the EIS were those submitted in response to a Request for Proposals (RFP) for conversion services that DOE had issued in October 2000, plus any other technologies that DOE believed must be considered.

Then, on August 2, 2002, the U.S. Congress passed the *2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States* (Public Law 107–206). In pertinent part, this law required that, within 30 days of enactment, DOE award a contract for the scope of work described in the October 2000 RFP, including design, construction, and operation of a DUF6 conversion plant at each of the Department's Paducah, Kentucky and Portsmouth, Ohio sites. Accordingly, the DOE awarded a contract to Uranium Disposition Services, LLC, on August 29, 2002.

In light of Public Law 107–206, and DOE's award of the contract to Uranium Disposition Services, DOE reevaluated the appropriate scope of its NEPA review and decided to prepare two separate EIS's, one for the plant proposed for the Paducah site and a second for the Portsmouth site. The proposed alternatives to be considered in each EIS would focus primarily on where the conversion facilities will be sited at the respective sites, and a no action alternative. DOE will also consider impacts arising from shipment of ETTP cylinders for conversion to each site.

Schedule

Both draft EISs are scheduled to be published in July 2003. A 45-day comment period on the draft EISs is planned, which will include public hearings to receive comments. Availability of the draft EISs, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media.

The final EISs are scheduled for publication in January 2004. The Records of Decision would be issued no sooner than 30 days after the U.S. Environmental Protection Agency notices of availability of the final EISs are published in the **Federal Register**. As directed by Pub. L. 107–206, construction of the DUF6 conversion facilities is scheduled to begin not later than July 31, 2004.

The purpose of this Notice is to inform the public of the change in the approach for the NEPA review for the DUF6 conversion projects for Paducah

and Portsmouth, and to invite public comments on the revised approach.

David R. Allen,

NEPA Compliance Officer, Oak Ridge Operations Office.

[FR Doc. 03–10373 Filed 4–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 15, 2003, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order; Introductions; Approve April Minutes; Review Agenda
6:10 p.m. DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m. Federal Coordinator Comments
6:40 p.m. Ex-officio Comments
6:50 p.m. Public Comments and Questions
7:00 p.m. Review of Action Items
7:15 p.m. Break
7:25 p.m. Presentation
- Fiscal Year (FY) 2004 Budget—Judy Penry (Oak Ridge Chief Financial Officer [CFO])
- Waste Disposition Environmental Assessment (EA) Addendum

8:10 p.m. Public Comments and Questions
8:20 p.m. Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:55 p.m. Administrative Issues
- Preparation for September Chairs' Meeting
- June Dinner Meeting
- Review of Workplan
- Review Next Agenda
- Final Comments

9:10 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. Monday through Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on April 23, 2003.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 03–10374 Filed 4–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–610–000]

Allegheny Energy Supply Units 3, 4, & 5, LLC; Notice of Issuance of Order

April 21, 2003.

Allegheny Energy Supply Units 3, 4, & 5, LLC (Allegheny 3, 4 & 5) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates, as well as sale of ancillary services into PJM Interconnection LLC, New York Independent System Operator, Inc., and ISO New England, Inc. at market-based rates. Allegheny 3, 4, & 5 also requested waiver of various Commission regulations. In particular, Allegheny 3, 4, & 5 requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Allegheny 3, 4, & 5.

On April 18, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Allegheny 3, 4, & 5 should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 19, 2003.

Absent a request to be heard in opposition by the deadline above, Allegheny 3, 4, & 5 is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Allegheny 3, 4, & 5 compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Allegheny 3, 4, & 5's

issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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. 03–10307 Filed 4–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–597–000 and ER03–597–001]

Brookhaven Energy Limited Partnership; Notice of Issuance of Order

April 21, 2003.

Brookhaven Energy Limited Partnership (Brookhaven) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of electric energy and capacity at market-based rates. Brookhaven also requested waiver of various Commission regulations. In particular, Brookhaven requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Brookhaven.

On April 18, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Brookhaven should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 19, 2003.

Absent a request to be heard in opposition by the deadline above, Brookhaven is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Brookhaven, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Brookhaven's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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. 03–10306 Filed 4–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–622–000]

Capital Power, Inc.; Notice of Issuance of Order

April 21, 2003.

Capital Power, Inc. (Capital Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sale of capacity and energy at market-based rates. Capital Power is a Michigan corporation that intends to engage in the wholesale trading of electricity. Capital Power also requested waiver of various Commission regulations. In particular, Capital Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Capital Power.

On April 18, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Capital Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 19, 2003.

Absent a request to be heard in opposition by the deadline above, Capital Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Capital Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Capital Power's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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. 03–10308 Filed 4–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2014–010]

Entergy Services, Inc.; Notice of Filing

April 21, 2003.

Take notice that on April 14, 2003, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed a compliance filing in response to the Commission's March 13, 2003, Order On Amended Generator Operating Limits Filing (March 13 Order) Entergy Servs., Inc., 102 FERC ¶ 61,281.[1] Entergy states that the compliance filing implements revisions to Attachment Q to the Entergy Open Access Transmission Tariff that were required by the March 13 Order and contains Entergy's status report on implementation of Attachment Q.

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, 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.

Comment Date: May 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10305 Filed 4–25–03; 8:45 am]

BILLING CODE 6717–01–P

[1] This same Notice of Filing was erroneously issued on April 16, 2003, in Docket No. ER02–2014–014 on April 16, 2003. That Notice has been rescinded.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2942–005, 2931–002, 2941–002, 2932–003, and 2897–003]

S.D. Warren Company; Notice Rejecting Proposal To Use Alternative Means of Dispute Resolution

April 21, 2003.

On March 28, 2003, S.D. Warren, pursuant to Rule 604 of the Commission's Rules of Practice and Procedure, 18 CFR 385.604, filed a request to initiate alternative dispute resolution in respect to the pending relicensing proceeding for its Dundee, Gambo, Little Falls, Mallison Falls, and Saccarappa Projects Nos. 2942, 2931, 2941, 2932, and 2897, respectively.

Rule 604(a)(1) provides that participants to a proceeding may use alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree. Rule 604(e)(3) provides that a proposal to use alternative means of dispute resolution must include the signatures of all participants or evidence otherwise indicating the consent of all participants.

The proposal submitted by S.D. Warren does not include signatures of the other participants to the proceeding or evidence indicating the consent of all participants. In addition, responses to S.D. Warren's request were filed by the U.S. Department of the Interior and by American Rivers and Friends of the Presumpscot River, all participants in the relicensing proceeding. These participants object to S.D. Warren's proposal. Because the proposal does not conform to the provisions of Rule 604 requiring consent of all participants, S.D. Warren's request must be rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10309 Filed 4–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–77–000, et al.]

El Paso Merchant Energy, L.P., et al.; Electric Rate and Corporate Filings

April 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. El Paso Merchant Energy, L.P., Mohawk River Funding IV, L.L.C.

[Docket No. EC03–77–000]

Constellation Power Source, Inc.Take notice that on April 15, 2003, El Paso Merchant Energy, L.P. (EPME), Mohawk River Funding IV, L.L.C. (MRF IV) and Constellation Power Source, Inc. (CPSI) (jointly, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization for EPME to assign an electric purchase agreement to CPSI. Applicants also requested expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: May 6, 2003.

2. California Independent System Operator Corporation

[Docket Nos. EL00–95–082, and EL00–98–070]

Take notice that on April 14, 2003, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's March 13, 2003 ''Order on Compliance Filing,'' 102 FERC ¶ 61,285 (2003), issued in the above-referenced dockets.

The ISO states that it has served copies of this filing upon all entities that are on the official service list for the docket.

Comment Date: May 14, 2003.

3. California Independent System Operator Corporation

[Docket Nos. ER03–218–002, and ER03–219–002]

Take notice that on April 15, 2003, the California Independent System Operator Corporation (ISO) made a filing (Compliance Filing) in compliance with the Commission's January 24, 2003, Order in Docket Nos. ER03–218–000 and ER03–219–000 (January 24 Order). The ISO states that the purpose of the Compliance Filing is to submit certain changes to the ISO Tariff and the Transmission Control Agreement to bring them into

conformance with the directives of January 24 Order.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff. The ISO is requesting that the Commission delay acting on the Compliance Filing until it has acted on certain Requests for Rehearing of the January 24 Order.

Comment Date: May 6, 2003.

4. California Independent System Operator Corporation

[Docket No. ER03–407–003]

Take notice that on April 16, 2003, the California Independent System Operator Corporation (ISO) submitted an errata filing concerning the ISO's April 11, 2003, filing to comply with the Commission's March 12, 2003, ''Order Conditionally Accepting Tariff Amendment For Filing, as Modified, Granting Waiver of Notice, and Directing Compliance Filing,'' 102 FERC ¶ 61,268 issued in Docket No. ER03–407–000. The ISO states that copies of this filing have been served upon all entities that are on the official service list for Docket No. ER03–407–000.

Comment Date: May 7, 2003.

5. ISG Sparrows Point Inc

[Docket No. ER03–693–001]

Take notice that on April 15, 2003, ISG Sparrows Point Inc., (ISG Sparrows Point) filed an amendment to its April 1, 2003, Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority, and Request for Shortened Notice and Expedited Action. ISG Sparrows Point proposes to revise its originally proposed FERC Electric Tariff, Original Volume No. 1, to reflect the Commission's action in Aquila Inc., 101 FERC ¶ 61,331. ISG Sparrows Point requests an effective date for the amended rate schedule of May 1, 2003.

Comment Date: April 28, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER03–749–000]

Take notice that on April 16, 2003, the New York Independent System Operator, Inc. (NYISO), filed corrections to its May 31, 2002, filing in which the NYISO indicates that it proposed to modify the manner in which it recovers charges assessed to customers under its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff).

The NYISO states that it has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Service Commission, and the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: May 7, 2003.

7. D.E. Shaw Plasma Power, L.L.C.

[Docket No. ER03–750–000]

Take notice that on April 16, 2003, D. E. Shaw Plasma Power, L.L.C., submitted a notice of withdrawal of the proposed rate schedule filed on December 18, 2002.

Comment Date: May 7, 2003.

8. MidAmerican Energy Company

[Docket No. ER03–751–000]

Take notice that on April 16, 2003, MidAmerican Energy Company (MidAmerican) tendered for filing an amended Service Agreement between MidAmerican and Resale Power Group of Iowa (RPGI). MidAmerican seeks an effective date of April 17, 2003.

MidAmerican states that copies of this filing have been served on RPGI, the Iowa Utilities Board, the Illinois Commerce Commission, and the South Dakota Public Utilities Commission.

Comment Date: May 7, 2003.

9. Solaro Energy Power Marketing Corporation

[Docket No. ER03–752–000]

Take notice that on April 16, 2003, Solaro Energy Power Marketing Corporation (Solaro Energy) petitioned the Commission for acceptance of Solaro Energy 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.

Comment Date: May 7, 2003.

10. The Detroit Edison Company

[Docket No. ES03–35–000]

Take notice that on April 16, 2003, The Detroit Edison Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt securities in an amount not to exceed $1 billion.

Comment Date: May 8, 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. 03–10304 Filed 4–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–564–001, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Filings

April 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–564–001]

Take notice that on April 17, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing an original and five copies of proposed amendments to Exhibit A to the Network Integration Transmission Service Agreement for Wisconsin Public Power, Inc. (WPPI), Service Agreement No. 532 (NITS Agreement) under the Midwest ISO's Open Access Transmission Tariff

(Tariff), FERC Electric Tariff, Second Revised Volume No. 1.

The Midwest ISO has requested waiver of the Commission's 60-day notice requirement and an effective date of February 1, 2003.

The Midwest ISO states that it has served copies of its filing on all affected customers and that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: May 8, 2003.

2. American Electric Power Service Corporation

[Docket No. ER03–659–001]

Take notice that on April 17, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Amended and Restated Interconnection and Operation Agreement between Ohio Power Company and Lawrence Energy Center LLC. AEPSC states that the agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001. AEP requests an effective date of June 16, 2003.

AEPSC states that a copy of the filing was served upon Lawrence Energy Center and the Public Utilities Commission of Ohio.

Comment Date: May 8, 2003.

3. American Electric Power Service Corporation

[Docket No. ER03–660–001]

Take notice that on April 17, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Amended and Restated Interconnection and Operation Agreement between Ohio Power Company and Lawrence Energy Center LLC. AEPSC states that the agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001. AEP requests an effective date of June 16, 2003.

AEPSC states that a copy of the filing was served upon Lawrence Energy Center and the Public Utilities Commission of Ohio.

Comment Date: May 8, 2003.

4. FPL Energy New England Transmission, LLC

[Docket Nos. OA03–4–000 and OA03–5–000]

Take notice that on April 8, 2003, FPL Energy New England Transmission, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) a request for expedited order confirming that it has complied with the requirements of Order No. 888 by placing its transmission facilities under the control of the New England Independent System Operator. Applicant also requested an expedited order confirming that the standards of conduct with its pleading comply with the requirements of Order No. 889.

Comment Date: May 21, 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. 03–10322 Filed 4–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

April 23, 2003.

The Following Notice of Meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: April 30, 2003, 10 a.m.

Place: Room 2C, 888 First Street, NE., Washington, DC 20426.

Status: Open.

Matters to be Considered: Agenda

Note.— Items listed on the Agenda may be deleted without further notice.

FOR MORE INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400, for a Recording Listing Items Stricken from or Added to the Meeting, Call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

826th—Meeting April 30, 2003; Regular Meeting 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket# AD03–8, 000, Regional Market Monitor State of the Market Presentations

Markets, Tariffs and Rates—Electric

E–1.
Omitted

E–2.
Omitted

E–3.
Omitted

E–4.
DOCKET# EL98–6, 001, Old Dominion Electric Cooperative v. Public Service Electric and Gas Company

E–5.

Docket# ER02–2560, 001, Louisville Gas and Electric Company and Kentucky Utilities Company

E–6.
Docket# PA03–1, 000, America Electric Power Co.
Other#s PA03–2, 000, Aquila Marketing Service
PA03–3, 000, Coral Energy Resources, LP
PA03–4, 000, CMS Marketing Services & Trading
PA03–5, 000, Dynegy, Inc.
PA03–6, 000, Duke Energy Trading and Marketing, LLC,
PA03–7, 000, El Paso Merchant Energy, LP
PA03–8, 000, Mirant Americas Energy Marketing, LP
PA03–9, 000, Reliant Resources, Inc.
PA03–10, 000, Sempra Energy Trading Corp.
PA03–11, 000, Williams Energy Marketing & Trading Company

E–7.
Docket# ER03–583, 000, Entergy Services, Inc., and EWO Marketing LP
Other#s ER03–681 000 Entergy Services, Inc., and Entergy Power, Inc.
ER03–682, 000, Entergy Services, Inc., and Entergy Power, Inc.
ER03–682, 001, Entergy Services, Inc., and Entergy Power, Inc.

E–8.
Docket# EC03–53, 000, Ameren Energy Generating Company and Union Electric Company, d/b/a AmerenUE

E–9.
Docket# ER03–452 000 Conjunction LLC

E–10.
Docket# ER01–2099, 002, Neptune Regional Transmission System, LLC

E–11.
Docket# ER03–218, 001, California Independent System Operator Corporation
Other#s ER03–219, 001, California Independent System Operator Corporation
EC03–81, 000, California Independent System Operator Corporation

E–12.
Omitted

E–13.
Omitted

E–14.
Docket# OA97–261, 004 Pennsylvania-New Jersey-Maryland Interconnection
Other#s EC96–28, 005, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company
EC96–28, 006, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company
EC96–29, 005, PECO Energy Company
EC96–29, 006, PECO Energy Company
EL96–69, 005, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company
EL96–69, 006, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company
ER96–2516, 005, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company
ER96–2516, 006, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company
ER96–2668, 005, PECO Energy Company
ER96–2668, 006, PECO Energy Company
EC97–38, 003, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company
EC97–38, 004, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company
EL97–44, 003, Pennsylvania-New Jersey-Maryland Interconnection Restructuring
EL97–44, 004, Pennsylvania-New Jersey-Maryland Interconnection Restructuring
OA97–261, 005, Pennsylvania-New Jersey-Maryland Interconnection
OA97–678, 003, PJM Interconnection, LLC
OA97–678, 004, PJM Interconnection, LLC
ER97–1082, 006, Pennsylvania-New Jersey-Maryland Interconnection Interconnection
ER97–3189, 032, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company
ER97–3189, 033, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company
ER97–3273, 003, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Service Electric and Gas Company, and Pennsylvania-New Jersey-Maryland Interconnection Restructuring
ER97–3273, 004, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and Pennsylvania-New Jersey-Maryland Interconnection Restructuring

E–15.
Docket# ER01–313, 000, California Independent System Operator Corporation
Other#s ER01–313 001, California Independent System Operator Corporation
ER01–424, 000, Pacific Gas and Electric Company
ER01–424, 001, Pacific Gas and Electric Company

E–16.
Docket# ER03–574, 000, Midwest Independent Transmission System Operator, Inc.

E–17.
Omitted

E–18.
Docket# ER03–580, 000, Midwest Independent Transmission System Operator, Inc., and GridAmerica Companies
EL03–119, 000, Midwest Independent Transmission System Operator, Inc., and GridAmerica Companies

E–19.
Docket# ER03–606, 000, Wisconsin Public Service Corporation

E–20.
Docket# ER03–355, 000, Southern Company Services, Inc.
Other#s ER03–355, 001, Southern Company Services, Inc.

E–21.
Docket# ER03–601, 000, San Diego Gas & Electric Company

E–22.
Docket# ER01–2201, 000, Entergy Services, Inc.
Other#s EL02–46, 000, Generator Coalition v. Entergy Services, Inc.

E–23.
Omitted

E–24.
Omitted

E–25.
Omitted

E–26.
Docket# ER03–159, 000, Virginia Electric and Power Company
Other#s ER03–159, 001, Virginia Electric and Power Company ,
ER03–159, 002, Virginia Electric and Power Company

E–27.
Omitted
E–28.
Docket# ER03–600, 000, Cross-Sound Cable Company, LLC
E–29.
Omitted
E–30.
Docket# ER02–290, 002, Midwest Independent Transmission System Operator, Inc.
E–31.
Docket# EC03–14, 002, Ameren Services Company, American Transmission Systems, Incorporated, Northern Indiana Public Service Company, GridAmerica LLC and GridAmerica Holdings, Inc.
E–32.
Omitted
E–33.
Omitted
E–34.
Omitted
E–35.
Omitted
E–36.
Omitted
E–37.
Omitted
E–38.
Docket# EL03–35, 002, Midwest Independent Transmission System Operator, Inc.
E–39.
Docket# ER01–1807, 005, Carolina Power & Light Company and Florida Power Corporation
Other#s ER01–1807, 006, Carolina Power & Light Company and Florida Power Corporation
ER01–2020, 002, Carolina Power & Light Company and Florida Power Corporation
ER01–2020, 003, Carolina Power & Light Company and Florida Power Corporation
E–40.
Docket# RT01–87, 005. Midwest Independent Transmission System Operator, Inc.
Other#s RT01–87, 006, Midwest Independent Transmission System Operator, Inc.
ER02–106, 001, Midwest Independent Transmission System Operator, Inc.
ER02–108, 002, Midwest Independent Transmission System Operator, Inc.
ER02–108, 004, Midwest Independent Transmission System Operator, Inc.
E–41.
Omitted
E–42.
Omitted
E–43.
Omitted
E–44.
Omitted
E–45.
Docket# RT02–1, 004, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company
Other#s EL02–9, 002, WestConnect RTO, LLC
E–46.
Omitted
E–47.
Docket# EC03–14, 001, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.
Other#s ER02–2233, 002, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.
ER02–2233, 003, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.
E–48.
Omitted
E–49.
Docket# EL03–25, 001, NSTAR Electric & Gas Corporation, et al. v. New England Power Pool
Other#s EL03–25, 002, NSTAR Electric & Gas Corporation, et al. v. New England Power Pool
EL03–25, 003, NSTAR Electric & Gas Corporation, et al. v. New England Power Pool
E–50.
Omitted
E–51.
Omitted
E–52.
Omitted
E–53.
Omitted
E–54.
Docket# EL03–57, 000, Midwest Independent Transmission System Operator, Inc.
E–55.
Docket# EL02–77, 000, Puget Sound Energy, Inc.
E–56.
Docket# EL02–112, 000, FirstEnergy Solutions Corp., v. PJM Interconnection, L.L.C.
Other#s EL02–120, 000, Edison Mission Energy v. PJM Interconnection, L.L.C.
E–57.
Omitted
E–58.
Docket# EL03–52, 000, Public Service Company of New Mexico v. Arizona Public Service Company
E–59.
Docket# EL03–117, 000, Investigation of Certain Enron-Affiliated QF's
Other#s QF86–972, 006, Cogen Technologies NJ Venture
QF89–251, 008, Las Vegas Cogeneration Limited Partnership
QF90–65, 008, Cogen Technologies Linden Venture, L.P.
QF90–87, 008, Camden Cogen, L.P.
QF90–203, 004, Saguaro Power Company
EL03–47, 000, Investigation of Certain Enron-Affiliated QF's
E–60.
Omitted
E–61.
Docket# ER03–590, 000, New England Power Pool
E–62.
Docket# EL03–114, 000, PG&E National Energy Group, PG&E Generating, USGen New England, Inc., PG&E Energy Trading-Power, L.P. and United Illuminating Company v. New England Power Pool

Miscellaneous Agenda

M–1.
Docket# RM03–7, 000, Delegations of Authority

Markets, Tariffs and Rates—Gas

G–1.
Docket# OR02–11, 000, Rocky Mountain Pipeline System LLC
G–2.
Docket# RP03–324, 000, Southern Star Central Gas Pipeline, Inc.
Other#s RP03–324, 001, Southern Star Central Gas Pipeline, Inc.
G–3.
Docket# RP03–202, 000, Enbridge Pipelines (KPC)
G–4.
Docket# RP03–297, 000, MIGC, Inc.
G–5.
Docket# RP03–335, 000, Enbridge Offshore Pipelines (UTOS) L.L.C.
G–6.
Omitted
G–7.
Docket# RP03–315, 000, Kern River Gas Transmission Company
G–8.
Docket# RP03–323, 000, Williston Basin Interstate Pipeline Company
G–9.
Omitted
G–10.
Docket# RP03–47, 000, Gulf South Pipeline Company, LP
G–11.
Docket# RP03–76, 000, Southern Natural Gas Company
G–12.
Omitted
G–13.
Omitted
G–14.
Docket# PR03–5, 000, Washington Gas Light Company
G–15.
Docket# RP00–329, 002, Great Lakes Gas Transmission Limited Partnership
Other#s RP00–329, 003, Great Lakes Gas Transmission Limited Partnership
G–16.
Docket# RP00–403, 002, Northern Border Pipeline Company
Other#s RP00–403, 003, Northern Border Pipeline Company
RP01–388, 003, Northern Border Pipeline Company
G–17.
Docket# IS03–218, 000, Olympic Pipe Line Company
G–18.
Docket# RP03–213, 000, Gulf South Pipeline Company, LP
G–19.
Omitted
G–20.
Docket# RP03–308, 000, CenterPoint Energy Gas Transmission Company
G–21.

Omitted
G–22.
Omitted
G–23.
Omitted
G–24.
Docket# RP02–562, 002, Mississippi River Transmission Corporation
G–25.
Omitted
G–26.
Docket# RP00–410, 004, CenterPoint Energy-Mississippi River Transmission Corporation
Other#s RP00–410, 005, CenterPoint Energy-Mississippi River Transmission Corporation
RP01–8, 004, CenterPoint Energy-Mississippi River Transmission Corporation
RP01–8, 005, CenterPoint Energy-Mississippi River Transmission Corporation
G–27.
Docket# RP03–70, 001, PG&E Gas Transmission, Northwest Corporation
Other#s RP03–70, 000, PG&E Gas Transmission, Northwest Corporation
G–28.
Omitted
G–29.
Omitted
G–30.
Docket# RP99–324, 004, Gulf South Pipeline Company, LP.
Other#s RP99–324, 005, Gulf South Pipeline Company, LP.
G–31.
Omitted
G–32.
Omitted
G–33.
Omitted
G–34.
Omitted
G–35.
Omitted
G–36.
Omitted
G–37.
Docket# RP03–64, 000, Gulf South Pipeline Company, LP
G–38.
Omitted
G–39.
Docket# RP00–535, 005, Texas Eastern Transmission, LP
G–40.
Docket# RP00–533, 005, Algonquin Gas Transmission Company
G–41.
Omitted
G–42.
Docket# RP03–329, 000, ANR Pipeline Company
G–43.
Docket# RP03–299, 001, Dominion Cove Point LNG, LP
G–44.
Docket# CP02–142, 002, Columbia Gas Transmission Company
Other#s CP01–260, 002, Columbia Gas Transmission Company

Energy Projects—Hydro

H–1.
Omitted
H–2.
Omitted
H–3.
Docket# P–2738, 053, New York State Electric & Gas Corporation
H–4.
Docket# P–4632, 029, Clifton Power Corporation

Energy Projects—Certificates

C–1.
Docket# CP01–409, 000, Tractebel Calypso Pipeline, LLC
Other#s CP01–409, 001, Tractebel Calypso Pipeline, LLC
CP01–409, 002, Tractebel Calypso Pipeline, LLC
CP01–410, 000, Tractebel Calypso Pipeline, LLC
CP01–410, 001, Tractebel Calypso Pipeline, LLC
CP01–410, 002, Tractebel Calypso Pipeline, LLC
CP01–411, 000, Tractebel Calypso Pipeline, LLC
CP01–411, 001, Tractebel Calypso Pipeline, LLC
CP01–411, 002, Tractebel Calypso Pipeline, LLC
CP01–444, 000, Tractebel Calypso Pipeline, LLC
CP01–444, 001, Tractebel Calypso Pipeline, LLC
CP01–444, 002, Tractebel Calypso Pipeline, LLC
C–2.
Docket# CP02–141, 001, Transcontinental Gas Pipe Line Corporation
C–3.
Docket# CP02–4, 002, Northwest Pipeline Corporation
C–4.
Docket# CP01–438, 001, Northwest Pipeline Corporation
C–5.
Docket# CP03–18, 000, City of Duluth Public Works & Utilities Department
C–6.
Omitted
C–7.
Docket# CP98–131, 005, Vector Pipeline L.P.

C–8.

Docket# CP01–416, 001, Sierra Production Company

Magalie R. Salas,

Secretary.

[FR Doc. 03–10585 Filed 4–24–03; 3:59 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

April 23, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: April 30, 2003 (Within a relatively short time before or after the regular Commission Meeting).

Place: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.

Status: Closed.

Matters to be considered: Non-public, Investigations and Inquiries, and Enforcement Related Matters.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on April 30, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10586 Filed 4–24–03; 3:59 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Cheyenne-Miracle Mile 115-Kilovolt Transmission Line Rebuild Project, Laramie, Albany, and Carbon Counties, WY

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain/wetland involvement.

SUMMARY: The Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), is the lead Federal agency for a proposal to rebuild 140 miles of the Cheyenne-Miracle Mile 115-kilovolt (kV) transmission line located in Laramie, Albany, and Carbon counties, Wyoming. Western plans to rebuild the segment of line between Cheyenne and Seminoe, Wyoming. A number of floodplains associated with small drainages are crossed by the existing transmission line. Some of

these floodplains have transmission line structures located within a 100-year floodplain. Western will incorporate an assessment of floodplains/wetlands in the Environmental Assessment being prepared for the project, and would perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplains/wetlands.

DATES: Comments on the proposed floodplain/wetland action are due to the address below no later than May 13, 2003.

ADDRESSES: Comments should be addressed to Mr. Jim Hartman, Environmental Manager, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, fax (970) 461–7213, e-mail *hartman@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, Environmental Specialist, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, telephone (970) 461–7371, e-mail *rjones@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposal to rebuild the Cheyenne-Miracle Mile 115-kV transmission line between Cheyenne and Seminoe, Wyoming, would involve construction activities within floodplains and wetlands. Most of this line (139.69 miles) was constructed as part of the Seminoe-Cheyenne transmission line in 1939; the remaining 6.60 miles were reconstructed by Western and placed into service in February 1992. The Seminoe-Cheyenne segment of the line was constructed with wood pole H-frame structures.

Due to age and weather exposure of this facility, many of the transmission line structures and related hardware have deteriorated. The line is presently 64 years old. Because of its age the potential for structural failures and power outages has increased.

The existing transmission line right-of-way (ROW) width is 75 feet. Depending on which design alternative is selected, the maximum transmission line ROW width acquired would be 125 feet. The transmission line crosses primarily private land, although there are some public lands managed by the Bureau of Land Management and the State of Wyoming. Based on a review of Federal Emergency Management Agency floodplain hazard maps, Western has determined that a number of 100-year floodplains associated with small drainages are crossed by the existing transmission line. Some structures fall within the boundaries of these floodplains, and would be replaced under the proposed action.

As the lead Federal agency, Western will prepare an Environmental Assessment for the proposed project, in compliance with the National Environmental Policy Act (NEPA), and regulations promulgated by the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR part 1500–1508) and the DOE NEPA Implementing Procedures (10 CFR part 1021). The Environmental Assessment will examine the proposed construction activities in floodplains/wetlands, in accordance with DOE's Floodplain/Wetland Review Requirements (10 CFR part 1022).

It is Western's goal to rebuild the Cheyenne-Miracle Mile transmission line in a manner that minimizes impacts to the natural, human, and cultural environments while improving our ability to maintain and operate the transmission line in a safe and environmentally sound manner. To the extent possible, the proposed rebuild would use the existing transmission line corridor and established trails and roads for access.

Maps and further information are available from Western from the contact above.

Dated: April 11, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–10375 Filed 4–25–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7488–9]

Science Advisory Board; Request for Comments on the Use of the Environmental Engineering Committee for a Consultation and Notification of Two Environmental Engineering Committee Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA, SAB is announcing that the Environmental Engineering Committee, a standing committee of the SAB, will provide a consultation on improving leach testing of waste at a conference call May 16 and a face-to-face meeting June 17–19, 2003. The Staff Office solicits comments from the public about the appropriateness of the use of the EEC for this consultation.

DATES: Comments on the use of the EEC for this consultation should be submitted no later than May 19, 2003. The conference call meeting will be held Friday May 16, 2003 from 12:30–2:30 p.m. Eastern Time. The face-to-face meeting will be held June 17–18, 2003. The meeting will begin each day at 9 a.m., adjourn no later than 6 p.m. on Tuesday June 17 and no later than 4 p.m. on Wednesday June 18.

ADDRESSES: Any member of the public wishing to provide comment on the proposed use of the EEC for this consultation should contact the individual named below. The roster for the EEC and biosketches for its members can be viewed on the SAB Web site *http://www.epa.gov/sab/eecconsultationonleaching.html.* Participation in the May 16, 2003 conference call meeting will be by teleconference only. The June 17–18, 2003 face-to-face meeting will be held in the metropolitan Washington DC area; the specific location will be announced in a subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the conference call, face-to-face meeting, or the use of the EEC for this consultation may contact Ms. Kathleen White, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue NW, Washington DC 20460–0001 (for overnight delivery, please specify room 6450 Z and use zip code 20004). Ms. White can also be reached by telephone/voice mail at (202) 564–4559, by fax at (202) 501–0582; or via e-mail at *white.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Summary: The EPA SAB is announcing that the Environmental Engineering Committee, a standing committee of the SAB, will provide a consultation on improving leach testing of waste at a face-to-face meeting June 17–19, 2003. Planning for the face-to-face meeting will take place at a conference call meeting to be held May 16. The public is offered the opportunity to comment on the appropriateness of the use of the EEC for this consultation.

Background—The Resource Conservation and Recovery Act (RCRA) defines hazardous wastes as solid wastes that may pose a substantial present or potential hazard to human health and the environment when improperly managed. When EPA promulgated characteristics that classify wastes as hazardous by virtue of their inherent properties (45 FR 33084, May 19, 1980), it established two criteria for identifying hazardous waste characteristics: ''(1) The characteristic

should be capable of being defined in terms of physical, chemical or other properties which cause the waste to meet the statutory definition of hazardous waste and (2) the properties defining the characteristic must be measurably standardized and available testing protocols.'' Under this rule, the potential for certain wastes to leach significant concentrations of toxic substances is a defining characteristic. At present, EPA uses the Toxicity Characteristic Leaching Procedure (TCLP) as a regulatory screening test to identify wastes which exhibit such leaching behavior under plausible worst-case management conditions. TCLP is also used for determining whether required treatment of hazardous waste has been adequately done. TCLP therefore does not address all parameters and scenarios.

EPA believes that TCLP remains an appropriate and valid test in its regulatory functions. The Agency also believes that leach testing more tailored to known disposal conditions can be the basis for better environmental decisionmaking, when regulatory programs allow such flexibility. EPA has initiated both internal and external research to begin work toward a more comprehensive assessment framework and set of testing protocols for evaluation of leaching potential of waste materials under relevant environmental conditions.

In 1999, the Science Advisory Board provided the EPA with a commentary, *Waste Leachability: The Need for Review of Current Agency Procedures.* (This commentary is available at *http://www.epa.gov/sab/pdf/eecm9902.pdf.*) Since then there has been progress in both understanding leaching mechanisms and in test method development. EPA is now seeking input from the SAB on the direction of work performed to date and the Agency's consideration of recent and ongoing academic research. EPA's Office of Solid Waste is preparing a short background document in support of the consultation which will be posted on the SAB's Web site (*http://www.epa.gov/sab/eecconsultationonleaching.html*) no later than June 3, 2003 along with an updated charge for the consultation.

Charge: While many questions and much research remain, EPA seeks an opportunity for a consultation with the SAB before it embarks on further effort to develop a more comprehensive assessment framework and set of testing protocols for use in important areas such as waste reuse and site remediation. At this consultation, EPA will describe for the EEC the direction of work performed and issues relating to recent and ongoing research on leach testing. EPA does not look for consensus recommendations at this time. Instead it seeks a variety of perspectives to enrich its understanding of two issues. One is the potential for long-term research work to develop a fundamental understanding of leaching that would improve the predictive capability of test suites or testing frameworks. The second issue is identifying modest short-term changes that could potentially improve particular programs, specifically programs that do not now require the use of the TCLP.

Opportunity to Comment on Suitability of the EEC for this Consultation: The SAB Staff Office has determined that the following expertise is needed for the consultation on improving leach testing of waste which will be held at the June 17–18 meeting: environmental chemistry and microbiology; industrial wastes; leaching, transport and fate; modeling; quality systems; remediation of contaminated sites; soils and subsurface systems; and waste management. Because the Staff Office has further determined that the EEC has the necessary expertise to conduct this consultation without the need for additional expert consultants, it is not soliciting additional experts for this consultation.

The public has the opportunity to provide information, analysis or other documentation relevant to the use of the EEC for this consultation. To facilitate this, biosketches for the EEC members will be posted on the SAB Web site *http://www.epa.gov/sab/eecconsultationonleaching.html.* Those wishing to comment should contact the DFO, Ms. Kathleen White, whose contact information is provided above.

Definitions: For the EPA SAB, a balanced committee is characterized by inclusion of individuals who possess the necessary domains of knowledge, the relevant scientific perspective, and the collective breadth of expertise to adequately address the charge.

A ''consultation'' is one of several types of formal interaction between EPA and the Science Advisory Board. The purpose of a consultation is to conduct an early discussion between EPA and the SAB to help articulate important issues in the development of a project. The meeting is public and consists of briefings and discussions. In some cases a partial document, or an early draft is available to serve as the basis for discussions. A charge is often used. No consensus advice is sought and no report is generated by the SAB.

Teleconference Meeting: The EEC will meet by conference call Friday May 16, 2003 from 12:30 to 1:30 p.m. Eastern Standard Time. The conference call will be used to plan the June 17–18, 2003 face-to-face meeting and is likely to include briefings relevant to the leaching consultation as well as other items of committee business. Participation will be by teleconference only. A limited number of lines are available. To participate, please contact the DFO above no later than the day before the meeting.

Face-to-face Meeting: The EEC will meet face-to-face on Tuesday and Wednesday June 17–18, 2003 to participate in a consultation with the EPA's Office of Solid Waste on improving Agency leach testing of waste and conduct other Committee business.

General Information: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee of the SAB will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB policies and procedures. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

Agendas for the meetings that are the subject of this notice will be posted on the SAB Web site (*www.epa.gov/sab*) (under the AGENDAs subheading) approximately 10 days before the meeting. Other materials that may be available will also be posted on the SAB Web site in this time-frame, linked to the calendar entry for this meeting (*http://www.epa.gov/sab/mtgcal.htm.*)

It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting.

Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting.

Written Comments: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 22, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–10399 Filed 4–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 21, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0758.

Title: Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket No. 96–256.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 428.

Estimated Time per Response: 0.10 to 0.25 hours.

Total Annual Burden: 681 hours.

Total Estimated Cost: None.

Needs and Uses: Under 47 CFR Part 5 of the FCC's Rules governing the Experimental Radio Service: (1) Pursuant to Section 5.75, if a blanket license is granted, licensees are required to notify the Commission of the specific details of each individual experiment, including location, number of base and mobile units, power, emission designator, and any other pertinent technical information not specified by the blanket license; (2) pursuant to Section 5.85(d), when applicants are using public safety frequencies to perform experiments of a public safety nature, the license may be conditioned to require coordination between the experimental licensee and appropriate frequency coordinator and/or all public safety licensees in its area of operation; (3) pursuant to Section 5.85(e), the Commission may, at its discretion, condition any experimental license or special temporary authority (STA) on the requirement that before commencing operation, the new licensee coordinate its proposed facility with other licensees that may receive interference as a result of the new licensee's operations; and (4) pursuant to Section 5.93(b), unless otherwise stated in the instrument of authorization, a license granted for the purpose of limited market studies requires the licensee to inform anyone participating in the experiment that the service or device is granted under an experimental authorization and is strictly temporary. In all cases, it is the responsibility of the licensee to coordinate with other users.

OMB Approval Number: 3060–0397.

Title: Special Temporary Authority—Section 15.7(a).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 6.

Estimated Time per Response: 2 hours.

Total Annual Burden: 12 hours.

Total Estimated Cost: $150.

Needs and Uses: In exceptional situations, the FCC will issue a special temporary authorization to operate a radio frequency device not conforming to the subject rules. An applicant must show that the proposed operation is in the public interest but cannot be feasibly conducted under the applicable rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–10285 Filed 4–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are

considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 13, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Danny Jo McLeod, Horace, North Dakota; to acquire control of Quality Bankshares, Inc., Fingal, North Dakota, and thereby indirectly acquire control of Fingal State Bank, Fingal, North Dakota.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. William Frederick Budde and Frank Frederick Budde, Walton, Kansas; to retain control of J&M Bancshares, Inc., Walton, Kansas, and thereby indirectly retain control of The Walton State Bank, Walton, Kansas.

2. Edward Carlson Rolfs, as co–trustee of CKI Management Trust, general partner of Central of Kansas, LP, Junction City, Kansas; to acquire control of Central of Kansas, Inc., Junction City, Kansas, and thereby indirectly acquire control of Central National Bank, Junction City, Kansas.

Board of Governors of the Federal Reserve System, April 23, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–10420 Filed 4–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. PeoplesBancorp, MHC, Holyoke, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of PeoplesBank, Holyoke, Massachusetts. PeoplesBank currently operates as Peoples Savings Bank.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Adirondack Trust Company Trust Employee Stock Ownership Trust, Saratoga Springs, New York; to become a bank holding company by acquiring and retaining more than 25 percent of the voting shares of 473 Broadway Holding Corporation, Saratoga Springs, New York, and thereby directly and indirectly acquire shares of The Adirondack Trust Company, Saratoga Springs, New York.

C. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gemini Bancshares, Inc., Monument, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Integrity Bank and Trust, Monument, Colorado.

Board of Governors of the Federal Reserve System, April 22, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–10315 Filed 4–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Equity Bancshares, Inc., Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Andover, Andover, Kansas.

Board of Governors of the Federal Reserve System, April 23, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–10419 Filed 4–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1148]

Privacy Act of 1974; Notice of Amendment of System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; amendment of systems of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is amending two systems of records, entitled Recruiting and Placement Records (BGFRS–1) and General Personnel Records (BGFRS–4). These amendments include new routine uses and reflect changes due to increased use of electronic records management. We invite public comment on this publication.

DATES: Comment must be received on or before May 28, 2003.

ADDRESSES: Comments should refer to Docket No. R–1148 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or mailed electronically to regs.comments@federalreserve.gov. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), or Chris Fields, Assistant Director, Human Resources Function, Management Division (202/452–3654). For the hearing impaired only, contact Telecommunications Device for the Deaf (TDD)(202/263–4869).

SUPPLEMENTARY INFORMATION: Unlike most Federal government agencies whose personnel files are maintained by the Office of Personnel Management (OPM), the Board maintains its own recruiting and personnel files. because the Board has independent statutory authority to hire staff and set the salary and benefit terms for its staff. Accordingly, the recruiting and personnel files of Board employees are not contained in the systems of records identified as OPM/GOVT–1 and OPM/GOVT–5. Nevertheless, the Board's personnel and recruiting files are used in much the same manner as personnel and recruiting files of other federal employees, and the Board has adopted many of the routine uses that are included in OPM/GOVT–1 and OPM/GOVT–2. The current amendments being made to the routine uses are necessary due to changes in laws and increases in national security measures.

In accordance with 5 U.S.C. 552a(r), a report of these amended systems of records is being filed with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget. These amendments will become effective on June 16a, 2003, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, the systems of records entitled FRB–Recruiting and Placement Records (BGFRS–1) and FRB–General Personnel Records (BGFRS–4) are amended as set forth below.

SYSTEM NAME:

BGFRS 1– Recruiting and Placement Records

SYSTEM LOCATION:

Most records are maintained at the Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551. Some information, primarily resumes, is electronically collected and stored off–site on behalf of the Board by a contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for employment with the Federal Reserve Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following categories of records are maintained in this system: resumes, applications, and supporting documentation submitted by persons seeking employment; information from job fairs; referrals from Federal Reserve Banks and other Federal government agencies; transcripts or notes from interviews with some applicants; notes of interviews with references; information regarding verification of education and/or military status; some employment inquiries (and responses) sent to the Chairman of the Board; and offer letters and related correspondence. Certain information is retained in an electronic database to enable the Board's Equal Employment Opportunity Office to monitor and track its recruiting and hiring performance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in recruiting and retaining qualified employees, and to allow the Board to periodically review its hiring practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

b. To disclose to contractors, agents, or volunteers performing or working on a contract, service, cooperative agreement, or job for the Board.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Board decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

e. To disclose to a Federal agency or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency or Federal Reserve Bank, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's or Federal Reserve Bank's decision.

f. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

g. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being

conducted by a Federal agency, when the Board or United States is a party to the judicial or administrative proceeding.

h. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission.

k. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

l. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

m. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

n. To disclose information to Federal, State, local, and professional licensing boards, Board of Medical Examiners, or to the Federation of State Medical Boards or a similar non–government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or speciality, in order to obtain information relevant to a Board decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non–government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Since January 2000, records have been stored in an automated database and in paper format.

RETRIEVABILITY:

Resumes and related material received since January 2000 are retrievable by name and other identifying aspects in the automated database. Resumes and related material received prior to January 2000 are filed in paper form by year and job category, not by individually identifiable labels.

SAFEGUARDS:

Access to computerized records is limited to those whose official duties require it.

RETENTION AND DISPOSAL:

Resumés are retained for two years. The retention period for otherrecords is currently under review. Until review is completed, those records will not be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System, 20th & Constitution, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Current Board employees who wish to gain access to or contest their records should contact the system manager, address above. Former Board employees should direct such a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

CONTESTING RECORD PROCEDURES:

Same as ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information comes from the job applicant; the transcript or notes from interviews with the applicant; notes from interviews and supporting documentation from references; OPM Personnel Management Records System; personnel records of other Government civilian or military agencies or Federal Reserve Banks; and official transcripts and other documentation from schools identified by the applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsections (k)(2) and (k)(5) of the Privacy Act and the Board's regulation relating thereto (12 CFR 261a), certain portions of this system of records may be exempted from certain provisions of the Act where: (1) such portions represent investigatory material compiled for law enforcement purposes, or (2) such portions represent investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Board employment to extent that disclosure of such portions would reveal the identity of a source who furnished information under a promise of confidentiality.

BGFRS – 4

SYSTEM NAME:

FRB — General Personnel Records

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Board, and the surviving spouses and children of former Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of information relating to employment determinations, such as salary and job classification actions, disciplinary actions, leave issues, reasonable accommodation decisions, Performance Management Program (PMP) appeals, grievances, as well as any other decisions made about an individual during the course of his or her employment by the Board. These records may contain information about employees and former employees relating to employment, placement, and personnel actions; academic assistance, and training and development activities; health conditions; background investigations; and salary actions. PMP ratings are included, but the actual PMP form is not included. Also included are: minority group and medical disability designators; records relating to benefits and designation of beneficiary; emergency contact information; address and name changes; information concerning awards; and other information relating to the status of the individual while employed by the Board, including records of jury duty by the employee and any doctor's certificate that may have been filed at the request of the employee regarding the employee's health. The system of records also contains information regarding surviving beneficiaries of deceased Board employees to the extent necessary to provide benefits to those individuals. All categories of records may include identifying information, such as name, date of birth, home address, mailing address, social security number, and home telephone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 10 and 11 of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in its personnel actions and decisions, and in the administration of its benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Government training facilities (Federal, State, and local) and to non–Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to educational institutions on appointment of a recent graduate to a position at the Board, and to provide college and university officials with information about their students who are working in internships or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, a Federal Reserve Bank, or any Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Board, a Federal Reserve Bank, or any agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

d. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or a Thrift Savings Program (TSP) election change and designation of beneficiary.

e. To disclose to an employee, agent, contractor, or administrator of any Board, Federal Reserve System, or Federal government employee benefit or savings plan, any information necessary to carry out any function authorized under such plan, or to carry out the coordination or audit of a benefit or savings plan.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Board decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

h. To disclose to a Federal agency in the executive, legislative or judicial branch of government, or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

j. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board or United States is a party to the judicial or administrative proceeding.

k. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

l. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

m. When an individual to whom a record pertains is deceased, or mentally incompetent, or under other legal disability, information in the individual's record may be disclosed to the executor of the individual's estate, the government entity probating a will, a designated beneficiary, or to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual, heir, or beneficiary is entitled.

n. To disclose to the Board–appointed representative of an employee all notices, determination, decisions, or other written communications issued to the employee, in connection with an examination ordered by the Board under fitness–for–duty examination procedures.

o. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

q. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission.

r. To disclose to prospective non–Federal employers the following information about a specifically identified current or former Board employee: (1) tenure of employment; (2) civil service status; (3) length of service at the Board and in the Government; and (4) when separated, the date and nature of action as shown on the Job Action.

s. To disclose information to contractors, agents, or volunteers performing or working on a contract, service, cooperative agreement, or job for the Board.

t. To disclose information to a Federal, State or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal, State, or local agency, or by a financial or similar institution.

u. To disclose to a spouse or dependent child (or court–appointed guardian thereof) of a Board employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from a self–and–family to a self–only health benefits enrollment.

v. To verify for an entity preparing to make a loan to an employee the individual's employment status and salary.

w. To disclose information to officials of labor organizations recognized under applicable law when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

x. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

y. To disclose information to officials of foreign governments for clearance before a Board employee is assigned to that country.

z. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

aa. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

bb. To disclose specific Board or civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of Board or civil service retirees for national emergency mobilization purposes.

cc. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

dd. To disclose information in connection with the investigation and resolution of election disputes or other matters within the jurisdiction of the Federal Reserve Board Labor Relations Panel when requested.

ee. To disclose relevant information with personal identifiers of Board employees to authorized Federal agencies and non–Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include, but is not limited to, the name, social security number, date of birth, sex, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational services, health plan code, position occupied, work schedule (full time, part time, or intermittent), duty station location, standard metropolitan service area, special program identifier, and submitting office number of Board employees.

ff. To disclose information to Federal, State, local, and professional licensing boards, Board of Medical Examiners, or to the Federation of State Medical Boards or a similar non–government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or speciality, in order to obtain information relevant to a Board decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non–government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

gg. To disclose information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System and Federal Offset System for use in locating individuals, verifying

social security numbers, and identifying their incomes sources to establish paternity, establish and modify orders of support for enforcement action.

hh. To disclose to Federal Reserve Bank personnel responsible for assigning examination or inspection staff information concerning a current employee's job qualifications and specializations and that employee's availability for assignment.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE.

Records are maintained in file folders, microfiche, and in electronic storage media.

RETRIEVABILITY.

Records are indexed by name, Social Security number, or identification number. Electronically maintained records may be sorted and retrieved by other variables, such as date of birth, division in which an employee works, or date of hire.

SAFEGUARDS.

Paper or microfiche records are located in locked metal file cabinets or in metal file cabinets in secured rooms with access limited to those whose official duties require it. Access to electronic records is limited, through use of access codes, to those whose official duties require it. In addition, access to electronic records can be tracked through an automatically–generated audit trail.

RETENTION AND DISPOSAL.

The general employment records are retained indefinitely. An individual's benefits records are maintained until the death of the last surviving beneficiary.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System, 20th &Constitution, NW, Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES.

Current Board employees who wish to gain access to or contest their records should contact the system manager, address above. Former Board employees should direct such a request in writing to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

CONTESTING RECORD PROCEDURES:

Same as ''Notification procedure'' above.

RECORD SOURCE CATEGORIES.

Information in this system of records comes from the individual to whom it applies or is derived from the information the individual supplied, except information provided by Board officials. Information is also obtained from the following sources: OPM Personnel Management Records System; personnel records of other Government agencies; personnel records of Federal Reserve Banks; and official transcripts from schools when authorized by the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsections (k)(2) and (k)(5) of the Privacy Act and the Board's regulation relating thereto (12 CFR 261a), certain portions of this system of records may be exempted from certain provisions of the Act where: (1) such portions represent investigatory material compiled for law enforcement purposes, or (2) such portions represent investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Board employment to extent that disclosure of such portions would reveal the identity of a source who furnished information under a promise of confidentiality.

By order of the Board of Governors of the Federal Reserve System, April 22, 2003.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. 03–10316 Filed 4–25–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Revision of a Standard Form

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration, Federal Supply Service has revised the following Standard form: SF 1186, Transmittal for Transportation Schedules and Related Basic Documents.

The address on where to send the completed form was updated. You can obtain camera copy of SF 1186 two ways:

On the Internet. Address: *http://www.gsa.gov/forms*, or;

From Forms—CAP, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn West, Passenger, Rail and Steamship Branch, (202) 208–1661. This contact is for information on completing the form and interpreting the regulation only.

DATES: Effective April 28, 2003.

Dated: April 15, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–10312 Filed 4–25–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11⅝% for the quarter ended March 31, 2003. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 18, 2003.

Shirl Ruffin,

Acting Deputy Assistant Secretary, Finance.

[FR Doc. 03–10152 Filed 4–25–03; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–41–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Asian American Audiences Survey for the Evaluation of CDC's Youth Media Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages. CDC, working in collaboration with the Health Resources and Services Administration (HRSA), the National Center for Child Health and Human Development (NICHD), and the Substance Abuse and Mental Health Services Administration (SAMHSA), is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help kids develop habits that foster good health over a lifetime. The Campaign will be based on principles that have been shown to enhance success, including: Designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; tracking the Campaign's effectiveness and revising Campaign messages and strategies as needed.

Shifts in the Asian American population are of importance to the campaign and CDC desires to obtain a measure of the attitudes, beliefs, and behaviors among Asian Americans who are exposed to the campaign versus those who are not exposed to the campaign. CDC is specifically interested in the first generation Asian American parents who speak an Asian language in their household and their children, ages 9–13. The Asian-focused marketing efforts have been targeted to four Asian subgroups: parents and children who speak Korean, Vietnamese, Chinese Cantonese, and Chinese Mandarin. CDC proposes to conduct a targeted survey with 600 parent/ween dyads in Los Angeles during the summer of 2003. Computer-assisted telephone interviewing (CATI) methodology will be used to conduct the telephone interviews. The total annual burden for this data collection is 322 hours.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)
Screening	5,333	1	1/60
Parent Survey	800	1	10/60
Child Survey	600	1	10/60

Dated: April 22, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–10336 Filed 4–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment on the Improvement of the Adoption and Foster Care Analysis and Reporting System (AFCARS)

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, HHS.

ACTION: Notice of request for public comment.

SUMMARY: Section 479 of the Social Security Act (the Act) requires that a system for the collection of data relating to adoption and foster care be developed and regulated. The resultant Adoption and Foster Care Analysis and Reporting System (AFCARS) has been operating since 1994 and is administered by the Children's Bureau in the Administration for Children and Families. The AFCARS collects case level information on all children in foster care for whom the State child welfare agency has responsibility for placement, care or supervision and on children who are adopted under the auspices of the State's public child welfare agency. In addition, ACF encourages States to report data on other types of adoptions.

Section 479(c) of the Act requires that the AFCARS system avoid unnecessary diversion of resources from agencies responsible for adoption and foster care and assure that the data collected is reliable and consistent over time. Given that the system has been operating since 1994, we believe it is time to assess the system to ensure that it continues to comport with the section 479(c) requirements and to identify what enhancements and system improvements might be needed.

DATES: Comments will be accepted until June 27, 2003.

ADDRESSES: E-mail written comments to the *AFCARS Project@acf.hhs.gov* (there is a space between ''AFCARS'' and ''Project''), or send written comments to Children's Bureau, 330 C St., SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement may be submitted to and will be answered by E-mail at the same e-mail address as above: *AFCARS Project@acf.hhs.gov* or via the above

Children's Bureau address, Attention: Penelope L. Maza.

SUPPLEMENTARY INFORMATION:

AFCARS Background

In recent years, the Adoption and Foster Care Reporting System (AFCARS) has become the principal data source for information about State foster care and adoption populations. It was created, in part, due to concerns raised about the lack of national information available on children in foster care, their families, foster care settings and adopted children. In 1986, Congress amended title IV-E of the Social Security Act (the Act) by adding section 479, which requires the Federal government to institute a foster care and adoption data collection system In response to the law, in 1993, final rules for the Adoption and Foster Care Reporting System (AFCARS) were published and codified in Federal regulations at 45 CFR 1355.40 with requirements for States to report adoption and foster care data to a Federal system. As of October 1, 1994, States were required to collect and submit the AFCARS data to the Administration for Children and Families (ACF).

The AFCARS data are submitted semi-annually, in May and November. The Department aggregates the data both by State and nationally and makes it publicly available on the web at *http://www.acf.hhs.gov/programs/cb.* The appendices to the regulation, technical bulletins, and other AFCARS related resources are also located on the web at *http://www.acf.hhs.gov/programs/cb/dis/index.htm.*

AFCARS Current Uses

The purpose of the AFCARS is twofold: to address policy development and program management issues. Currently, AFCARS data is used in:

- Providing data for the calculation of the performance measures, statewide assessment and program improvement plans for the Child and Family Services (CFS) reviews;
- Drawing samples for the CFS reviews and the title IV–E eligibility reviews conducted by ACF;
- Providing data for the Child Welfare Outcomes Annual Report;
- Providing the primary data in the formula to distribute funds to States for the Chafee Foster Care Independence Program (CFCIP) under section 477 of the Act;
- Identifying the number of finalized adoptions for which a State may be awarded adoption incentive funds under the Adoption Incentive Program under section 473A of the Act;
- Targeting areas for greater or potential technical assistance efforts, for discretionary service grants, research and evaluation, and regulatory change;
- Generating short and long-term budget projections;
- Conducting trend analyses and short and long-term program planning;
- Responding to Congressional requests for current data on children in foster care or those who have been adopted;
- Responding to questions and requests from other Federal departments and agencies, including the General Accounting Office (GAO), the Office of Management and Budget (OMB), the DHHS Office of Inspector General (OIG), national advocacy organizations, States, and other interested organizations and individuals.

Future of AFCARS

At the time AFCARS was first implemented, the Children's Bureau committed to revisiting AFCARS to assure that the system was producing data that were useful to Federal and State governments and to the child welfare field. We are beginning the process of revising AFCARS to consider improvements that may make the data more accurate and useable by soliciting comments from interested parties. Please comment on any aspects of AFCARS that you wish. We are particularly interested in obtaining input on:

- The specific strengths of the AFCARS;
- The specific weaknesses of the AFCARS or suggestions for areas of improvement, including ideas about how the suggested improvement could be made and how the Federal government could facilitate the changes;
- Data elements currently in the AFCARS that could be deleted and any elements that should be added;
- Strategies to improve data quality for AFCARS, including the use of incentives.

We also invite comments based on your specific experience and use of:

(1) Demographic and other information on foster children, adopted children, foster parents, adoptive parents, birth parents, child descriptors such as disability status, prior adoption status, foster care information on current and previous foster care episodes and discharge;

(2) Financial information;

(3) How the data files are structured and how data are submitted.

Upon receipt of comments within 60-day comment period, ACF will analyze the comments and utilize them in determining the necessary next steps to improve AFCARS.

Dated: April 18, 2003.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–10294 Filed 4–25–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0065]

Agency Information Collection Activities; Announcement of OMB Approval; Fiscal Year 2003 MDUFMA Small Business Qualification Certification (Form FDA 3602)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Fiscal Year 2003 MDUFMA Small Business Qualification Certification (Form FDA 3602)'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 2003 (68 FR 14664), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0508. The approval expires on October 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–10300 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0066]

Agency Emergency Processing Under OMB Review; Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information will be used by FDA to publish the criteria FDA intends to use to accredit third parties to conduct inspections of eligible manufacturers of class II and class III medical devices.

DATES: Fax written comments on the information collection provisions by May 28, 2003. FDA is requesting approval of this emergency processing by June 12, 2003, under the PRA of 1995 to implement the statutory provision under section 201 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

ADDRESSES: Submit written comments on the collection of information to OMB. OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). This information is needed immediately so that the agency can publish the criteria required to implement an Inspection by Accredited Persons Program to accredit persons that wish to conduct inspections of eligible manufacturers of class II and class III medical devices. FDA is requesting this emergency processing to implement the statutory provision under section 201 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) directing FDA to publish criteria for accrediting third parties within 180 days of enactment of MDUFMA. In addition, FDA must accredit persons under the published criteria no later than 1 year after enactment of MDUFMA. MDUFMA was signed into law on October 26, 2002. The use of normal clearance procedure would likely result in the prevention or disruption of this collection of information. Therefore, FDA has requested approval of emergency processing of this proposed collection of information by June 12, 2003.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Inspection by Accredited Persons Program Under MDUFMA

MDUFMA, Public Law 107–250, amends section 704 (21 U.S.C. 374) of the Federal Food, Drug and Cosmetic Act. MDUFMA was signed into law on October 26, 2002.

New section 704(g)(1) of the act (21 U.S.C. 374(g)(1)) directs FDA to accredit persons to inspect eligible manufacturers of class II and class III medical devices in lieu of an FDA inspection. Under section 704(g)(2) (21 U.S.C. 374(g)(2)) of the act, FDA must publish, within 180 days of enactment of MDUFMA, criteria for the accreditation of third parties to conduct inspections of eligible manufacturers of class II and class III medical devices. Within 60 days of receiving a request for accreditation, FDA must inform the requestor whether the request for accreditation is adequate for review. Under section 704(g)(4) of the act (21 U.S.C. 374(g)(4)), FDA must publish, on the Internet, a complete list of accredited persons and the activities for which they are accredited. These sections of the act will enable FDA to implement an ''Inspection by Accredited Persons Program'' under MDUFMA.

Participation in the program is voluntary. Manufacturers may continue to have FDA perform inspections or, if eligible, they may utilize an accredited person. FDA will serve as the accreditation body. FDA will began accepting applications immediately following approval by OMB of the proposed collection of information. Because the statute requires the agency to make accreditation decisions no later than 1 year after MDUFMA's enactment (October 26, 2003), FDA intends to stop accepting applications on August 25, 2003.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a document announcing the criteria it will use to accredit persons to inspect eligible device manufacturers and the availability of a guidance entitled ''Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties.'' The guidance further describes the criteria FDA will use to accredit persons that wish to conduct inspections of eligible manufacturers of class II and class III medical devices. The guidance also addresses the format and content of accreditation applications and the evaluation process FDA will use in qualifying firms to participate in this program.

Respondents to the proposed collection of information will likely be businesses or other for-profit organizations.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Item	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Request for Accreditation (1st Year)	25	1	25	80	2000
Request for Accreditation (2nd Year)	10	1	10	15	150
Request for Accreditation (3rd Year)	5	1	5	80	400
Total Hours					2,550

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on conversations with industry, trade association representatives, and internal FDA estimates. Our expectation is that 25 bodies will apply and meet the minimum standard for being accredited. Under MDUFMA, we can only accredit 15 persons during the first year. We expect that the lowest ranking 10 (the ones not accredited), will reapply the following year and will submit an updated application. Five new applicants may apply the third year. Once an organization is accredited, it will not be required to reapply.

Dated: April 23, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–10414 Filed 4–23–03; 5:03 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1403]

Determination of Regulatory Review Period for Purposes of Patent Extension; PREVNAR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PREVNAR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product PREVNAR. PREVNAR is indicated for immunization of infants 2, 4, 6, and 12 to 15 months of age to prevent invasive pneumococcal disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PREVNAR (U.S. Patent No. 5,360,897) from the University of Rochester through American Home Products, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 30, 2002, FDA advised the Patent and Trademark Office that this human biologic product had undergone a regulatory review period and that the approval of PREVNAR represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PREVNAR is 1,910 days. Of this time, 1,648 days occurred during the testing phase of the regulatory review period, while 262 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 27, 1994. The applicant claims November 25, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 27, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act*: June 1, 1999. FDA has verified the applicant's claim that the product license application (PLA) for PREVNAR (PLA 99–0279) was initially submitted on June 1, 1999.

3. *The date the application was approved*: February 17, 2000. FDA has verified the applicant's claim that PLA 99–0279 was approved on February 17, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,086 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 27, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 27, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–10302 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0345]

Determination of Regulatory Review Period for Purposes of Patent Extension; AROMASIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for AROMASIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product AROMASIN (exemestane). AROMASIN is indicated for the treatment of advanced breast cancer in postmenopausal women whose disease has progressed following tamoxifen therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for AROMASIN (U.S. Patent No. 4,808,616) from Pharmacia and Upjohn, S.p.A, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of AROMASIN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AROMASIN is 3,153 days. Of this time, 2,848 days occurred during the testing phase of the regulatory review period, while 305 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: March 6, 1991. The applicant claims January 31, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 6, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 21, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for AROMASIN (NDA 20–753) was initially submitted on December 21, 1998.

3. *The date the application was approved*: October 21, 1999. FDA has verified the applicant's claim that NDA 20–753 was approved on October 21, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,745 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 27, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by

October 27, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–10298 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Products Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Dental Products Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 22, 2003, from 9:30 a.m. to 4:30 p.m.

Location: Gaithersburg Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Michael E. Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, via e-mail at *mea@cdrh.fda.gov,* or by phone: 301–827–5283, ext. 123. Please call the FDA Advisory Committee Information Line at 800–741–8138 (301–443–0572 in the Washington, DC area), code 12518, for updated information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a petition to reclassify tricalcium phosphate granules for dental bone repair (21 CFR 872.3930) from class III to class II (special controls). Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html.* Material will be posted on May 21, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 7, 2003. Oral presentations from the public will be scheduled for approximately 60 minutes at the beginning of committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 7, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed committee deliberations: On May 22, 2003, from 4 p.m. to 4:30 p.m., the meeting will be closed to the public to permit FDA to present to the committee trade secret and/or confidential commercial information regarding pending and future agency issues (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 21, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–10299 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0077]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 008

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 008'' (Recognition List Number: 008) will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of ''Modification to the List of Recognized Standards, Recognition List Number: 008'' to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Submit written comments concerning this document or to recommend additional standards for recognition to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments by e-mail: *standards@cdrh.fda.gov*. This document may also be accessed on FDA's Internet site at *http://www.fda.gov/cdrh/fedregin.html*. See section VI of this document for electronic access to the searchable database for the current list of ''FDA Recognized Consensus Standards,'' including Recognition List Number: 008 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and

Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 156.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of guidance entitled ''Recognition and Use of Consensus Standards.'' This notice described how FDA will implement its standard recognition program and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617); July 12, 1999 (64 FR 37546); November 15, 2000 (65 FR 69022); May 7, 2001 (66 FR 23032), January 14, 2002 (67 FR 1774), and October 2, 2002 (67 FR 61893), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA.

The agency maintains ''html'' and ''pdf'' versions of the list of ''FDA Recognized Consensus Standards.'' Both versions are publicly accessible at the agency's Internet site. See section VI of this document for electronic access information.

II. Modifications to the List of Recognized Standards, Recognition List Number: 008

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of ''FDA Recognized Consensus Standards'' in the agency's searchable database. FDA will use the term ''Recognition List Number: 008'' to identify: (1) Supplementary information sheets for standards added to the list for the first time, (2) standards added to replace withdrawn standards, (3) recognized standards for which minor revisions are made to clarify the application of the standards, and (4) standards withdrawn with no replacement.

In the following charts, FDA describes: (1) Modifications that involve the withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the addition of certain recognized standards with revisions to the supplementary information sheets involving changes in significant applications of the standards.

In section III, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

A. Anesthesia

Old Item No.	Standard	Change	Replacement Item No.
12	ISO 5361:1999 Anaesthetic and respiratory equipment—Tracheal tubes and connectors.	Withdrawn and replaced with newer version.	35
13	ISO 5361–2:1993 Tracheal Tubes—Part 2: Oro-tracheal and Naso-tracheal tubes of Magill Type (plain and cuffed).	Withdrawn and integrated into another standard.	(35)
14	ISO 5361–3:1984 Tracheal Tubes—Part 3: Murphy Type.	Withdrawn and integrated into another standard.	(35)
16	ISO 5361–5:1984 Tracheal Tubes—Part 5: Requirements and Methods of Test for Cuffs and Tubes.	Withdrawn and integrated into another standard.	(35)
17	ISO 5366–3:2001 Anaesthetic and respiratory equipment—Tracheostomy tubes—Part 3: Paediatric tracheostomy tubes.	Withdrawn and replaced with newer version.	36
26	CGA C–9:1988 Edition: 3 Title: Standard Color Marking of Compressed Gas Containers Intended for Medical Use.	Withdrawn and replaced with newer version.	37
27	CGA V–1:2001 Edition: 9 Title: Compressed Gas Association Standard for Compressed Gas Cylinder Valve Outlet and Inlet Connections.	Withdrawn and replaced with newer version.	38
28	CGA V–5:2000 Edition: 4 Title: Diameter Index Safety System (Noninterchangeable Low Pressure Connections for Medical Gas Applications).	Withdrawn and replaced with newer version.	39
29	CGA V–7.1: 1997 Edition: 1 Title: Standard Method of Determining Cylinder Valve Outlet Connections for Medical Gases.	Withdrawn and replaced with newer version.	40
22	NFPA 99 Standard for Health Care Facilities CHAPTER 19—Hyperbaric Facilities.	Withdrawn and replaced with newer version.	41

B. Biocompatibility

Old Item No.	Standard	Change	Replacement Item No.
7	ASTM F719–81(2002)e1, Standard Practice for Testing Biomaterials in Rabbits for Primary Skin Irritation.	Withdrawn and replaced with newer version.	68
30	ASTM F720–81(2002)e1, Standard Practice for Testing Guinea Pigs for Contact Allergens: Guinea Pig Maximization Test.	Withdrawn and replaced with newer version.	69
32	ASTM F750–87(2002)e1, Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse.	Withdrawn and replaced with newer version.	70

C. Cardiovascular/Neurology

Old Item No.	Standard	Change	Replacement Item No.
46	ASTM F2079–02 Standard Test Methods for Measuring Recoil of Balloon-Expandable Stents.	Recognize newer year date version.	49

D. Dental/ENT

Old Item No.	Standard	Change	Replacement Item No.
48	ANSI/ADA Specification No. 16:1989, Dental Impression Paste Zinc Oxide—Eugenol Type.	Correction in title (dash between oxide and eugenol).	
64	ISO 3107:1988, Dental Zinc Oxide/Eugenol Cements and Zinc Oxide Non-Eugenol Cements.	Correction in title (slash between oxide and eugenol).	
66	ISO 4049:1988, Dentistry-Resin—Based Filling Materials.	Correction in year date (1988 instead of 1998).	
86	ANSI/ADA Specification No. 38:2000, Metal-Ceramic Systems.	Correction in title (change to systems).	

E. General

Old Item No.	Standard	Change	Replacement Item No.
6	IEC 60601–1–2, (First Edition, 1993–04), Medical Electrical Equipment—Part 1: General Requirements for Safety; Electromagnetic Compatibility—Requirements and Tests.	Re-recognize	6
28	IEC 60601–1–2, (Second Edition), Medical Electrical Equipment—Part 1: General Requirements for Safety; Electromagnetic Compatibility - Requirements and Tests.	Extension of time period for the transition statement.	28

H. General Hospital/ General Plastic Surgery

Old Item No.	Standard	Change	Replacement Item No.
81	ASTM E1061	Title correction	81

I. In Vitro Devices

Old Item No.	Standard	Change	Replacement Item No.
30	NCCLS H15–A3, Reference and Selected Procedures for the Quantitative Determination of Hemoglobin in Blood; Approved Standard—Third Edition.	Revision	71
45	NCCLS M11–A5, Methods for Antimicrobial Susceptibility Testing of Anaerobic Bacteria; Approved Standard—Fifth Edition.	Revision	75
10	NCCLS M23–A2, Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters; Approved Guideline—Second Edition.	Revision	78
1	NCCLS C28–A2, How to Define and Determine Reference Intervals in the Clinical Laboratory; Approved Guideline—Second Edition.	Revision	81
20	NCCLS C34–A2, Sweat Testing: Collection and Quantitative Analysis; Approved Guideline—Second Edition.	Revision	82
5	NCCLS H18–A2, Procedures for the Handling and Processing of Blood Specimens; Approved Guideline.	Withdraw	57
8	NCCLS M2–A7, Performance Standards for Antimicrobial Disk Susceptibility Tests—Sixth Edition; Approved Standard.	Withdraw	55
28	NCCLS H11–A3, Procedure for the Collection of Arterial Blood Specimens; Approved Standard.	Withdraw	58
44	NCCLS M7–A5, Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria Tests for Bacteria That Grow Aerobically—Fourth Edition; Approved Standard.	Withdraw	56

J. Materials

Old Item No.	Standard	Change	Replacement Item No.
1	ASTM F67–00, Standard Specification for Unalloyed Titanium for Surgical Implant Applications (UNS R50250, UNS R50400, UNS R50550, UNS R50700).	Clarification to extent of recognition with regard to biocompatibility requirements.	
2	ASTM F75–01, Standard Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Castings and Casting Alloy for Surgical Implants (UNS R30075).	Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	
3	ASTM F90–01, Standard Specification for Wrought Cobalt–20 Chromium–15 Tungsten–10 Nickel Alloy for Surgical Implant Applications (UNS R30605).	Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	
4	ASTM F136–02, Standard Specification for Wrought Titanium–6 Aluminum–4 Vanadium ELI (Extra Low Interstitial) Alloy for Surgical Implant Applications (UNS R56401).	Withdrawn and replaced with newer version. Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	44

Old Item No.	Standard	Change	Replacement Item No.
5	ASTM F138–00, Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants (UNS S31673).	Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	
6	ASTM F139–00, Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Sheet and Strip for Surgical Implants (UNS S31673).	Clarification to extent of recognition with regard to biocompatibility requirements.	
7	ASTM F560–98, Standard Specification for Unalloyed Tantalum for Surgical Implant Applications (UNS R05200, UNS R05400).	Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	
8	ASTM F562–02, Standard Specification for Wrought 35 Cobalt–35 Nickel–20 Chromium–10 Molybdenum Alloy for Surgical Implant Applications (UNS R30035).	Withdrawn and replaced with newer version. Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	45
9	ASTM F563–00, Standard Specification for Wrought Cobalt–20 Nickel–20 Chromium–3.5 Molybdenum–3.5 Tungsten–5 Iron Alloy for Surgical Implant Applications (UNS R30563).	Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	
10	ASTM F603–00, Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application.	Clarification to extent of recognition with regard to biocompatibility requirements.	
11	ASTM F620–00, Standard Specification for Alpha Plus Beta Titanium Alloy Forgings for Surgical Implants.	Clarification to extent of recognition with regard to biocompatibility requirements.	
12	ASTM F621–02, Standard Specification for Stainless Steel Forgings for Surgical Implants.	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	46
13	ASTM F648–00, Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants.	Clarification to extent of recognition with regard to biocompatibility requirements.	
14	ASTM F688–00, Standard Specification for Wrought Cobalt–35 Nickel–20 Chromium–10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035).	Clarification to extent of recognition with regard to biocompatibility requirements.	
15	ASTM F745–00, Standard Specification for 18 Chromium–12.5 Nickel–2.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications.	Clarification to extent of recognition with regard to biocompatibility requirements.	
17	ASTM F799–02, Standard Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537, R31538, R31539).	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	47
18	ASTM F899–02, Standard Specification for Stainless Steel for Surgical Instruments.	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	48

Old Item No.	Standard	Change	Replacement Item No.
19	ASTM F961–96, Standard Specification for Cobalt–35 Nickel–20 Chromium–10 Molybdenum Alloy Forgings for Surgical Implants (UNS R30035).	Cardiovascular contact person. Clarification to extent of recognition with regard to biocompatibility requirements.	
20	ASTM F1058–02, Standard Specification for Wrought 40 Cobalt–20 Chromium–16 Iron–15 Nickel–7 Molybdenum Alloy Wire and Strip for Surgical Implant Applications (UNS R30003 and UNS R30008).	Withdrawn and replaced with newer version. Cardiovascular contact person change. Clarification to extent of recognition with regard to biocompatibility requirements.	49
21	ASTM F1088–87(1992)e1, Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation.	Clarification to extent of recognition with regard to biocompatibility requirements.	
22	ASTM F1091–02, Standard Specification for Wrought Cobalt–20 Chromium–15 Tungsten–10 Nickel Alloy Surgical Fixation Wire (UNS R30605).	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	50
23	ASTM F1108–02, Standard Specification for Titanium–6 Aluminum–4 Vanadium Alloy Castings for Surgical Implants (UNS R56406).	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	51
24	ASTM F1185–88 (1993)e1, Standard Specification for Composition of Ceramic Hydroxylapatite for Surgical Implants.	Discontinued by ASTM in 2002, no replacement.	Withdrawn
25	ASTM F1295–01, Standard Specification for Wrought Titanium–6 Aluminum–7 Niobium Alloy for Surgical Implant Applications (UNS R56700).	Clarification to extent of recognition with regard to biocompatibility requirements.	
26	ASTM F1314–01, Standard Specification for Wrought Nitrogen Strengthened 22 Chromium-13 Nickel-5 Manganese-2.5 Molybdenum Stainless Steel Alloy Bar and Wire for Surgical Implants (UNS S20910).	Clarification to extent of recognition with regard to biocompatibility requirements.	
27	ASTM F1341–99, Standard Specification for Unalloyed Titanium Wire UNS R50250, UNS R50400, UNS R50550, UNS R50700, for Surgical Implant Applications.	Clarification to Extent of Recognition with regard to biocompatibility requirements.	
28	ASTM F1350–02, Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673).	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	52
29	ASTM F1472–02, Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium Alloy for Surgical Implant Applications (UNS R56400).	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	53
30	ASTM F1537–00, Standard Specification for Wrought Cobalt–28–Chromium–6-Molybdenum Alloy for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539).	Clarification to extent of recognition with regard to biocompatibility requirements.	
31	ASTM F1580–01, Standard Specification for Titanium and Titanium–6 Aluminum–4 Vanadium Alloy Powders for Coatings of Surgical Implants.	Withdrawn and replaced with newer version. Clarification to extent of recognition with regard to biocompatibility requirements.	54

Old Item No.	Standard	Change	Replacement Item No.
32	ASTM F1586–02, Standard Specification for Wrought Nitrogen Strengthened 21 Chromium–10 Nickel–3 Manganese–2.5 Molybdenum Stainless Steel Bar for Surgical Implants (UNS S31675).	Clarification to extent of recognition with regard to biocompatibility requirements.	
33	ASTM F1609–95, Standard Specification for Calcium Phosphate Coatings for Implantable Materials.	Clarification to extent of recognition with regard to biocompatibility requirements.	

K. Orthopedic

Old Item No.	Standard	Change	Replacement Item No.
57	ASTM F1717–01 Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model.	Withdrawn and replaced with newer version.	159
98	ASTM F629–02 Standard Practice for Radiography of Cast Metallic Surgical Implants.	Withdrawn and replaced with newer version.	160
153	ASTM F1264–01 Standard Specification and Test Methods for Intramedullary Fixation Devices.	Withdrawn and replaced with newer version.	161
156	ASTM F564–02 Standard Specification and Test Methods for Metallic Bone Staples.	Withdrawn and replaced with newer version.	162
157	ASTM F543–02 Standard Specification and Test Methods for Metallic Medical Bone Screws.	Withdrawn and replaced with newer version.	163
158	ASTM F1541–02 Standard Specification and Test Methods for External Skeletal Fixation Devices.	Withdrawn and replaced with newer version.	164

L. Sterility

Old Item No.	Standard	Change	Replacement Item No.
71	ANSI/AAMI ST8:2001, Hospital Steam Sterilizers	Change in Title (Sterilizers instead of Sterilization).	
77	ANSI/AAMI ST24:1999, Automatic General Purpose Ethylene Oxide Sterilizers and Ethylene Oxide Sterilant Sources Intended for Use in Health Care Facilities, 3rd. Edition.	Change in title (add third edition)	
91	ASTM F2096–02, Standard Test Method for Detecting Gross Leaks in Porous Medical Packaging by Internal Pressurization (Bubble Test).	Recognize newer year version (Should be 02 instead of 01).	

IV. Listing of New Entries

The listing of new entries and consensus standards added as ''Modifications to the List of Recognized Standards,'' under Recognition List Number: 008, is as follows:

A. Anesthesia

A. Anesthesia

Item No.	Title of Standard	Reference No. and Date
42	Anaesthetic vaporizers—Agent-specific filling systems	ISO 5360:1993
43	Anaesthetic reservoir bags	ISO 5362:2000

Item No.	Title of Standard	Reference No. and Date
44	Anaesthetic and respiratory equipment—Tracheostomy tubes—Part 1: Tubes and connectors for use in adults.	ISO 5366–1:2000

B. General

Item No.	Title of Standard	Reference No. and Date
30	Medical Electrical Equipment—Part 1–2: General Requirements for Safety - Collateral Standard: Electromagnetic Compatibility—Requirements and Tests.	ANSI/AAMI/IEC 60601–1–2:2001

C. In Vitro Devices

Item No.	Title of Standard	Reference No. and Date
65	Evaluation of Precision Performance of Clinical Chemistry Devices; Approved Guideline.	NCCLS EP5–A:1999
66	Preliminary Evaluation of Quantitative Clinical Laboratory Methods; Approved Guideline.	NCCLS EP10–A:1998
67	Evaluation of Matrix Effects; Approved Guideline	NCCLS EP14–A:2001
68	Laboratory Instruments and Data Management Systems: Design of Software User Interfaces and End-User Software Systems Validation, Operation, and Monitoring; Approved Guideline—Second Edition.	NCCLS GP19–A2:2001
69	Procedures for the Collection of Diagnostic Blood Specimens by Venipuncture; Approved Standard—Fourth Edition.	NCCLS H3–A4:1998
70	Procedures and Devices for the Collection of Diagnostic Blood Specimens by Skin Puncture; Approved Standard—Fourth Edition.	NCCLS H4–A4:1999
72	Clinical Application of Flow Cytometry: Quality Assurance Immunophenotyping of Lymphocytes; Approved Guideline.	NCCLS H42–A:1998
73	Clinical Evaluation of Immunoassays; Approved Guideline	NCCLS I/LA21–A:2002
74	Protocols for Evaluating Dehydrated Mueller-Hinton Agar; Approved Standard.	NCCLS M6–A:1996
76	Laboratory Diagnosis of Blood-Borne Parasitic Diseases; Approved Guideline.	NCCLS M15–A:2000
77	Quality Assurance for Commerically Prepared Microbiological Culture Media—Second Edition; Approved Standard.	NCCLS M22–A2:1996
79	Procedures for the Recovery and Identification of Parasites from the Intestinal Tract; Approved Guideline.	NCCLS M28–A:1997
80	Molecular Diagnostic Methods for Genetic Diseases; Approved Guideline.	NCCLS MM1–A:2000
83	Blood Gas and pH Analysis and Related Measurements; Approved Guideline.	NCCLS C46–A:2001
84	Stability Testing of In Vitro Diagnostic Reagents	EN 13640:2001

C. Materials

Item No.	Title of Standard	Reference No. and Date
30	Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests.	ANSI/AAMI/IEC 60601–1–2:2001
31	Symbols to be used with medical device labels, labeling and information to be supplied.	ISO 15223:2000
32	Graphical symbols for use in the labeling of medical devices.	EN 980:1996+A1:1999+A2:2001
55	Standard Test Method for Measurement of Radio Frequency Induced Heating Near Passive Implants During Magnetic Resonance Imaging.	ASTM F2182–02

D. Tissue Engineering

Item No.	Title of Standard	Reference No. and Date
1	Standard Guide for Characterization and Testing of Alginates as Starting Materials Intended for Use in Biomedical and Tissue-Engineered Medical Products Application.	ASTM F2064:2000
2	Standard Guide for Characterization and Testing of Chitosan Salts as Starting Materials Intended for Use in Biomedical and Tissue-Engineered Medical Product Applications.	ASTM F2103:2001

IV. List of Recognized Standards

FDA maintains the agency's current list of ''FDA Recognized Consensus Standards'' in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

In order to receive ''Guidance on the Recognition and Use of Consensus Standards'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

You may obtain a copy of ''Guidance on the Recognition and Use of Consensus Standards' by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes this guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing ''Modifications to the List of Recognized Standards, Recognition List Number: 008'' will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/cdrh*. You may access ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable data base for ''FDA Recognized Consensus Standards,'' through hyperlinks at *http://www.fda.gov/cdrh/stdsprog.html*. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at *http://www.fda.gov/cdrh/fedregin.html*.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of ''Modifications to the List of Recognized Standards, Recognition List Number: 008.'' These modifications to the list of recognized standards are effective upon publication of this notice.

Dated: April 7, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–10417 Filed 4–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0117]

Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the criteria it will use to accredit persons for the purpose of conducting inspections of eligible device manufacturers under section 201 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), which established an ''inspection by accredited persons'' program. The new law requires FDA to publish in the **Federal Register** the criteria it will use to accredit persons to conduct inspections of eligible device establishments. These criteria are set out in this document and will become effective immediately after approval by the Office of Management and Budget (OMB) of the collection of information proposed by FDA in connection with this program. At that time, FDA will begin accepting applications for this program. In this document, FDA is also announcing the availability of a guidance document that will provide information for those interested in participating in this newly-created program. The guidance is entitled ''Implementation of the Inspection by Accredited Persons Program under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff and Third Parties.'' In accordance with the agency's good guidance practices (GGPs), the guidance remains subject to comment at any time. FDA is taking these actions to implement provisions of MDUFMA.

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section VI for information on electronic access to the guidance. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: http://www.fda.gov/dockets/ecomments. Identify comments with the docket number found in brackets within the heading of this document.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Director, Division of Small Manufacturers, International and Consumers Assistance, Center for Devices and Radiological Health (CDRH) (HFZ–220), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–6597 ext. 124.

SUPPLEMENTARY INFORMATION:

I. Background

MDUFMA (Public Law 107–250) was signed into law on October 26, 2002. Section 201 of MDUFMA adds a new paragraph ''g'' to section 704 of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 374), directing FDA to accredit third parties (accredited persons or APs) to perform inspections of eligible manufacturers of class II or class III devices. This is a voluntary program; eligible manufacturers have the option of being inspected by an AP or by FDA. The new law requires FDA within 180 days from the date MDUFMA was signed into law to ''publish in the **Federal Register** criteria to accredit or deny accreditation to persons who request to perform'' these inspections (section 704(g)(2) of the act). Under section 704(g)(2) of the act, through publication of this **Federal Register** document, the criteria set out in section II of this document will be binding on those persons who apply to become APs under this program. The criteria will be in effect immediately following approval by the OMB of the collection of information proposed by FDA in connection with this program. At that time, FDA will begin accepting applications for accreditation.

FDA is also issuing a guidance document that repeats the criteria it will use for accrediting APs. The guidance also addresses other aspects of this program such as the appropriate format and content for accreditation applications. The guidance is discussed further in section III of this document. Although it was not feasible to obtain comments before issuing the guidance due to tight statutory deadlines, in accordance with this agency's GGP procedures, FDA will accept comments on the guidance at any time.

The new law requires that no more than 15 firms receive accreditation during the 12 months following publication of this **Federal Register** document. In addition, on or before October 26, 2003, FDA must make available on its Web site a list of accredited firms that may conduct inspections and the specific information about the scope of their accreditation. Therefore, in order to comply with this statutory timeframe, FDA will not accept any applications for 2003 after August 25, 2003. The list of APs will be updated periodically but no later than 30 days after a new person is accredited. This update will show any withdrawal of accreditation or any change in activities for which an AP is accredited.

II. Accreditation Criteria

This section describes the criteria FDA will apply when making decisions about whether to accredit persons who request to conduct inspections of eligible class II and class III device manufacturers in lieu of FDA inspection. The guidance document entitled ''Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties,'' repeats these criteria and provides suggestions on how applicants can address them in their application.

A. Minimum Requirements

Section 704(g)(3) of the act describes the minimum requirements that an AP must meet in order to be accredited by FDA. These requirements are that an AP:

1. May not be a Federal Government employee;

2. Shall be an independent organization not owned or controlled by a manufacturer, supplier, or vendor of

articles regulated under the act and have no organizational, material, or financial affiliation (including a consultative affiliation) with such a manufacturer, supplier, or vendor;

3. Shall be a legally constituted entity permitted to conduct the activities for which it seeks accreditation;

4. Shall not engage in the design, manufacture, promotion, or sale of articles regulated under the act;

5. Shall operate in accordance with generally accepted professional and ethical business practices and agree in writing that, at a minimum, it will:

(a) Certify that the reported information accurately reflects data reviewed, inspection observations made, other matters that relate to or may influence compliance with the act, and recommendations made during an inspection or at an inspection's closing meeting;

(b) Limit work to that for which competence and capacity are available;

(c) Treat information received, records, reports, and recommendations as confidential commercial or financial information or trade secret information, except such information may be made available to the FDA;

(d) Respond promptly and attempt to resolve complaints regarding its activities for which it is accredited;

Protect against the use of any officer or employee of the AP to conduct inspections who has a financial conflict of interest regarding any product regulated under the act, and annually make available to the public disclosures of the extent to which the AP, and the officers and employees of the person, have maintained compliance with requirements relating to financial conflicts of interest.

B. Additional Criteria

In addition to the minimum requirements specified at section 704(g)(3) of the act for becoming an AP, this notice also establishes the following additional criteria:

1. Personnel Qualifications

FDA expects AP to have sufficient personnel, with the necessary education, training, skills and experience to review records and perform inspections. FDA will consider several factors when accrediting applicants. These include:

(a) Whether personnel have demonstrated knowledge of:

• The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*);

• The Public Health Service Act (42 U.S.C. 201 *et seq.*);

• Regulations implementing these statutes, particularly 21 CFR part 11 and parts 800–1271, with special emphasis on Parts 11, 801, 803, 806, 807, 809, 814, 820 and 821;

• FDA Compliance Program 7382.845, Inspection of Medical Device Manufacturers;

• Guide to Inspection of Quality Systems: Quality System Inspection Technique (QSIT); and

• FDA Investigations Operations Manual, Chapter 5–Establishment Inspection.

(b) Whether the applicant:

• Has established, documented, and executed policies and procedures to ensure that inspections are performed by qualified personnel, and will maintain records on the relevant education, training, skills, and experience of all personnel who contribute to the performance of inspections;

• Has available to its personnel clear, written instructions for duties and responsibilities with respect to inspections;

• Has identified personnel who, as a whole, are qualified in all of the quality system disciplines for the inspections under the AP scope of work; and

• Has identified at least one individual who is responsible for providing supervision over inspections and who has sufficient authority and competence to assess the quality and acceptability of inspection reports.

2. Infrastructure

APs need the capability to interface with FDA's electronic data systems, including the FDA Internet Web sites, and the CDRH Facts-On-Demand system. At a minimum, this would entail a computer system with a modem and an independent facsimile machine. FDA will rely extensively on the use of our electronic systems for timely dissemination of guidance documents to APs and other interested parties. APs must also have physical security and safeguards for protecting trade secret and confidential commercial or financial information, as well as personal identifier information in medical records, such as adverse event reports, that would reveal the identity of individuals if disclosed.

3. Prevention of Conflicts of Interest (COI)

An AP must be impartial and free from any commercial, financial, and other pressures that might present a COI or an appearance of a COI. To that end, when deciding whether to accredit a person, we will consider whether they have established, documented, and executed policies and procedures to prevent any individual or organizational COI, including conflicts that their contractors or individual contract employees may have.

Although it is not feasible to identify all of the circumstances that would raise concerns about COI in this document, the most common conditions that indicate an actual or a potential COI are:

a. The AP is owned, operated, or controlled by a manufacturer, supplier or vendor of any article regulated under the act. Please see http://www.fda.gov/ohrms/dockets/yellow/yellotoc.htm for examples of firms that are regulated by FDA and, therefore, would create a conflict. This includes manufacturers of radiation-emitting electronic products such as televisions, microwave ovens, compact disk players, laser printers, industrial lasers, as well as foods, drugs, biologics, cosmetics, veterinary products, and medical devices.

b. The AP has any ownership or financial interest in any product, manufacturer, supplier or vendor regulated under the act (see section II.B.3.a of this document);

c. Any personnel of the AP involved in inspections or their spouse or minor children have an ownership or other financial interest regarding any product regulated under the act (see link at section II.B.3.a of this document);

d. The AP or any of its personnel involved in inspections participates in the design, manufacture, promotion or sale of any product regulated under the act;

e. The AP or any of its personnel involved in inspections provides consultative services to any manufacturer, supplier or vendor of products regulated under the act (see link at section II.B.3.a of this document);

f. Any personnel of the AP involved in the inspection process participates in an inspection of a firm in which they had performed contract work (e.g. conformity assessment body audit, laboratory testing, or AP inspection) within the last 12 months;

g. Any personnel of the AP involved in the inspection process participates in an inspection of a firm they were employed by within the last 12 months;

h. The fees charged or accepted are contingent or based upon the recommendation in the report made by the AP.

When the AP uses the services of a contractor in connection with an inspection, it is responsible for the work of the contractor and its personnel. It will be the AP's responsibility to assure that the contractor meets the same criteria for freedom from COI as the AP and its personnel.

In addition to conducting inspections as an AP, an AP may also conduct other activities, such as objective laboratory testing of products regulated under the act or assessment of conformance to

standards, if those other activities do not affect the impartiality of inspections. Examples of conflicted laboratory testing, i.e., activities an AP may not perform, are routine quality production tests, validation/verification studies, and quality assurance-related testing.

Information on the COI standards FDA applies to its own personnel is included in appendix 1 of the guidance entitled ''Standards for Ethical Conduct for Employees of the Executive Branch.'' An AP may adopt these standards, utilize the model COI policy FDA has provided as another appendix to the guidance, or demonstrate how alternative equivalent procedures will safeguard against COI.

4. Training

An AP will not be eligible to conduct independent inspections until they have successfully completed the classroom training required by FDA and conducted a satisfactory performance inspection under FDA observation. Firms identified on the FDA's list of APs to perform inspections will designate employees to participate in the classroom training and joint qualifying inspections. FDA will train no more than three employees per AP during the training sessions to be held by FDA in January 2004. FDA strongly encourages each AP to send at least two employees to the training, in recognition of employee attrition. APs with multiple sites engaged in FDA inspectional activities should request permission from the agency to send one representative from each site, not to exceed a total of five representatives from each AP.

Training for APs will be ''modeled'' after training of European Union Conformity Assessment Bodies (EU CABs) under the Mutual Recognition Agreement (MRA) Implementation Plan. (See http://www.fda.gov/cdrh/mra/guidance/mraprocedure.html.) EU CABs that have been accredited as APs and whose personnel have successfully completed the required training and/or joint inspections under the MRA program should state this in their application. If confirmed by FDA, the AP will not be required to have a representative repeat the classroom training or joint qualifying inspections. However, FDA does recommend that the AP send a representative to the FDA Investigator Training module as an update. Personnel trained by FDA under the MRA program who do not attend the current training will need to review a videotaped FDA presentation on evidence development.

The FDA training will consist of a two tiered program.

Tier one will include formal classroom training for AP inspectional staffers (trainees). At a minimum this will include:

a. The Association for the Advancement of Medical Instrumentation (AAMI) GMP/ Quality System: Requirements and Industry Practice (or equivalent). AAMI will be conducting this training throughout the United States and in Frankfurt, Germany in 2003; see AAMI web site at http://www.aami.org/meetings/courses/gmp.html[1] for specific dates and locations. Please note that you must register separately for the training session and the examination. The AAMI training schedule for 2004 will not be posted until late 2003.

b. FDA's Quality System Inspection Technique (QSIT) training module.

c. FDA Investigator Training, which will include training on:

- Food and drug law,
- Advanced QSIT,
- FDA inspectional procedures,
- FDA policies and device regulations and
- Evidence development.

FDA plans to conduct its training sessions from January 12 through 16, 2004, in the Washington, DC metropolitan area. FDA will make a final decision on applications in early October 2003, and plans to advise applicants and post the list of APs on the Internet in mid-October. Each applicant to this program should make tentative plans to send appropriate representatives to the FDA Investigator Training. However, only those applicants that are confirmed as APs in October will be eligible to attend the training. Applicants should advise FDA in their AP application of the names of the employee(s) that have either successfully completed this training or those who will be nominated to participate in this training. AP trainees will not qualify to enter the second tier, unless they successfully pass a test at the end of each tier one training session.

The second tier will involve the completion of three joint inspections, during which FDA and the AP will address the relevant parts of Compliance Program 7382.845—Inspection of Medical Device Manufacturers and the QSIT guidance—Guide to Inspection of Quality Systems. The three joint inspections will include:

(a) Collaborative Inspection—The FDA investigator will be the lead inspector and the AP trainee will act primarily as an observer. The FDA investigator will prepare a list of any nonconformities and an inspection report. The trainee will prepare a ''practice'' list of nonconformities and an inspection report.

(b) Modified Performance Inspection—Using established criteria, the FDA investigator will observe and evaluate the trainee performance of an inspection and may provide assistance. The trainee will prepare a list of any nonconformities to be presented to the facility and an inspection report. The FDA investigator will review the list of nonconformities and provide feedback before it is presented. In addition, the FDA investigator will review the inspection report and, if necessary, write an addendum to supplement the inspection report.

(c) Full Performance Inspection—The AP trainee will perform an independent inspection and will be observed and evaluated by the FDA investigator using established criteria. The FDA investigator may not provide assistance to the trainee. The trainee will prepare a list of any nonconformities to be presented to the facility and an inspection report. The FDA investigator will review the list of nonconformities and provide feedback before it is presented. In addition, the FDA investigator will review the inspection report and, if necessary, write an addendum to supplement the inspection report. The FDA investigator's evaluation of the trainee and recommendation will be presented to the FDA Office of Regulatory Affairs (ORA) certifier in the FDA Division of Human Resource Development who will determine if the trainee is qualified to perform independent inspections.

The criteria FDA will use to evaluate the joint inspections will be addressed at the FDA training sessions to be held in January 2004.

5. Evaluation of the AP Application

(a) The Third Party Recognition Board (TPRB) Chairman will e-mail the applicant's contact person, within 24 hours of receipt of the AP application, acknowledging receipt.

(b) Members of the TPRB will perform an initial review to determine if the request for accreditation addresses the information set forth below in section II.B.6 of this document, Contents of an AP Application, and is adequate for review by the full TPRB.

(c) The TPRB Chairman will advise the contact individual, via e-mail, within 60 days after the receipt of such request for accreditation, whether the request is adequate for review by the TPRB or whether additional information is needed.

[1] FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

(d) If the application is deficient, FDA will identify its shortcomings and advise the applicant so it may submit additional information within the designated time period. FDA may deem the application incomplete and deny the request for accreditation if the applicant fails to respond to a request for additional information in a timely manner. All information submitted to FDA in response to any requests for additional information should be received no later than September 25, 2003.

(e) If the application is adequate, FDA will file it for full review, rating and ranking by the TPRB. A rating criteria checklist will be used to assess the relevant qualifications and competence of persons applying to become APs. The agency has assigned a weight (5, 15 or 20) to each of eight elements. The eight elements are addressed in section II.B.6 of this document, Contents of an AP Application. The weight of the element is based on how essential the information is in determining if the applicant is suitable to perform Quality System / Good Manufacturing Practices (QS/GMP) inspections on behalf of FDA. Each member of the TPRB will assess each of the eight elements and will vote a ''quality level'' score from 0 to 4 (0 = Unsatisfactory, 2 = Satisfactory, 4 = Exceeds) for each element. The final Quality Level Score will be determined by a majority vote of the TPRB. Quality Level Score x Weight = Element Score. The eight element scores will be totaled to yield an ''Application Rating'' (maximum rating attainable is 400). The TPRB will then rank the applications (highest application rating first).

(f) If more than 15 applicants seeking accreditation satisfy the minimum requirements, FDA will accredit the 15 applicants that have the highest scores. If fewer than 15 persons are initially accredited, additional applications will be considered during the 12 months that follow the publication of this guidance. Persons seeking accreditation that are not among the 15 highest ranking applications can reapply 12 months after the publication of this guidance and persons who did not previously apply may also apply 12 months after publication of this guidance.

(g) FDA may deny the request for accreditation if we determine that the application does not meet the criteria established for APs or scores lower than the 15 highest rated applications received by August 25, 2003.

(h) FDA will stop accepting applications on August 25, 2003. FDA plans to publish on its Web site the List of Persons Accredited for Inspections on or before October 26, 2003.

6. Contents of an AP Application

Applicants should include the information described as follows:

(a) Administrative Information

• Application in English;

• Name and address of the organization seeking accreditation;

• Telephone number and e-mail address of the contact person. The contact person should be the individual to whom questions about the content of the application may be addressed and to whom a letter of determination and general correspondence will be directed;

• Name and title of the most responsible individual at the AP. Foreign applicants may wish to identify an authorized representative located within the United States who will serve as the AP's contact with FDA;

• Name and title of the most responsible individual at the parent organization, if applicable;

• Brief description of the applicant, including: type of organization (e.g., not-for-profit institution, commercial business, other type of organization); size of organization (number of employees); organizational charts showing the relationship of the organization involved in the AP inspection program and its relationship with parent or affiliate companies; number of years in operation; nature of work (e.g., conformity assessment testing or certification laboratory); and sufficient information regarding ownership, operation, and control of the organization to assess its degree of independence from manufacturers and distributors of products regulated under the act. Please include your annual report or, if it is available electronically on the Internet, please include the appropriate Web site address. If the applicant's organization has offices in numerous locations, please be specific and name all locations that you plan to participate in the AP inspection process for your firm. Applicants may include all locations under one application if they will operate under the same processes and procedures for AP inspections. Include curriculum vitae (CVs) for all supervisory personnel and explain where supervisory oversight will be located;

• List countries that have certified, accredited or recognized the applicant for quality system or GMP inspections/auditing and the date of such certification, accreditation, or recognition;

• Specify any accreditation for assessment of quality systems that you may have, such as accreditation to ISO/IEC Guide 62. If you are accredited to standards other then Guide 62, please provide copies of the standards in English.

• Activities for which the AP seeks accreditation. This includes a list identifying the devices the applicant seeks to inspect. Applicants may simply state ''all devices'' or identify the devices they wish removed from their scope of work by classification panel or by classification name (e.g., except cardiovascular devices under 21 CFR part 870 or except 21 CFR 870.3620, 870.3630, 870.3640, and 870.3670).

(b) Prevention of Conflict of Interest

The applicant should submit a copy of the written policies, procedures and sample certification/compliance statements established to prevent conflicts of interest. MDUFMA requires that the AP and its employees (including contract employees) involved in the performance of inspections and the preparation and approval of reports be free from conflicts of interest and the appearance of conflicts of interest that might affect the inspection process. No personnel of an AP involved in inspections, nor their spouses or minor children, may have ownership of or other financial interest in any product regulated under the act. In accordance with section 704(g)(3)(E) of the act, APs will annually make available to the public the extent to which the AP complies with conflict of interest requirements.

(c) Technical Competence

FDA will consider several factors with respect to personnel qualifications and the preparedness of the applicant to conduct technically competent inspections. The applicant should document these factors in its application and include:

• The written policies and procedures established to ensure that manufacturers are inspected by qualified personnel;

• The written instructions for the duties and responsibilities of personnel, including inspectors, with respect to the inspection of device manufacturing facilities;

• The written personnel qualification standards established to ensure that inspectors and other designated personnel are qualified in all of the regulatory and technical disciplines needed to effectively inspect for compliance with FDA's regulatory requirements for medical devices;

• The documentation (e.g., CVs) to establish that the inspectors and other involved non-supervisory personnel meet the established criteria for qualified personnel. This includes documentation of knowledge, education, training, skills, abilities and experience, including specialized education and experience needed for

the inspection of manufacturers' facilities;

• The documentation (e.g., CVs) to establish that the supervisor(s) of inspectors have sufficient authority and meet the established criteria for qualified supervisory personnel. This includes documentation of knowledge, education, training, skills, abilities and experience, including any specialized education and experience needed to supervise the inspection and review records prepared by inspectors;

• A description of the applicant's management structure and that of any contractor used for inspection work. The application should describe the position of the individual(s) providing supervision within the management structure and explain how that structure provides for the supervision of the inspectors and other personnel involved in the inspection process. (If the applicant plans to utilize contractors, please address the additional information described at section II.B.6.f of the document, Contractors);

• A description of the inspection team. This includes documentation for any members of the team who may already have training and experience relevant to the assessment of compliance with FDA's regulatory requirements for medical devices (e.g., compliance programs, the QS regulation, and general auditing principles). The description should include documentation of the ability of the team to recognize, collect and identify evidence of noncompliance and adequately communicate with the manufacturer regarding the inspection;

• Documentation that personnel involved in inspections have broad quality systems knowledge and are qualified in accordance with generally accepted quality assurance standards, (e.g., ISO 10011–2 or 21 CFR part 820) and capable of functioning in accordance with the relevant parts of these standards;

• Documentation of training plan to assure technical competence;

• Documentation of records that demonstrate the appropriate experience and training of each inspector.

(d) Resources

The applicant should identify what reference materials are available to inspectors and other personnel involved in inspections, (e.g., the act, regulations, manuals, standards). Also, the application should identify equipment and resources available that will enable the inspector to perform technical and administrative tasks. At a minimum, this should include a computer system with a modem and an independent facsimile machine. FDA will rely extensively on the use of our electronic systems for timely dissemination of guidance documents to APs and other interested parties.

APs should have physical security and safeguards in place for protecting trade secret and confidential commercial and financial information, as well as personal identifier information in medical records, such as adverse event reports, that would reveal the identity of individuals if disclosed.

(e) Confidentiality

The applicant should include established procedures to ensure confidentiality of reports and all information obtained during an inspection. These should address aspects of authorized disclosure and the procedures by which the applicant maintains confidentiality between itself and the manufacturer. In addition, the applicant should describe the procedures through which the applicant's personnel and any contractors are made aware of confidentiality requirements.

(f) Contractors

FDA will consider several factors to determine whether the applicant ensures that contractors are properly qualified, utilized, and monitored. Special emphasis will be placed on personnel qualifications and preparedness to conduct technically competent inspections, and on conflict of interest controls. The applicant should document these factors in the application and include:

• The written policies and procedures established to ensure that contractors conform to the same requirements (e.g., education, training, and experience) that would apply to the applicant if it were performing the inspection or aspects of the inspection contracted. These policies and procedures should ensure that the contractor conducts inspections in accordance with the same procedures under which the applicant operates. The applicant should include assurances that it will maintain documentary evidence that the contractor has the necessary technical competence and resources to carry out contracted activities;

• Written policies and procedures documenting that the applicant will not contract the overall responsibility for reviewing the results of the inspections;

• Documentation of an agreement delineating the duties, responsibilities, and accountability of the contractor; and

• The written policies and procedures for establishing a register of qualified contractors.

(g) AP Quality System

FDA will consider the following factors to determine whether the applicant has established an adequate quality system to ensure compliance with FDA policies and procedures relevant to inspections:

• The applicant should establish a documented quality system to ensure that there are processes and procedures in place to demonstrate compliance with section 704(g) of the act;

• The policies and procedures the applicant follows are adequate to maintain control of all quality system documentation and to ensure that a current version is available at all locations; and

• The policies and procedures for internal auditing to ensure the quality system is implemented effectively and that resources are available for conducting such audits.

(h) Certification Agreement Statement

The applicant should provide a copy of a documented statement, which will be signed by the most responsible individual, certifying that:

• The AP has appropriate policies and procedures to meet FDA's conflict of interest provisions, has the appropriate staff and procedures in place to ensure technical competence for conducting inspections under section 704(g) of the act, and has the quality system in place to ensure acceptable and consistent inspections;

• Where the AP uses the services of a contractor for Quality System (QS)/GMP inspections, the AP should also certify that its contractor(s) meets the APs established criteria for freedom from conflicts of interest and technical competence;

• The AP consents to FDA inspection and copying of all records, correspondence, and other materials relating to any inspections conducted by the AP under this program, including records on personnel, education, training, skills, and experience and all documentation on prevention of conflicts of interest, including certification/compliance statements; and

• The AP will protect trade secret and confidential commercial or financial Information, and will treat as private information about specific patient identifiers in records such as adverse event reports, except that such information may be made available to FDA.

III. The Guidance

We are also issuing a guidance entitled ''Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties,''

which repeats the AP criteria set out in section II of this document. In addition, the guidance provides other useful information such as suggestions about the format and content of the accreditation applications.

The guidance represents the agency's current thinking on the ''Implementation of the Inspection by Accredited Persons Program under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties.'' The issuance of this guidance is consistent with FDA's good guidance practices regulation (21 CFR 10.115). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This document and the guidance entitled ''Implementation of the Inspection by Accredited Persons Program under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties'' contain a proposed collection of information that requires clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995. In a document found elsewhere in this issue of the **Federal Register**, FDA is announcing that this proposed collection of information has been submitted to OMB for emergency processing. The document also solicits comments concerning the proposed collection of information.

FDA will publish a separate document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions contained in this document and the guidance. 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.

V. Comments

Interested persons may submit their written or electronic comments regarding the guidance at any time to Dockets Management Branch (see **ADDRESSES**). Submit either a single copy of the electronic comments to: http://www.fda.gov/dockets/ecomments or send two paper copies of any mailed comments (individuals may submit only one copy). Identify comments with the docket number found in brackets in the heading of this document. Comments received will be made available in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

To receive ''Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria; Guidance for Industry, FDA Staff, and Third Parties'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1200) followed by the pound sign (ι). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

Dated: April 23, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–10415 Filed 4–23–03; 5:03 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act: CARE Act Data Report (CADR) Form: Extension (OMB No. 0915–0253)

The CARE Act Data Report (CADR) form, created in 1999 by the HIV/AIDS Bureau of the Health Resources and Services Administration (HRSA), is designed to collect information from grantees, as well as their subcontracted service providers, funded under titles I, II, III and IV of the Ryan White (CARE) Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 and 2000 (codified under title XXVI of the Public Health Services Act). All titles of the CARE Act specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records of the providers receiving CARE Act funding, the services provided, and the clients served continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

CARE Act grantees are required to report aggregate data to HRSA annually. The CADR form is used by grantees and their subcontracted service providers to report data on six different areas: service provider information, client information, services provided/clients served, demographic information, AIDS

Pharmaceutical Assistance and AIDS Drug Assistance Program, and the Health Insurance Program. The primary purposes of the CADR are to: (1) Characterize the organizations from which clients receive services; (2) provide information on the number and characteristics of clients who receive CARE Act services; and (3) enable HAB to describe the type and amount of services a client receives. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected on the CADR is critical for HRSA, State and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems.

The estimated response burden for CARE Act grantees is estimated as:

Title under which grantee is funded	Estimated number of grantees	Estimated (median) number of providers	Estimated hours to coordinate receipt of data reports from providers	Estimated total hour burden for grantees
Title I only	51	107	40	2,040
Title II only	59	112	40	2,360
Title III only	337	1	8	2,696
Title IV only	90	1	16	1,440
Total	537			8,536

The estimated response burden for service providers is estimated as:

Title under which provider is funded	Estimated number of provider respondents	Estimated responses per provider	Estimated hours per response	Estimated total hour burden
Title I only	1,175	1	24	28,200
Title II only	995	1	24	23,880
Title III only	248	1	40	4,800
Title IV only	98	1	40	3,920
Funded under multiple titles	394	1	40	15,760
Total	2,782			76,560

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 21, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–10295 Filed 4–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: May 29, 2003, 8:30 a.m.–4:30 p.m.; May 30, 2003, 8 a.m.–2 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Pub. L. 105–392. At this meeting the Advisory Committee will continue working on its third report which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2003. The third report focuses on disparities in health care and their implications for primary care medical education.

Agenda: The meeting on Thursday, May 29, will begin with welcoming and opening comments from the Chair and Executive Secretary of the Advisory Committee. A plenary session will follow in which the Advisory Committee members will work on drafting various sections of the third report. The Advisory Committee will also discuss various partnership opportunities with the National Advisory Council of the National Health Service Corps.

On Friday, May 30, the Advisory Committee will meet in plenary session to discuss outcome measures for programs under section 47 of the Public Health Service Act and will make plans for the October 2003 meeting. An opportunity will be provided for public comment.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Stan Bastacky, D.M.D., M.H.S.A., Acting Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: April 21, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–10296 Filed 4–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–14928]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 1625–0003, Lifesaving, Report of Recreational-Boating Accident

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR concerns Lifesaving, Report of Recreational-Boating Accident. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it.

DATES: Comments must reach the Coast Guard on or before June 27, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2003–14928) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document (USCG 2003–14928), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

Title: Lifesaving, Report of Recreational-Boating Accident.

OMB Control Number: 1625–0003.

Summary: The information collected from this report helps the Coast Guard to identify possible manufacturers' defects in boats or equipment, develop boat-manufacturing standards, formulate rules on safety, support programs in boating-safety education and awareness, and publish accident statistics.

Need: 46 U.S.C. 6102(a) requires a uniform system for reporting marine casualties with rules prescribing reportable casualties and the manner of reporting. The statute requires States to compile and submit to the Secretary of the Department in which the Coast Guard is operating (who delegated the responsibility to the Commandant) reports, information, and statistics on casualties reported to them. Federal rules (33 CFR 173.55) require the operator of any vessel that is numbered or used for recreational purposes to submit a report on a recreational-boating accident to the State authority where the accident occurred when either—

(a) A person dies;

(b) A person is injured and requires medical treatment beyond first aid;

(c) Damage to the vessel and other property totals $2,000 or more, or there is a complete loss of a vessel; or

(d) A person disappears from the vessel under circumstances that indicate death or injury.

Respondents: Operators of recreational vessels involved in accidents.

Frequency: On occasion.

Burden: The estimated burden is 3,250 hours a year.

Dated: April 21, 2003.

Nathaniel S. Heiner,

Acting Director of Information and Technology.

[FR Doc. 03–10289 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15026]

Health Information Privacy Program

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces provisions to allow for appropriate uses and disclosures of protected health information concerning members of the Armed Forces to assure the proper execution of the military mission. A similar notice has been published by the Department of Defense for members of the Armed Forces within their jurisdiction.

DATES: This notice is effective as of April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Chief, Clinical Support and Quality Assurance Division, Office of Health Services, Health and Safety Directorate, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, 202–267–6101.

SUPPLEMENTARY INFORMATION: Under 45 CFR part 164,''Standards for Privacy of Individually Identifiable Health Information,'' a covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission. However, the appropriate military authority must publish a notice in the **Federal Register** indicating the appropriate military command authorities and the purposes for which the protected health information may be used or disclosed. The Department of Defense has already published a notice with respect to members of the Armed Forces within the jurisdiction of that Department (68 FR 17357, April 9,

2003). The present notice implements those provisions with respect to members of the Coast Guard or members of the other Armed Forces falling within the Coast Guard's jurisdiction. Under 45 CFR 164.512(k)(1)(i), the Coast Guard has established the following provisions:

1. *General rule.* A covered entity (including a covered entity not part of or affiliated with the Department of Homeland Security) may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission.

2. *Appropriate Military Command Authorities.* For purposes of paragraph 1, appropriate Military Command authorities are the following:

2.1. All Commanders who exercise authority over an individual who is a member of the Armed Forces, or other persons designated by such a Commander to receive protected health information in order to carry out an activity under the authority of the Commander.

2.2. The Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Department of the Navy.

2.3. Any official delegated authority by the Secretary of Homeland Security to take an action designed to ensure the proper execution of the military mission.

3. *Purposes for which protected health information may be used or disclosed.* For purposes of paragraph 1, the purposes for which any and all of the protected health information of an individual who is a member of the Armed Forces may be used or disclosed are as follows:

3.1. To determine the member's fitness for duty, including but not limited to the member's compliance with standards and all other activities carried out under the authority of COMDTINST M1020.8C, ''Allowable Weight Standards for the Health and Well-being of Coast Guard Military Personnel;'' COMDTINST M1850.2C, ''Physical Disability Evaluation System;'' and similar requirements pertaining to fitness for duty.

3.2. To determine the member's fitness to perform any particular mission, assignment, order, or duty, including any actions required as a precondition to performance of such a mission, assignment, order, or duty.

3.3. To carry out activities under the authority of COMDTINST M6000.1B, ''The Coast Guard Medical Manual,'' chapter 12 (Occupational Medical Surveillance & Evaluation Program).

3.4. To report on casualties in any military operation or activity according to applicable Coast Guard regulations or procedures.

3.5. To carry out any other activity necessary to the proper execution of the mission of the Armed Forces.

Dated: April 23, 2003.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

[FR Doc. 03–10422 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–03–015]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, June 5, 2003, from 9 a.m. to 12 a.m. (noon). The meeting of the Committee's working groups will be held on Thursday, May 15, 2003, at 9 a.m. to 11 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard 5 working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of the committee in advance of the meeting should reach the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee meeting will be held at the Offices of the Houston Pilots Association, 8150 South Loop East, Houston, TX, telephone (713) 645–9620. The working groups meeting will be held at the Port of Houston Authority Seaman's Church Building, 111 East Loop North, Houston, TX, telephone (713) 670–2400. Written materials and requests to make presentations should be sent to Commanding Officer, VTS Houston-Galveston, Attn: LTJG Tobey, 9640 Clinton Drive, Floor 2, Houston, TX 77029. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Captain Kevin Cook, Executive Director of HOGANSAC, telephone (713) 671–5199, Commander Tom Marian, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Junior Grade Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5155, e-mail *katobey@vtshouston.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Duncan) (or the Committee Sponsor's representative), Executive Director (CAPT Cook) and Chairman (Tim Leitzell).

(2) Approval of the January 30, 2003, minutes.

(3) Old Business:

(a) Dredging projects.

(b) Electronic navigation.

(c) Aids to Navigation (AtoN) Knockdown Working Group.

(d) Mooring subcommittee report.

(e) Texas City Container Terminal Update.

(f) Recreational boating education initiative.

(g) Port Security Subcommittee report.

(h) Bridge Allision Prevention Working Group.

(4) New Business:

(a) Maritime Security Regulations Presentation.

(b) Hurricane Season Presentation.

(c) Galveston Bay System Design Team.

(d) Industry Expo.

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of

passing vessels on moored ships, recreational boater education issues, and port security. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished.

Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard 5 working days before the meeting at which the presentation will be made. If you would like to have written materials distributed to each member of the committee in advance of the meeting, you should send your request along with 15 copies of the materials to the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or assistant to the Executive Secretary as soon as possible.

Dated: April 17, 2003.

J.W. Stark,

Captain, Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 03–10291 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Comprehensive Conservation Plan for Seedskadee National Wildlife Refuge, Green River, WY

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that a Comprehensive Conservation Plan (CCP) and Summary for Seedskadee National Wildlife Refuge is available. This CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage this Refuge for the next 15 years.

ADDRESSES: A copy of the Plan or Summary may be obtained by writing to U.S. Fish and Wildlife Service, Seedskadee National Wildlife Refuge, P.O. Box 700, Green River, WY 82935; or download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Carol Damberg, Project Leader, U.S. Fish and Wildlife Service, Seedskadee National Wildlife Refuge, P.O. Box 700, Green River, WY 82935. Phone 307–875–2187; fax 307–875–4425; or e-mail: *carol_damberg@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Seedskadee National Wildlife Refuge (NWR), comprised of 26,382 acres, is long and narrow and is bisected throughout its length by the Green River, within the Upper Colorado River basin, in Sweetwater County, southwestern Wyoming. The Refuge is situated in a high desert plain where the native upland plant associations include sagebrush/grass, greasewood and shadscale, and bottomland plant associations include wet meadow riparian types with willows and cottonwoods dominating the overstory and riverine wetlands. Over 220 species, including some Federally listed species, of birds, mammals, reptiles, amphibians, and fishes utilize, occur at, or migrate through this Refuge. Seedskadee NWR was established in 1965 through the Colorado River Storage Project Act of 1956 and the principal purpose of the Refuge is to provide for the conservation, maintenance, and management of wildlife resources and its habitat including the development and improvement of such wildlife resources. Additionally, the Refuge is charged to protect the scenery, cultural resources, and other natural resources and provide for public use and enjoyment of compatible wildlife-dependent activities.

The availability of the Draft CCP and Environmental Assessment (EA) for 30-day public review and comment was announced in the **Federal Register** on October 31, 2001, in Volume 66, Number 211. The Draft CCP/EA identified and evaluated three alternatives for managing Seedskadee National Wildlife Refuge for the next 15 years. Alternative 1, the no action alternative, would have continued current management of the Refuge. Alternative 2 (preferred alternative) emphasizes restoration of riparian habitat functions and forest health, and restoration of historic wetland types within the Refuge. Alternative 3 would have maximized wildlife benefits by focusing on habitat protection and enhancement and de-emphasizing public use opportunities.

Based on this assessment and comments received, the preferred Alternative 2 was selected for implementation. The preferred alternative was selected because it best meets the purposes and goals of the Refuge, as well as the goals of the National Wildlife Refuge System. The preferred alternative will also benefit foraging raptors, marsh birds, migrating and nesting waterfowl, and neotropical migrants, as well as improvements in water quality from riparian habitat restoration. Modifications to existing vehicular routes will result in improved wildlife habitats and diversified visitor experiences. Cultural and historical resources will be interpreted and protected.

Dated: October 2, 2002.

Elliott Sutta,

Regional Director, Region 6, Denver, Colorado.

[FR Doc. 03–10335 Filed 4–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 28, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–070682

Applicant: Andrew K. Stahl, Dallas, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–070686

Applicant: Lacy J. Harber, Denison, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–070537

Applicant: Melvin L. Roschelle, Los Gatos, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–070521

Applicant: Columbus Zoo and Aquarium, Powell, OH.

The applicant requests a permit to import seven male and six female captive-born cheetahs (*Acinonyx jubatus*) from DeWildt Cheetah and Wildlife Centre, DeWildt, South Africa, for the purpose of enhancement of the species through captive breeding and conservation education.

PRT–063702

Applicant: S.O.S. Care, Inc., Valley Center, CA.

The applicant requests a permit to export and/or re-export carcasses from four tiger cat (*Leopardus tigrinus oncilla*), one margay (*Leopardus wiedii*), and two black-footed cat (*Felis nigripes*) to the National Museums of Scotland, Edinburgh, United Kingdom, for the purpose of enhancement of the species through conservation education and scientific research.

PRT–058835

Applicant: Harold S. Countryman, Chantilly, VA.

The applicant requests a permit to import one female gibbon (*Hylobates* spp.) from Seoul, Korea, for the purpose of enhancement of the survival of the species.

PRT–810465

Applicant: A.R. Galloway Exotic Ranch, Pearsall, TX.

The applicant requests amendment of an application previously published on March 17, 2003, for the renewal of a permit authorizing interstate and foreign commerce, export, and cull from their captive herds, to include excess male red lechwe (*Kobus leche*) for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a five year period. Permittee must apply for renewal annually.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or request for a hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–070596

Applicant: Marvin J. Winter, North Collins, NY.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

PRT–070536

Applicant: Robert E. Speegle, Garland, TX.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–070534

Applicant: Walter P. Mays, Zanesfield, OH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 18, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–10319 Filed 4–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Environmental Impact Report/ Environmental Impact Statement and Habitat Conservation Plan for the Natomas Basin, Sacramento and Sutter Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public of the availability of the Final Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) on the application by the City of Sacramento, Sutter County, and the Natomas Basin Conservancy (the ''applicants'') to the Fish and Wildlife Service (Service) for 50-year incidental take permits for 22 covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applications address the potential for ''take'' of covered species associated with various activities within the Natomas Basin, a 53,537-acre area in the Sacramento Region. These activities (the ''covered activities'') include 15,517 acres of planned land development, and development and management of mitigation lands. A conservation program to minimize and mitigate for the covered activities would be

implemented as described in the Natomas Basin Habitat Conservation Plan (Plan), which would be jointly implemented by the applicants.

This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act Regulation (40 CFR 1506.6).

DATES: A Record of Decision and permit decision will occur no sooner than 30 days from the date of publication of the Environmental Protection Agency's notice of the Final EIS in the **Federal Register**.

Availability of Documents: Copies of the Plan, Implementing Agreement and Final EIR/EIS are available for public inspection during regular business hours at the Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**), the City of Sacramento Planning and Building Department, 1231 I Street, Room 300, Sacramento, California; State Library, 914 Capitol Mall, Sacramento, California; Central Library, 828 I Street, Sacramento, California; South Natomas Library, 2901 Truxel Road, Sacramento, California; and Sutter County Library, 750 Forbes Avenue, Yuba City, California.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief, Division of Conservation Planning and Recovery, at the Sacramento Fish and Wildlife Office; 2800 Cottage Way; Sacramento, California; telephone (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under limited circumstances, the Service may issue permits to authorize ''incidental take'' of listed animal species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The applicants are seeking permits for take of the following Federally listed species: the threatened giant garter snake (*Thamnophis gigas*), threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), and the endangered vernal pool tadpole shrimp (*Lepidurus packardi*). The proposed permits would also authorize future incidental take of the currently unlisted Swainson's hawk (*Buteo swainsoni*), Aleutian Canada goose (*Branta canadensis leucopareia*), bank swallow (*Riparia riparia*), tricolored blackbird (*Agelaius tricolor*), northwestern pond turtle (*Clemmys marmorata marmorata*), white-faced ibis (*Plegadis chihi*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), California tiger salamander (*Ambystoma californiense*), western spadefoot toad (*Scaphiopus hammondii*), and midvalley fairy shrimp (*Branchinecta mesovallensis*). Several listed and unlisted plant species are also included on the permits. Take of listed plant species is not prohibited under the Act and cannot be authorized under a section 10 permit. The following plant species are proposed to be included on the permits in recognition of the conservation benefits provided for them under the plan. These species would also receive no surprise assurances under the Service's ''No Surprises'' regulation (63 FR 8859). The listed plant species proposed to be included on the permits are the threatened Colusa grass (*Neostapfia colusana*), endangered Sacramento Orcutt grass (*Orcuttia viscida*), and threatened slender Orcutt grass (*Orcuttia tenuis*). The following unlisted species are also proposed to be included on the permits: Boggs Lake hedge-hyssop (*Gratiaola heterosepala*), legenere (*Legenere limosa*), delta tule pea (*Lathyrus jepsonii* ssp. *jepsonii*) and Sanford's arrowhead (*Sagittaria sanfordii*), should any of these species become listed under the Act during the life of the permit. Collectively, the 22 listed and unlisted species are referred to as the ''covered species'' in the Plan.

The applicants propose to minimize and mitigate the effects to covered species associated with the covered activities by participating in the Plan. The purpose of this basin-wide conservation program is to promote biological conservation in conjunction with compatible economic and urban development within the Natomas Basin. Through the payment of development fees, one-half acre of mitigation land would be established for every acre of land developed within the various permit areas (a total of 7,759 acres of mitigation land to be acquired based on 15,517 acres of urban development). The mitigation land would be acquired and managed by the Natomas Basin Conservancy. In addition to the requirement to pay mitigation fees, the Plan also includes take avoidance and minimization measures.

On August 26, 2002, a notice was published in the **Federal Register** (67 FR 54819) announcing that the Service had received an application for an incidental take permit from the applicants based on the Plan and the availability of a Draft EIR/EIS for the application. The Draft EIR/EIS analyzed the potential environmental impacts that may result from the Federal action of authorizing incidental take anticipated to occur as a result of urban development within the permit areas of the plan and as a result of the Plan's conservation program. The EIR/EIS also identified various alternatives to the Plan. Twenty-four comment letters were received on the Draft EIR/EIS. A response to each comment received has been included in the Final EIR/EIS.

The Draft EIR/EIS considers four alternatives in addition to the Proposed Action and the No Action Alternative. Under the No Action Alternative, no section 10(a)(1)(B) permits would be issued for take of listed species associated with the covered activities; the applicants would address the potential for take of listed species on a case-by-case basis. The Increased Mitigation Ratio Alternative would double the extent of required mitigation land relative to the Plan. The Habitat-Based Mitigation Alternative would prescribe mitigation based on the value of habitat to be disturbed, rather than on a general ratio applied to all lands to be disturbed. The Reserve Zone Alternative would prioritize specific areas within the Natomas Basin for acquisition, in contrast to the general acquisition strategy described in the Plan. The Reduced Potential for Incidental Take Alternative would result in reduced urban development covered by the permits, and would therefore reduce the potential for incidental take associated with urban development.

The analysis provided in the Final EIR/EIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comments received on the Draft EIR/EIS; disclose the direct, indirect and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Dated: April 22, 2003.

Ken McDermond,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–10359 Filed 4–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement Regarding Proposed Issuance of an Incidental Take Permit to the Montana Department of Natural Resources and Conservation on Forested State Trust Lands in the State of Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement, Notice of Public Scoping Meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the Fish and Wildlife Service (Service) intends to prepare an Environmental Impact Statement (EIS). The EIS will address the proposed issuance of an incidental take permit (Permit) to allow take of species on State Trust lands administered by the Montana Department of Natural Resources and Conservation (DNRC) for activities primarily related to forest management.

The proposed Permit would authorize take of federally listed threatened and endangered species in accordance with the Endangered Species Act of 1973, as amended (ESA), and other species of concern should they become listed in the future. The DNRC intends to request a Permit that includes the following species:

Listed as threatened—gray wolf (*Canis lupus*), grizzly bear (*Ursus arctos horribilis*), bald eagle (*Haliaeetus leucocephalus*), Canada lynx (*Lynx canadensis*), bull trout (*Salvelinus confluentus*). Species of concern—wolverine (*Gulo gulo*), fisher (*Martes pennanti*), northern goshawk (*Accipiter gentilis*), black-backed woodpecker (*Picoides arcticus*), pileated woodpecker (*Dryocopus pileatus*), flammulated owl (*Otus flammeolus*), westslope cutthroat trout (*Oncorhynchus clarki lewisi*).

As required by the ESA, the DNRC is preparing a Habitat Conservation Plan (HCP) as part of an application for the Permit. The HCP would address the effects to species of DNRC's forest management activities on approximately 283,280 hectares (700,000 acres) of forested state school trust lands. The Service is furnishing this notice to advise other agencies and the public of our intentions and to announce the initiation of a 60-day scoping period during which other agencies and the public are invited to provide written comments on the scope of the issues and potential alternatives to be included in the EIS.

In compliance with their responsibilities pursuant to the NEPA and its implementing regulations, 40 CFR 1500.0 *et seq.*, and the Montana Environmental Policy Act (MEPA), Mont. Code Ann. 75–1–101 through 75–1–324, and its DNRC implementing regulations, ARM 36.2.501 through 36.2.611, the DNRC and the Service jointly announce their intent to prepare an EIS for the proposed action of reviewing and approving the proposed HCP and issuing an incidental take permit. The DNRC and the Service also jointly announce their intent to hold scoping meetings, the date, time, and place of which are provided in this notice below. This notice is provided pursuant to section10(c) of the ESA and NEPA implementing regulations, 40 CFR 1506.6.

DATES: Scoping will commence as of the date of publication of this Notice in the **Federal Register**. Written comments on the scope of the proposed action, the approval of a HCP, and the concomitant issuance of the Permit should be received on or before June 27, 2003. Four scoping meetings will be held, on the following dates—April 28, 29, and May 12, 13, 2003. Each meeting will run from 6:30 p.m. until 9:30 p.m. The DNRC and the Service will use an open-house format for the meetings, allowing interested members of the public to attend at any point during the meetings to gather information and/or provide comments.

ADDRESSES: Meeting locations are scheduled as follows—April 28, 2003, Montana Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana; April 29, 2003, Bozeman Public Library, 220 East Lamme, Bozeman, Montana; May 12, 2003, Montana Fish Wildlife and Parks Region 1 Headquarters, 490 North Meridian Road, Kalispell, Montana; and May 13, 2003, City Fire Station Number Four, 3011 Latimer Street, Missoula, Montana. Written comments regarding the proposed action and the proposed EIS should be addressed to Tim Bodurtha, Supervisor, U.S. Fish and Wildlife Service Ecological Services, 780 Creston Hatchery Road, Kalispell, Montana 59901, or Pete VanSickle, DNRC Forest Management Bureau Chief, 2705 Spurgin Road, Missoula, Montana 59804.

FOR FURTHER INFORMATION CONTACT: Tim Bodurtha, U.S. Fish and Wildlife Service, Ecological Services Field Office, 780 Creston Hatchery Road, Kalispell, Montana 59901, telephone (406) 758–6882, facsimile (406) 758–6877, e-mail: *tim_bodurtha@fws.gov;* Mike O'Herron, DNRC EIS Planner, 2705 Spurgin Road, Missoula, Montana 59804, telephone (406) 542–4300, facsimile (406) 542–4217, e-mail: *moherron@state.mt.us*; Lowell Whitney, DNRC/FWS Cooperative Project Coordinator, 2705 Spurgin Road, Missoula, Montana 59804, telephone (406) 542–4300, facsimile (406) 542–4217, e-mail: *lwhitney@state.mt.us.*

Reasonable Accommodation: Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Tim Bodurtha, Mike O'Herron, or Lowell Whitney. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing. Information regarding the proposed action is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: Pursuant to section 9 of the ESA and its implementing regulations, ''take'' of threatened and endangered species is prohibited. The term ''take'' is defined under the ESA to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is defined by the Service to include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.

The Service, under certain circumstances, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened or endangered species are found at 50 CFR 17.22, and 50 CFR 17.32.

Background

The DNRC manages approximately 283,280 hectares (700,000 acres) of forested State school trust lands in Montana. These lands are currently managed under the State Forest Land Management Rules (hereafter ''Rules'') formally adopted on March 13, 2003. The Rules provide the guiding framework for proposing, developing and analyzing site-specific projects. The management direction of the Rules is based on the following criteria—(1) monetary return to the school trusts, (2) maintenance of biodiversity and long term health of the forest resource, and (3) effects on the biological and physical environment. Included in the Rules are management standards that promote an appropriate mix of forest stand structures and compositions to support diverse wildlife habitats on a landscape scale, as well as an approach for threatened, endangered, and sensitive species through management of single

species' (fine filter) habitat requirements.

Some of DNRC's forest management activities have the potential to impact species subject to protection under the ESA. Section 10(a)(2)(B) of the ESA contains provisions for the issuance of incidental take permits to non-Federal landowners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. An applicant for a Permit under section 10(a)(2)(B) of the ESA must prepare and submit to the Service for approval a Conservation Plan (commonly known as a HCP) containing a strategy for minimizing and mitigating, to the maximum extent practicable, the impacts of the take on listed species associated with the proposed activities. The applicant also must ensure that adequate funding for the Conservation Plan will be provided.

The DNRC initiated discussions with the Service regarding the development of a HCP and permit issuance for their forest management activities. During this process DNRC intends to employ the Service's technical assistance. The goals of DNRC's HCP are:

(1) To the maximum extent practicable, minimize and mitigate the impacts of DNRC's forest management activities on all species covered by the HCP.

(2) Provide habitat conditions that are necessary and advisable to conserve and enhance species populations, and allow for the long-term survival of species covered by the HCP, in a manner consistent with DNRC's Trust mandate. To the extent unlisted species are covered by the HCP, DNRC's goal is to address the listing factors under its control such that the listing of such species would be unnecessary, assuming the measures in the HCP were implemented by similarly situated landowners throughout a species' range.

(3) Provide DNRC with predictability and flexibility to manage its forest lands economically, consistent with its statutory mandate to generate revenue for Trust beneficiaries.

As currently envisioned, the HCP would involve a multi-year agreement covering approximately 283,280 hectares (700,000 acres) of blocked and scattered school trust lands across the State of Montana. In addition, the HCP might include an additional approximate of 121,406 hectares (300,000 acres) of non-forested parcels that could involve access associated with timber management activities on forested lands. The DNRC is currently considering an agreement term of 50 years. The Service specifically requests comment on the term of a permit.

The DNRC has indicated that the HCP will adopt a multi-species approach for several listed and non-listed terrestrial and aquatic species. The HCP would be integrated into an existing biodiversity management approach for State school trust lands. The approach would apply to all lands identified in the planning area.

The intent of employing a multi-species habitat-based approach would be to address biological concerns associated with listed and sensitive terrestrial and aquatic species in the planning area and minimize threats to their habitat associated with forest management activities. The intent of the approach would be to address habitat concerns for the species of interest through incorporation of overlapping mitigation strategies that may collectively provide greater conservation benefits and management flexibility. Species initially considered for inclusion in the HCP include listed species—(1) grizzly bear (*Ursus arctos horribilis*); (2) gray wolf (*Canis lupus*); (3) bald eagle (*Haliaeetus leucocephalus*); (4) Canada lynx (*Lynx canadensis*); (5) bull trout (*Salvelinus confluentus*); and unlisted species—(6) wolverine (*Gulo gulo*); (7) fisher (*Martes pennanti*); (8) northern goshawk (*Accipiter gentilis*); (9) black-backed woodpecker (*Picoides arcticus*); (10) pileated woodpecker (*Dryocopus pileatus*); (11) flammulated owl (*Otus flammeolus*); and (12) westslope cutthroat trout (*Oncorhynchus clarki lewisi*). Species may be added to or removed from the initial list of covered species as a result of the analysis. The Service specifically requests comment on the multi-species habitat-based approach to plan development, and the possibility of inclusion of these and other species in the plan and permit.

A key assumption for species protection in the HCP is that actions taken to address the biological needs of listed wide-ranging terrestrial and aquatic species would be beneficial to other non-listed species dependent on associated habitats. The conservation needs of all species to be included in the HCP would be fully and independently identified and analyzed, and any additional actions necessary for their conservation would be included in the HCP. The Service will evaluate the conservation needs of the identified listed and non-listed species throughout their ranges to ensure that conservation measures agreed to in this planning process are adequate to contribute meaningfully to their protection overall.

As a component of this planning process, the Service seeks to identify habitat conditions and land management actions on lands adjacent to those owned by the State of Montana that are administered by DNRC. In many cases, nearby or adjacent lands may be managed by the Department of Agriculture Forest Service, and Department of Interior Bureau of Land Management. In such cases, the Service will work with the Forest Service and Bureau of Land Management under existing authorities to develop and implement management actions that are complementary to those developed for lands administered by DNRC. This approach to habitat conservation planning will help ensure that adequate conservation of habitat for target species is achieved in the planning area.

Management activities undertaken by DNRC that might impact species covered under the HCP include activities associated with forest management such as, but not limited, to timber harvest, salvage harvest, thinning, control and disposal of slash, prescribed burning, site preparation, reforestation, weed control, road construction, road maintenance, forest inventory, monitoring, grazing of classified forest lands, gravel quarrying for the purposes of logging and road construction, pesticide/herbicide application, fertilization, forest fire suppression, electronic facility sites, and other activities common to commercial forest management.

For the proposed HCP, the DNRC would develop specific conservation measures to be implemented under Rules following the Montana Administrative Procedure Act and Montana Environmental Policy Act as appropriate. Measures would likely be developed under the following general categories:

1. *Biodiversity and Silviculture.* Alteration of forest vegetation is recognized as having the potential to impact terrestrial and aquatic species in various ways. Conservation measures would be developed to maintain biological diversity and species conservation, while maintaining the ability to generate reasonable and legitimate returns for school trust beneficiaries. To accomplish this the following considerations would be among those incorporated into developing conservation strategies for species included in the HCP—stand structures, compositions, stand age diversity, salvage, snags, downed wood, patch conditions, fragmentation, thinning, cover needs, and natural disturbance processes.

2. *Road Management.* Roads are recognized as having the potential to impact some terrestrial and aquatic species in various ways. Conservation measures would be developed considering (but not limited to) the following factors—human disturbance associated with road access, seasonal security, road construction requirements, road maintenance, road amounts, road locations, sedimentation/erosion potential, legacy management, and fish passage.

3. *Watershed/Riparian Area Management.* Alteration of forest vegetation associated with watershed function and riparian habitat is recognized as having the potential to impact some terrestrial and aquatic species in various ways. Conservation measures would be developed to regulation activities that could potentially impact watersheds and riparian areas. Such measures would include consideration of the following—water quality, stream shade, structure, woody debris recruitment, and riparian vegetation management.

4. *Grazing on Classified Forest Lands.* Livestock grazing in forested landscapes is recognized as having the potential to impact some terrestrial and aquatic species in various ways. Conservation measures would be developed to address impacts associated with riparian and upland rangelands on classified forest lands resulting from grazing. Such measures would include consideration of the following—condition of riparian vegetation, range condition, stream bank disturbance, season of use, browse utilization, plant species composition, and erosion.

5. *Weed Management.* Herbaceous weed species are recognized as having the potential to impact some terrestrial species in various ways. Conservation measures would be developed to address impacts associated with weed spread and control. Such measures would include consideration of the following—integrated weed management, education, biological controls, herbicide application, re-vegetation, minimization of disturbance, and prevention strategies.

6. *Land Use Planning.* The DNRC administers property in the planning area that may ultimately have long-term uses other than forestry. The DNRC also may buy, sell, or trade land in the planning area. Land use planning measures would be developed to mitigate the impacts of future development or adjustment of land ownership.

7. *Administration and Implementation.* The DNRC would initiate a program to track significant elements of the HCP and develop a program to inform and educate contractors and employees on standards and practices to be implemented.

As currently envisioned, the HCP would incorporate active adaptive management features, including terrestrial and watershed analysis. Research and monitoring would help determine the effectiveness of the HCP, validate models used to develop the HCP, and provide the basic information used to implement ''mid-course corrections'' if necessary.

The Service will conduct an environmental review of the proposed HCP and prepare an EIS. The environmental review will analyze the proposal as well as a full range of reasonable alternatives and the associated impacts of each. The Service and the DNRC are currently in the process of developing alternatives for analysis. The scoping process will be used to identify reasonable alternatives in addition to the No Action alternative.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA (42 U.S.C. 4321 *et seq.*), Council of Environmental Quality regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the Service for compliance with those regulations. It is estimated that the draft EIS will be available for public review during the second quarter of calendar year 2004.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to the proposed action are addressed and that all significant issues are identified. Comments or questions concerning this proposed action and the environmental review should be directed to the Service (*see* **ADDRESSES**).

Dated: April 4, 2003.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–10333 Filed 4–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–17286]

Public Land Order No. 7562; Revocation of Public Land Order No. 5386; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Public Land Order in it entirety as it affects approximately 40,760 acres of public land withdrawn to protect scenic and primitive values. The land is located within the boundary of the Powderhorn Wilderness Area and the withdrawal is no longer needed.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215–7076, 303–239–3706.

SUPPLEMENTARY INFORMATION: The land is located within the Powderhorn Wilderness Area and will remain closed to surface entry, mining, and mineral leasing.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 5386 which withdrew approximately 40,760 acres of public land to protect scenic and primitive values is hereby revoked in its entirety.

Dated: April 8, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–10317 Filed 4–25–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–ET; UTU–79769]

Public Land Order No. 7563; Transfer of Jurisdiction, Development of Air Force Morale, Welfare, and Recreation Facility; Utah

AGENCY: Bureau of Land Management.

ACTION: Public Land Order.

SUMMARY: This order transfers administrative jurisdiction of 26.61 acres of public land near Park City, Utah from the Secretary of the Interior, Bureau of Land Management to the Secretary of the Air Force for development as a morale, welfare, and recreation facility. This transfer of jurisdiction is authorized by section 2862 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107).

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Nelson, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119, 801–977–4355.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994) and section 2862 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107), it is ordered as follows:

1. Subject to valid existing rights, the administrative jurisdiction of the following described land is hereby transferred to the Secretary of the Air Force for development of a morale, welfare, and recreation facility:

Salt Lake Meridian

T. 2 S., R. 4 E.,
Sec. 3, lots 8 and 10.

The area described contains 26.61 acres in Summit County.

2. Future use and disposition of the land described in Paragraph 1 shall be in accordance with the provisions of section 2862 of Public Law 107–107.

Dated: April 8, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–10318 Filed 4–25–03; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of Restricted Joint Bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1,2003, through October 31, 2003. This notice updates the List of Restricted Joint Bidders published in the April 11, 2003, **Federal Register**.

Group I.
Exxon Mobil Corporation.
ExxonMobil Exploration Company.
Group II.
Shell Oil Company.
Shell Offshore Inc.
SWEPI LP.
Shell Frontier Oil & Gas Inc.
Shell Consolidated Energy Resources Inc.
Shell Land & Energy Company.
Shell Onshore Ventures Inc.
Shell Offshore Properties and Capital II, Inc.
Shell Rocky Mountain Production LLC.
Shell Gulf of Mexico Inc.
Group III.
BP American Production Company.
BP Exploration & Production Inc.
BP Exploration (Alaska) Inc.
Group IV.
TotalFinaElf E&P USA, Inc.
Group V.
ChevronTexaco Corporation.
Chevron U.S.A. Inc.
Texaco Inc.
Texaco Exploration and Production Inc.

Dated: April 23, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 03–10330 Filed 4–25–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; Limited Permittee Transaction Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days''. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Megan Morehouse, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* business or other for-profit. The purpose of this collection is to enable ATF to determine whether limited permittees have exceeded the number of receipts of explosive materials they are allowed and to determine the eligibility of such persons to purchase explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 400 respondents will complete up to six forms per year with each form taking 20 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 800 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite

1600, 601 D Street NW., Washington, DC 20530.

Dated: April 23, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–10411 Filed 4–25–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 25, 2002, and published in the **Federal Register** on November 7, 2002, (67 FR 67870), Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to manufacture bulk product and finished dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Abbott Laboratories, DBA Knoll Pharmaceuticals, to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Abbott Laboratories, DBA Knoll Pharmaceuticals, to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 7, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–10397 Filed 4–25–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Notice of Charter Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2), and title 41, Code of Federal Regulations, Section 101–6.1015, with the concurrence of the Attorney General, I have determined that the continuance of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) is in the public interest. In connection with the performance of duties imposed upon the FBI by law, I hereby give notice of the renewal of the APB Charter, effective January 23, 2003.

The APB provides me with general policy recommendations with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The APB includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of Federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations (*i.e.,* the American Probation and Parole Association, American Society of Crime Laboratory Directors, International Association of Chiefs of Police, National District Attorneys Association, National Sheriffs' Association, Major Cities Chiefs Association, Major County Sheriffs' Association, and a representative from a national professional association representing the courts or court administrators nominated by the conference of Chief Justices). All members of the APB are appointed by the FBI Director.

The APB functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed in accordance with the provisions of the Act.

Dated: March 21, 2003.

Robert S. Mueller, III,

Director.

[FR Doc. 03–10358 Filed 4–25–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 15, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 12035, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title: Main Fan Maintenance Record.

Type of Review: Extension of a currently approved collection.

OMB Number: 1219–0012.

Frequency: On occasion.

Type of Response: Recordkeeping.
Affected Public: Business or other for-profit.
Number of Respondent: 25.
Total Annual Responses: 8.
Estimated Time Per Respondent: 1.5 Hours.
Total Annual Burden: 12 Hours.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: 30 CFR 57.8525 requires Mine Operators to keep main fans maintained according to either manufacturers' recommendations or a written periodic schedule adopted by the mine operator. The main fans are the major life support system to the entire underground mining operation. The airflow provided by the fans assures fresh air to the miners at working faces, reduces the chance of the air reaching threshold limit values of airborne contaminants, and dilutes accumulations of possible explosive gases.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–10337 Filed 4–25–03; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 22, 2003.

The Department of Labor (DOL) has submitted the following public information colleciton requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Employment Standards Administration (ESA).
Title: Request for Earnings Information.
Type of Review: Extension of a currently approved collection.
OMB Number: 1215–0112.
Frequency: On occasion.
Type of Response: Reporting.
Affected Public: Individuals or households.
Number of Respondents: 1,600.
Annual Responses: 1,600.
Estimated Time Per Response: 15 minutes.
Total Burden Hours: 400.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The Form LS–426 gathers information regarding an employee's average weekly wage. This information is needed for determination of compensation benefits in accordance with Section 10 of the Longshore and Harbors Workers' Compensation Act.

Agency: Employment Standards Administration (ESA).
Title: The Remedial Education Provisions of the Fair Labor Standards Act.
Type of Review: Extension of a currently approved collection.
OMB Number: 1215–0175.
Frequency: On occasion.
Type of Response: Recordkeeping.
Affected Public: Business or other for profit; Not-for-profit institutions; State, Local, or Tribal Government.
Number of Respondents: 15,000.
Annual Responses: 30,000.
Estimated Time Per Response: 1 minute per week for 10 weeks (10 minutes per employee).
Total Burden Hours: 5,000.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The recordkeeping requirements for employers utilizing the partial overtime for remedial education are necessary to ensure employees are paid in compliance with the remedial education provisions of the Fair Labor Standards Act.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 03–10338 Filed 4–25–03; 8:45 am]
BILLING CODE 4510–CF–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,078]

Adecco Staffing Services Workers, Employed at Celestica Corporation, Midwest Campus, Rochester, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 6, 2003 in response to a worker petition which was filed on behalf of workers at Adecco Staffing Services Workers working at Celestica Corporation, Midwest Campus, Rochester, Minnesota.

An active certification covering the petitioning group of workers is already in effect (TA–W–50,528, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 8th day of April 2003.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 03–10350 Filed 4–25–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51, 092]

Adecco, North American, LLC, Fort Worth, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 7, 2003 in response to a worker petition which was filed on behalf of workers at Adecco, North American, LLC, Fort Worth, Texas.

An active certification covering the petitioning group of workers is already

in effect (TA–W–41,716, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10348 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51, 243]

Alcatel USA Marketing, Inc., Jupiter 1, Plano, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 20, 2003 in response to a petition filed on behalf of workers at Alcatel USA Marketing, Inc., Jupiter 1, Plano, Texas.

The petitioning worker group is covered by an active certification issued on March 7, 2003 and remains in effect (TA–W–50,158). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 16th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10343 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51, 479]

Andrews Wire Company, Andrews, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 11, 2003 in response to a worker petition filed by a company official on behalf of workers at Andrews Wire Company, Andrews, South Carolina.

This worker group, in its entirety, is under a certification for trade adjustment assistance benefits. That certification is valid until June 11, 2004. The valid certification was issued for Insteel Wire Products Company. The worker group under that name is the same as that of Andrews Wire Company, the new name for the subject firm. Thus, this investigation serves no purpose and is being terminated.

Signed at Washington, DC this 14th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10347 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,301]

Edgcomb Metals Roseville, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2003, in response to a petition filed by the United Steelworkers of America, District 2 on behalf of workers at Edgcomb Metals, Roseville, Michigan.

The union official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 7th day of April 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10357 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,412]

Express Personnel Services, Portland, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as mended, an investigation was initiated on April 3, 2003 in response to a worker petition filed by a company official on behalf of workers at Express Personnel Services, Portland, Maine.

The petitioning group of workers is covered by an active certification (TA–W–50,031 amended) which remains in effect.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 10th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10340 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,360]

Fishing Vessel (F/V) Lonny A., Ekwok, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 28, 2003 in response to a petition filed by a company official on behalf of workers of Fishing Vessel (F/V) Lonny A., State of Alaska Commercial Fisheries Entry Commission Permit # S03T55836U, Ekwok, Alaska. The workers of the subject group produce fresh and chilled salmon.

The Department issued a negative determination applicable to the petitioning group of workers on March 25, 2003 (TA–W–51,261). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10355 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,932]

Fishing Vessel Miss Synova, Metlakatla, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2003 in response to a petition filed by a company official on behalf of workers at Fishing Vessel Miss Synova, Metlakatla, Alaska.

The Department has been unable to locate the company official to obtain the

information necessary to issue a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10353 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,837]

George Wilson, Anchorage, AK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2003 in response to a petition filed by a company official on behalf of workers at George Wilson, Anchorage, Alaska.

The Department has been unable to locate the company official to obtain the information necessary to issue a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 8th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10352 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,639]

Maya Kanulie, Togiak, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2003 in response to a petition filed by a company official on behalf of workers at Maya Kanulie, Togiak, Alaska.

The Department has been unable to locate the company official to obtain the information necessary to issue a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation is terminated.

Signed at Washington, DC, this 9th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10354 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,338]

National Refractories and Minerals Corporation, Headquarters of National Refractories Holding Co., Livermore, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2003 in response to a worker petition filed by a company official on behalf of workers at National Refractories and Minerals Corporation, Headquarters of National Refractories Holding Co., Livermore, California.

The petitioning worker group is covered by a certification issued on April 16, 2003, TA–W–51,337.

Consequently, further investigation in this case would serve no purpose, and the petition has been terminated.

Signed at Washington, DC, this 16th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10344 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,224]

Olin Corporation, Olin Brass Indianapolis Plant, Indianapolis, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 19, 2003 in response to a petition filed by United Steelworkers of America (USWA), Local 7, Sub District 3, on behalf of workers at Olin Corporation, Olin Brass Indianapolis Plant, Indianapolis, Indiana.

The petitioning group of workers is covered by an active certification issued on May 6, 2002, and remains in effect (TA–W–40,433). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10342 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51, 364]

Raytheon Aircraft, Wichita, KS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 13, 2003, in response to a worker petition filed by the International Association of Machinists and Aerospace Workers, District Lodge 70 on behalf of workers at Raytheon Aircraft, Wichita, Kansas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–51,049). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10345 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,835]

Reliant Fastener, Rock Falls, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 10, 2003, in response to a worker petition filed by the United Steelworkers of America, Local 63 Unit 01, on behalf of workers at Reliant Fastener, Rock Falls, Illinois.

The petitioning group of workers is covered by an active amended certification issued on February 5, 2003,

and which remains in effect (TA–W–50,001A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10356 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,488]

Sanmina-SCI, Lewisburg, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 6, 2003 in response to a worker petition which was filed on behalf of workers at Sanmina-SCI, Lewisburg, Pennsylvania.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,182, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of April 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10341 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,473]

Shephard Clothing Company, Inc., New Bedford, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 11, 2003, in response to a worker petition that was filed on behalf of workers at Shepard Clothing Company, Inc., New Bedford, Massachusetts. All workers at the subject firm were certified on June 11, 2001 (TA–W–38,955). That certification expires two years from date of certification. All employees were laid off prior to the expiration of that TAA certification.

Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 14th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10346 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,905]

Shrimping Vessel (S/V) Vagabond, Inglis, FL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 14, 2003 in response to a petition filed by a company official on behalf of workers at shrimping vessel Vagabond, Inglis, Florida.

The Department has been unable to locate an official of the company to obtain the information necessary to issue a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10351 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6317]

General Cable Corp., Biccgeneral Cable Industries, Inc., Outside Voice and Data Telecommunications Div., Bonham, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 21, 2002, applicable to workers of General Cable Corp., Outside Voice and Data Telecommunications Div., Bonham, Texas. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67421).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of copper telephone cable.

New information shows that for approximately six months, General Cable Corp., Outside Voice and Data Telecommunications Div. was operating under the name of Biccgeneral Cable Industries, Inc. and that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Biccgeneral Cable Industries, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of General Cable Corp., Outside Voice and Data Telecommunications Div. affected by increased imports from Mexico.

The amended notice applicable to NAFTA–06317 is hereby issued as follows:

''All workers of General Cable Corp., Biccgeneral Cable Industries, Inc., Outside Voice and Data Telecommunications Div., Bonham, Texas, who became totally or partially separated from employment on or after June 24, 2001, through October 21, 2004, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.''

Signed in Washington, DC, this 9th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10339 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7627]

Power One, Boston, MA; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on February 19, 2003, for all workers of Power One located in Boston, Massachusetts. The notice was published in the **Federal Register** on March 10, 2003 (68 FR 11410).

The Department, at the request of the State agency, reviewed the certification

for workers of Power One in Boston, Massachusetts. Findings show that workers of the subject firm produced DC/DC power supplies.

The certification review revealed that workers of Power One are covered by an existing certification, NAFTA–5138, issued on October 4, 2001. While that certification noted that Power One workers were located in Allston, Massachusetts, the Department has learned that Allston is used synonymously with Boston.

Since the workers of Power One, located in Boston, Massachusetts, also known as Allston, Massachusetts, are covered by an existing certification, the continuation of this certification would serve no purpose and the certification has been terminated.

Signed at Washington, DC, this 13th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10349 Filed 4–25–03; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting #53

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on Thursday, May 22, 2003, from 9:30 a.m. to approximately 3:35 p.m. The meeting will be held at the Inn at Loretto, 211 Santa Fe Trail, Santa Fe, New Mexico.

The Committee meeting will begin at 9 a.m. with a welcome, introductions, announcements and discussion led by Adair Margo, Committee Chairman. This will be followed by speakers on ''El Camino Real as History and Metaphor.'' After a break, there will be a discussion of Cultural Exchanges between Mexico and the United States. The meeting will adjourn after Closing Remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c) (4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Charlotte Hoffman of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Hoffman.

If you need special accommodations due to a disability, please contact Ms. Hoffman through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: April 22, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–10370 Filed 4–25–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

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 Combined Arts Advisory Panel, Local Arts Agencies section (Creativity and Services to Arts Organizations and Artists categories) to the National Council on the Arts will be held on May 21–22, 2003, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 10:15 a.m. to 12 p.m. on May 22nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on May 21st and from 9 a.m. to 10:15 a.m. and 12 p.m. to 2 p.m. on May 22nd, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 22, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–10372 Filed 4–25–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Fellowships Advisory Panel

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 Fellowships Advisory Panel, Literature section (Translation Fellowships category) will be held from 9 a.m.—6:30 p.m. on Tuesday, June 3, 2003, in Room 714 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: April 22, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–10371 Filed 4–25–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (#1119).

Date and Time: May 14, 8:30 a.m.–6 p.m.; May 15, 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Sheila R. Tyndell, Staff Assistant, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–292–8601.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Discussion of FY 2003 programs of the Directorate for Education and Human Resources and planning for future activities.

Dated: April 22, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–10314 Filed 4–25–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–15 and 50–219; License No. DPR–16]

Amergen Energy Company, LLC., Oyster Creek Generating Station; Notice of Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a petition dated June 21, 2002, filed by Ms. Edith Gbur of the Jersey Shore Nuclear Watch, *et al.*, hereinafter referred to as the ''petitioners.'' The Petition concerns the operation of AmerGen Energy Company's Oyster Creek Independent Spent Fuel Storage Installation (ISFSI). The petitioners requested NRC to take the following actions:

1. Suspend Certificate of Compliance (CoC) No. 1004 for the NUHOMS dry spent fuel storage system.
2. Halt transfer of spent fuel from wet pool storage to dry storage modules at the Oyster Creek Generating Station (Oyster Creek).
3. Conduct a site-specific public hearing before independent judges on the dry cask licensing proceeding for Oyster Creek and other nuclear issues identified in the petition.
4. Make a determination of the NUHOMS' capability to withstand terrorist attacks similar to those on September 11, 2001.
5. Develop criteria and regulations to empirically verify dry storage system capability and to apply those requirements to Oyster Creek.
6. Halt loading until a thorough inspection of the total system has been completed to verify that the NUHOMS modules were fabricated properly and will last the design life.

As the basis for the request, the petitioners presented safety concerns in the following areas:

1. Location of the Oyster Creek independent spent fuel storage installation (ISFSI) relative to local roads and communities;
2. Ability of the NUHOMS dry spent fuel storage system to survive a sabotage attack;
3. Adequacy of Oyster Creek security measures for fuel-handling activities;
4. Adequacy of the Oyster Creek emergency evacuation plan; and
5. Quality of the NUHOMS systems planned for use at Oyster Creek.

The petitioners addressed the NRC Petition Review Board in a teleconference on July 18, 2002, to clarify the bases for the petition. The meeting was held to provide the petitioners and licensee an opportunity to present additional information and to clarify issues raised in the petition. Subsequently, the petitioners sent NRC a series of form letters signed by various members of the public in August 2002, to demonstrate additional support for the petition. On November 8, 2002, NRC received additional form letters forwarded by the petitioners. The NRC sent a copy of the proposed Director's Decision to the petitioners and AmerGen for comment on December 10, 2002. The petitioners responded with comments by e-mails dated February 6, March 5, 10, and 19, 2003. The comments and the staff responses to them are available electronically through NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* under docket number 07200015.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the six requests of the petitioner are denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD–03–01], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the NRC's Web site (*http://www.nrc.gov*) on the World Wide Web, under the ''Public Involvement'' icon.

The Director's Decision addressed the petitioner's requested actions as follows:

1. Suspend CoC No. 1004 for the NUHOMS dry spent fuel storage system, halt transfer of spent fuel from wet pool storage to dry storage modules at Oyster Creek, and halt loading of all NUHOMS systems until a thorough inspection has been completed to verify compliance with fabrication requirements.

The NRC staff found no safety basis for NRC immediately suspending CoC No. 1004 and prohibiting transfer of spent fuel from wet pool storage to dry storage modules at Oyster Creek, but would continue to consider the request as our safety review proceeded. Based on the staff's safety review, as detailed in the Director's Decision, NRC found no basis for suspending CoC No. 1004 nor disallowing transfer of spent fuel from wet storage to dry storage at Oyster Creek.

2. Conduct a site-specific public hearing before independent judges on the dry cask licensing proceeding for Oyster Creek and other nuclear issues identified in the petition.

Based on the staff's review, as detailed in the Director's Decision, NRC found no basis to conduct a hearing on the Oyster Creek ISFSI activities nor for the other concerns identified in the petition.

3. Make a determination of the NUHOMS's capability to withstand terrorist attacks similar to those on September 11, 2001.

The NRC, other Federal, State, and local agencies, and the nuclear industry has implemented a significant number of measures to prevent and mitigate terrorist attacks similar to those on September 11, 2001. These measures are summarized in the Director's Decision. In addition, although dry spent fuel storage systems are not specifically assessed as to their ability to withstand

the impact of a commercial aircraft, the design of the storage systems must have the capability to provide for the protection of public health and safety against naturally occurring events. This includes flying debris from tornadoes or hurricanes, and seismic events. To provide this level of protection, the design must be robust. This robustness prevents the dispersion of radioactive materials under analyzed accident conditions. The inherent robustness of the design will limit the release of radioactive materials under a terrorist attack, and continue to protect public health and safety.

4. Develop criteria and regulations to empirically verify dry storage system capability and to apply those requirements to the Oyster Creek storage design prior to approval.

The NRC technical review includes evaluating storage design characteristics such as structural, thermal, radiation shielding, radioactive material confinement, nuclear criticality, material interactions, and overall performance. As discussed in the Director's Decision, the NUHOMS design has been analyzed using industry standards for material characteristics based on empirical data for design life performance. Dry storage systems are evaluated using conservative analysis and assumptions to store the spent fuel safely for a design life of 20 years, at a minimum.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 17th day of April, 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–10394 Filed 4–25–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Postal Rate Commission.

TIME AND DATE: Daily, or as needed, from Wednesday, April 30, 2003, at 2:30 p.m., through May 22, 2003.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Recommendations in Docket No. MC2002–2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One Services, Inc.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, 202–789–6820.

Dated: April 24, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–10480 Filed 4–24–03; 10:22 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26008; 812–12782]

SEI Index Funds, et al.; Notice of Application

April 22, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: The requested order would permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: SEI Index Funds, SEI Tax Exempt Trust, SEI Liquid Asset Trust, SEI Daily Income Trust, SEI Institutional Managed Trust, SEI Institutional International Trust, SEI Institutional Investments Trust, SEI Insurance Products Trust and SEI Asset Allocation Trust (collectively, the ''Trusts''), on behalf of their portfolios (collectively, the ''Funds''), and SEI Investments Management Corporation (''SIMC'').

FILING DATES: The application was filed on February 15, 2002, and amended on April 15, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 May 16, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Applicants, c/o Leslie Cruz, Esq., Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Trust is a Massachusetts business trust registered under the Act as an open-end management investment company and currently consists of multiple Funds. Certain Funds hold themselves out to the public as money market funds and comply with the requirements of rule 2a–7 under the Act (together with any future money market Funds, the ''Money Market Funds'').[1]

[1] Applicants request that the relief also apply to any future Fund and any other registered open-end management investment company or series thereof (i) advised by SIMC or any successor or any person controlling, controlled by or under common control with SIMC (together, the ''Advisers'') or for which SEI Investment Distribution Co. (''SIDCo.'') or any successor or any person controlling, controlled by or under common control with SIDCo, serves as principal underwriter or for which SEI Investments Fund Management (''SEI Management'') or any successor or any person controlling, controlled by or under common control with SEI Management serves as the administrator, and (ii) which is part of the ''same group of investment companies,'' as the term is defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts (collectively, the ''Future

Continued

The remaining Funds are non-money market funds (''Investing Funds'').

2. SIMC, a wholly-owned subsidiary of SEI Investment Company (''SEI''), is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each Investing Fund except for the Bond Index Fund, a series of the SEI Index Funds; and the Corporate Daily Income Fund, Treasury Securities Daily Income Fund, Short Duration Government Fund, Intermediate Duration Government Fund and GNMA Fund, each a series of the SEI Daily Income Trust (collectively the ''Bond Funds''). Mellon Bond Associates, LLP (''Mellon'') serves as investment adviser to the Bond Index Fund, Wellington Management Company, LLP (''Wellington'') serves as investment adviser to the Bond Funds and Weiss, Peck & Greer, L.L.C. (''Weiss'') serves as the investment adviser to the California Tax Exempt Fund, Tax Free Fund, Institutional Tax Free Fund, Pennsylvania Tax Free Fund and Ohio Tax-Free Money Market Fund. Mellon, Wellington and Weiss are each registered as investment advisers under the Advisers Act. SIMC serves as investment adviser to the remaining Money Market Funds. The Funds of the Trusts are all in the same group of investment companies as defined in section 12(d)(1)(G)(ii) of the Act.

3. Applicants state that each of the Investing Funds has, or may be expected to have, uninvested cash (''Uninvested Cash''). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, or new monies received from investors. Certain Investing Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors (''Securities Lending Program''). The loans will be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

4. Applicants request an order to permit each Investing Fund to invest its Cash Balances in shares of one or more Money Market Funds, and the Money Market Funds to sell their shares to, and redeem their shares from, the Investing Funds and the Advisers to effect the proposed transactions. Investment of Cash Balances in shares of the Money Market Funds will be made consistent with each Investing Fund's investment objectives, restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and further diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act authorizes the Commission to exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the percentage limitations of sections 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement would not raise the concerns that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Money Market Fund through threat of redemption. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to, and redeemed from, the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' (''NASD'') Conduct Rules) or if such shares are subject to such fees, the Investing Fund's adviser will waive its advisory fee for the Investing Fund to offset the amount of the fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of securities, each Investing Fund will invest Cash Balances only in the class with the lowest expense ratio at the time of investment. Before approving any advisory contract for an Investing Fund, its board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will consider to what extent, if any, the advisory fees charged to the Investing Fund should be reduced to account for reduced services provided to the Investing Fund by its investment adviser as a result of the investment of Uninvested Cash in a Money Market Fund. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of an investment company to include, among others, any person directly or indirectly controlling, controlled by, or under common control with the other person and any person owning, controlling, or holding with power to vote, 5% or more of the other person. Applicants state that, because the Investing Funds and the Money Market Funds have a common investment adviser and Board, they may be deemed to be under common control with each other, and thus affiliated persons of each other. In addition, applicants state that if an Investing Fund acquires 5% or more of a Money Market Fund's securities, the Investing Fund and the Money Market Fund would be deemed to be affiliated persons of each other. As a result, the sale of the shares of a Money Market Fund to the Investing Funds, and the redemption of such shares by the

Funds''). The term Fund includes all Future Funds. Successor means any entity that results from a reorganization into another jurisdiction or change in type of business organization. All existing Funds that currently intend to rely on the requested relief are named as applicants. Any other existing and Future Funds that may rely on the relief in the future will do so only in accordance with the terms and conditions of the application.

Investing Fund could be deemed to be prohibited under section 17(a).

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the proposed transactions satisfy the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Funds will be purchased and redeemed by the Investing Funds at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. Applicants also state that each Money Market Fund may discontinue selling shares to any of the Investing Funds if the Money Market Fund determines that such sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Fund, by purchasing shares of the Money Market Funds, the Advisers, by effecting the proposed transactions, and each Money Market Fund, by selling shares to and redeeming shares from, the Investing Funds, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission will consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from, or less advantageous than, that of other participants. Applicants submit that the investment by the Investing Funds in shares of a Money Market Fund would be on the same basis and would be indistinguishable from any other shareholder account maintained by the same share class of the Money Market Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules). If such shares are subject to any such load or fees, the Investing Fund's investment adviser will waive its advisory fee for the Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of the Investing Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Board, including a majority of the Independent Trustees, taking in account all relevant factors, shall consider to what extent, if any, the advisory fees that the Investing Fund's adviser charges to the Investing Fund should be reduced to account for any reduction in services that the adviser provides to the Investing Fund as a result of the Uninvested Cash being invested in the Money Market Funds. In connection with this consideration, the Investing Fund's adviser will provide the Board with specific information regarding the approximate cost to the adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that such Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Investment of Cash Balances by the Investing Fund in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. No Money Market Fund whose shares are held by an Investing Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Before a Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Fund's participation in the Securities Lending Program. The Board also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interests of the shareholders of the Fund.

7. Each Investing Fund and Money Market Fund that relies on the order will be part of the same group of investment companies, as that term is defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10379 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47703; File No. SR–Amex–2002–104]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Rules 26, 29, 171, and 950 To Revise Specialist Capital Requirements and the Method for Computing Specialist Capital Requirements and To Create an Early Warning Level With Respect to Specialist Capital

April 18, 2003.

On December 10, 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 Amex Rules 26, 29, 171, and 950 to revise specialist capital requirements and the method for computing specialist capital requirements, and to create an early warning level with respect to specialist capital. The proposed rule change was published for comment in the **Federal Register** on March 14, 2003.[3] The Commission received no comments on the proposal.

After careful review, 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] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the Amex's rules be designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Amex's proposal to modify the specialist capital requirements and the specialist capital computation method should provide an accurate measure of a specialist's financial strength. In addition, the Commission believes that creating an ''early warning level'' should allow the Amex to take appropriate action with respect to a specialist's financial condition before the specialist falls out of compliance with capital requirements.

The Commission notes that the rule change will not take effect until one year after approval by the Commission in order to give specialist firms sufficient time to adjust to the new requirements.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act [6], that the proposed rule change (File No. SR–Amex–2002–104) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10386 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47469 (March 7, 2003), 68 FR 12393.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47702; File No. SR–Amex–2002–105]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Amex Rule 17 To Provide for ''Cash'' in Addition to ''Next Day'' Settlement of Transactions in Rights and Warrants During the Trading Days Prior to Expiration

April 18, 2003.

On December 12, 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 Amex Rule 17 to provide for ''cash'' in addition to ''next day'' settlement of transactions in rights and warrants during the trading days prior to expiration. The Amex filed an amendment to the proposed rule change on January 23, 2003.

The proposed rule change, as amended, was published for comment in the **Federal Register** on March 13, 2003.[3] The Commission received no comments on the proposed rule change.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the Amex's rules be designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Commission believes that permitting ''cash'' settlement of rights and warrants transactions should provide the Amex's members with an appropriate amount of flexibility in settling such transactions.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change and Amendment No. 1 (File No. SR-Amex-2002–105) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10387 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47446 (March 5, 2003), 68 FR 12110.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47701; File No. SR–CBOE–2003–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. To Implement Autobook on a Pilot Program Basis

April 18, 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 April 8, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Exchange amended the proposal on April 17,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2003,[3] and April 18, 2003.[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 amend CBOE rule 8.85 to implement Autobook on a pilot program basis. The text of the proposed rule change appears below. Additions are in *italics.*

* * * * *

Rule 8.85 DPM Obligations

(a) No change.

(b)(i)–(vi) No change.

(vii) Autobook Pilot. Maintain and keep active on the DPM's PAR workstation at all times the automated limit order display facility (''Autobook'') provided by the Exchange. The appropriate Exchange Floor Procedure Committee will determine the Autobook timer in all classes under that Committee's jurisdiction. A DPM may deactivate Autobook as to a class or classes provided that Floor Official approval is obtained. The DPM must obtain such approval no later than three minutes after deactivation. The Autobook Pilot expires on April 21, 2004, or such earlier time as the Commission has approved Autobook on a permanent basis.

To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraph (b)(i) through (b)(vii) of this rule and the general obligations of a Floor Broker or of an Order Book Official under the rules, subparagraph (b)(i) through (b)(vii) of this rule shall govern.

(c)–(e) No change.

* * * Interpretations and Policies:

.01—.03 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

CBOE rule 8.85(b) states, in part, that each Designated Primary Market Maker (''DPM'') shall fulfill all the obligations of an Order Book Official (''OBO'') under CBOE rules.[5] Further, CBOE rule 8.85(b)(i) specifically requires each DPM to enter into the limit order book any order in the possession of the DPM which is eligible for entry into the book unless the DPM executes the order upon its receipt, or the customer who placed the order has requested that the order not be booked provided the DPM announces in open outcry the order that would be displayed.[6]

In addition, pursuant to subparagraph IV.B.f of the Commission's September 11, 2000, Order,[7] CBOE was required to enhance and improve its surveillance, investigative and enforcement processes for order handling, including the display of customer limit orders in the disseminated quotes. In connection with this specific undertaking, in January 2002, CBOE issued Regulatory Circular RG02–03 which advised that effective January 15, 2002, each DPM was required to execute or book 90% of all eligible customer limit orders within 90 seconds of receipt or less. Regulatory Circular RG02–03 further advised that beginning in July 2002, DPMs were expected to execute or book (with certain exceptions) 95% of all eligible customer limit orders within 60 seconds of receipt or less. DPMs are currently subject to this latter 60-second requirement, and beginning on April 21, 2003, DPMs will be required to execute or book 95% of all eligible customer limit orders ''immediately''[8] but not later than 30-seconds after receipt under normal market conditions.[9]

To assist and facilitate DPMs' compliance with their regulatory obligation and ensure that eligible customer limit orders are displayed in the disseminated quotations as required by CBOE rules and Regulatory Circulars, CBOE proposes to institute Autobook on a one-year pilot basis. Autobook is an enhancement to the DPM's Public Automated Routing (''PAR'') workstation that will automatically facilitate the entry of eligible customer limit orders into the limit order book at the end of a configurable period of time provided such limit orders have not previously been addressed manually by the DPM.[10] When an eligible customer limit order routes to PAR, the DPM addresses that order by attempting to execute, display, or route that order (through linkage), as appropriate. If there are instances where the DPM has not yet addressed the order within the applicable 30-second period,[11] Autobook will automatically display the eligible customer limit order in the limit order book at or close to the end of that period. As such, Autobook will help to ensure that eligible customer limit orders are displayed within the required time period then in effect.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Commission, Division of Market Regulation (''Division''), dated April 16, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange made a technical change to the proposed rule text and stated that on April 21, 2003, the time period in which DPMs are required to execute or book eligible customer limit orders will decrease from 60-seconds to immediately, but no later than 30-seconds from receipt under normal market conditions. Lastly, the Exchange amended the proposed rule change to designate it as filed under section 19(b)(3)(A) and rule 19b–4(f)(6) thereunder, rather than section 19(b)(2), of the Act.

[4] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Commission, Division, dated April 17, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange requested the Commission accelerate the 30-day operative date under section 19(b)(3) of the Act, and rule 19b-4(f)(6) thereunder to April 21, 2003. The Exchange also amended the proposed rule text to indicate that the pilot program will expire on April 21, 2004.

[5] CBOE rule 7.7 requires that an OBO, ''in so far as practicable,'' display limit orders contained in the OBO's Limit Order Book when such limit orders represent the best bid or offer on the book.

[6] In June 2002, CBOE submitted draft rule change to the Commission to implement a limit order display requirement that it believes is similar to Exchange Act rule 11Ac1–4 (''Display rule''). 17 CFR 240.11Ac1–4. CBOE is currently discussing its draft filing with Commission staff and anticipates filing a proposed rule change in the near future.

[7] Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Act. *See* Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282 (the ''Order'').

[8] In its Adopting Release for the Display rule in the equities markets, the Commission stated that to comply with the requirement that display take place ''immediately,'' specialists must display (or execute or re-route) eligible customer limit orders ''as soon as practicable after receipt which under normal market conditions would require display no later than 30 seconds after receipt.'' *See* Securities Exchange Act Release No. 37619 (August 29, 1996), 61 FR 48290 (September 12, 1996). 17 CFR 240.11Ac1–4.

[9] Exchange Regulatory Circulars RG02–03, RG02–49, and RG03–03 discuss the requirement to book limit orders within these time periods and describe the sanctioning guidelines for violations.

[10] This configurable time period will not exceed the standard then in effect on the Exchange. As of April 21, 2003, the configurable time period may not exceed 30-seconds, as discussed above.

[11] On April 21, 2003, the time period in which DPMs are required to execute or book eligible customer limit orders will decrease from 60-seconds to no later than 30-seconds from receipt under normal market conditions. *See* Amendment No. 1, *supra* note 3.

The Exchange notes that Autobook does not relieve DPMs of their obligation to book eligible customer limit orders on their PAR workstation immediately but not later than 30-seconds after receipt.[12] To the extent a DPM excessively relies on Autobook to display eligible limit orders without attempting to address these orders immediately, it could violate its due diligence obligation. Brief or intermittent periods of reliance on Autobook out of necessity, however, would not violate the obligation.[13] Upon approval of this rule filing, the Exchange will issue a regulatory circular discussing the issue of excessive reliance upon Autobook.

Autobook will be an Exchange-mandated facility that will operate only on DPM PAR workstations. The appropriate Exchange Committee will be responsible for establishing the Autobook timer in all classes under that Committee's jurisdiction, and the timer may not exceed the customer limit order display requirement then in effect on the Exchange.

A DPM may deactivate Autobook as to a class or classes only upon approval by a floor official. The DPM must obtain floor official approval as soon as practicable but in no event later than three minutes from the time of deactivation. If the DPM does not receive approval within three minutes after deactivation, the Exchange will review the matter as a regulatory issue.[14] Floor officials will grant approval only in instances when there is an unusual influx of orders or movement of the underlying that would result in gap pricing or other unusual circumstances.[15] The Exchange will document all instances where a floor official grants approval.

The Exchange will continue to conduct surveillance to ensure that DPMs comply with their obligation to execute or book all eligible limit orders within the time period then in effect. CBOE also commits to conduct surveillance designed to detect whether DPMs as a matter of course rely on Autobook to display all eligible limit orders. A practice of excessive reliance upon Autobook will be reviewed by CBOE's Regulatory Division as a possible due diligence violation. As part of the proposed one-year pilot program, the Exchange will provide to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on Autobook by DPMs.

2. Statutory Basis

Autobook provides a mechanism to ensure eligible customer limit orders do not remain on PAR beyond a specified amount of time. As such, the Exchange believes the proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[17] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Furthermore, the Exchange believes that the proposed changes are consistent with the Act's requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[18]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[19] and subparagraph (f)(6) of rule 19b–4[20] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.[21]

Under rule 19b–4(f)(6)(iii) of the Act,[22] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Commission notes that beginning on April 21, 2003, DPMs will be required to execute or book 95% of all eligible customer limit orders immediately, but not later than 30-seconds after receipt under normal market conditions. The Exchange has requested that the Commission accelerate the 30-day operative date to April 21, 2003, so that it may implement the proposed rule change on that date to assist and facilitate DPMs' compliance with their regulatory obligation and ensure that eligible customer limit orders are displayed in the disseminated quotations immediately. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the Amex and NYSE, which were published for public notice and comment.[23] As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues. The Commission, consistent with the protection of investors and the public interest, has determined to accelerate the 30-day operative date to April 21, 2003,[24] and,

[12] *See* Amendment No. 1, *supra* note 3.

[13] For example, a DPM for a class that experiences an unexpected surge in trading activity would not violate its obligations if, because the DPM is not physically able to address eligible limit orders within 30-seconds, Autobook displays such orders at the end of the time period.

[14] This is consistent with Supplementary Material .15 to New York Stock Exchange, Inc. (''NYSE'') rule 79A. *See* Securities Exchange Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999).

[15] This is consistent with Commentary .10 to American Stock Exchange LLC (''Amex'') rule 170. *See* Securities Exchange Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on April 18, 2003, the date CBOE filed Amendment No. 2.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *See* Securities Exchange Act Release Nos. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000) (Commentary .10 to Amex rule 170); and 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999) (Supplementary Material .15 to NYSE rule 79A).

[24] For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on

therefore, the proposal is effective and operative on that date.

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 thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–16 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10388 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47712; File No. SR–DTC–2002–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fee Schedule Revisions for 2003

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 26, 2002, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions to DTC's fee schedule for 2003.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees DTC charges for various services so that the fees may be aligned with their respective estimated service costs for 2003. The revised fees will be effective with respect to services provided on and after January 1, 2003.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the fees will more equitably be allocated among users of DTC services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and rule 19b–4(f)(2).[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2002–18. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2002–18 and should be submitted by May 19, 2003.

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] DTC's revised schedule of service fees is attached as an exhibit to the filing.

[3] The Commission has modified parts of these statements.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10382 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47711; File No. SR–DTC–2002–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Revision of DTC Rules 2, 5, and 26

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 9, 2002, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises and modernizes existing rules 2 (section 7), 5, and 26 of DTC. The changes relate to participant and pledgee compliance with applicable laws, reflect guidelines of the Office of Foreign Assets Control of the U.S. Department of the Treasury (''OFAC'') and USA Patriot Act (''Patriot Act''), and allow DTC to rely on signatures transmitted by electronic or other similar means.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to require participant and pledgee compliance with applicable laws, add rule provisions reflecting guidelines of OFAC and the Patriot Act, and allow DTC to rely on signatures transmitted by electronic or other similar means. These changes will enhance DTC's compliance initiatives and ease administrative burdens currently experienced by DTC and its participants.

i. Compliance Initiatives

The proposed revisions require compliance by participants and pledgees with applicable laws. Among other things, this relates to applicable laws concerning money laundering, securities, and taxation. In addition, participants will be prohibited from seeking to make eligible at DTC those issues that have been banned by OFAC. The adoption of the proposed rules will reinforce DTC's compliance efforts in these areas.

ii. Signatures

In the interest of modernizing its rules and easing administrative burdens, DTC is proposing to amend its rules to allow it to rely on ''electronic'' and other modern forms of signatures in lieu of original signatures.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it will both increase administrative efficiency and enhance compliance with applicable laws thereby reducing risks and associated costs to DTC and its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants have not been solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[3] and rule 19b–4(f)(4)[4] promulgated thereunder because the proposal effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2002–11. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4).

refer to File No. SR–DTC–2002–11 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10383 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47710; File No. SR–DTC–2003–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Revisions to the Fee Schedule

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 28, 2003, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions to DTC's fee schedule for low volume tender offers processed through the facilities of DTC and for certain tax products offered by DTC. The low volume tender offer fee is payable by the offeror in advance of DTC's processing the offer.[2] The tax product fees are charged to participants using the selected tax products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees DTC charges for low volume tender offers and certain tax products so that the fees may be aligned with their respective estimated service costs. The new fees will be effective for low volume tender offers processed on and after April 1, 2003, and for certain tax products provided by DTC on and after April 1, 2003.

The new fees are as follows:

Proposed change	Current fee	New fee
Low Volume Tender Offer Fee	$2,700	$2,900
DTax PTS function	[1] 1.00	[2] 5.00
U.S. Withholding Tax Service—Tax Reporting	100	200
TaxRelief—EDS Post payable adjustment	70	100
Direct Payment Service	25	27

[1] Per screen.
[2] Per CUSIP.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to DTC because the fees will provide for a better allocation of DTC's service costs among users of DTC services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2).[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2003–04. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] For additional information concerning DTC's processing and fees for low volume tender offers *see* Securities Exchange Act Release No. 41032 (February 9, 1999), 64 FR 7931 (February 17, 1999) [SR–DTC–99–01].

[3] The Commission has modified parts of these statements.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2003–04 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10384 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47709; File No. SR–DTC–2003–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Establish a Transaction Look-Ahead Process

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 9, 2003, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to establish a transaction look-ahead process (''Look-Ahead'') which will reduce transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap.[2]

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The net debit cap, based upon the activity of the participant, is the maximum amount a participant may owe for transactions. Currently, the maximum allowable net debit cap is $1.8 billion per participant.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's system controls prevent the processing of a transaction (*i.e.*, cause the transaction to recycle) when the deliverer has insufficient position or collateral, the receiver has insufficient collateral, or the processing of the transaction would cause the receiver's net debit cap to be breached. For purposes of these controls, each transaction is assessed individually without regard to offsetting transactions that might resolve any system control issue presented by the initial transaction itself.

In principle, a long series of back-to-back transactions could be blocked as a result of the first transaction failing. For example, if a transaction fails for insufficient position, collateral, or net debit cap, then a second transaction could fail because it is dependent on the first delivery to establish the necessary securities position, then a third could fail, and so on. This does in fact occur quite often in the money market instrument (''MMI'') market because of the large values involved when issuing/paying agents sell new commercial paper to broker-dealers who then make deliveries to custodians, who in turn have maturities of commercial paper awaiting acceptance by the issuing/paying agents.

DTC plans to introduce Look-Ahead in June. Look-Ahead will reduce transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap. Look-Ahead will identify receive transactions pending due to a net debit cap insufficiency and link them to offsetting delivery transactions in the same security pending for a quantity deficiency. DTC will calculate the net effect of the offsetting transactions on the three participants involved, and if the net of the transactions results in positive risk management controls in all three accounts, the transactions will be completed. Initially, this capability will be available only for muni and corporate bonds, including MMIs where it is expected to have the widest application.

As a result of Look-Ahead, the number of recycling transactions will be reduced which could also reduce the need for intraday funding by participants and could help achieve a more efficient level of straight-through processing. Participants will not be required to make systemic changes and can continue to process their deliveries as they do today.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[4] and the rules and regulations thereunder applicable to DTC. By applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a participant's net debit cap, the proposed rule change should reduce the number of blocked transactions at DTC which would promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has discussed this rule change proposal in its current form with various DTC participants and industry groups, a number of whom have worked closely with DTC in developing Look-Ahead.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 self-regulatory

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1.

organization 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 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2003–07. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR–DTC–2003–07 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10385 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47713; File No. SR–FICC–2003–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Cross-Guaranty Agreements to Which FICC Is a Party

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 8, 2003, the Fixed Income Clearing Corporation (''FICC'') 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 primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change relates to cross-guaranty agreements to which FICC is a party.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC is proposing to amend the rules (''Rules'') of its Government Securities Division and Mortgage Backed Securities Division (''Divisions'') to make clear that, in the event that an entity that is a member of both Divisions becomes a defaulting member as defined in a cross-guaranty agreement to which FICC is a party and FICC chooses to participate in the arrangement, FICC will first offset the liquidation results of the Divisions prior to presenting its available net resources to other participating clearing corporations.

FICC's Rules provide that FICC may enter into cross-guaranty agreements. Cross-guaranty agreements are an important risk protection measure for clearing agencies. Generally, these agreements contain a guaranty from one clearing agency to another clearing agency that can be invoked in the event of the default of a common member. The guaranty generally provides that the excess resources of a defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy the obligations of the defaulting common member that remain unsatisfied at the other clearing agency. The Multilateral Agreement provides for the allocation of such excess resources among all clearing corporations in a deficit position with respect to a defaulting common member.

If a clearing corporation that is a party to the multilateral cross-guaranty agreement[3] suspends a person or declares a person insolvent pursuant to its rules and if such person is a common member of two or more clearing agencies, such clearing agency must give each other clearing agency a notice that it has ceased to act for the member and that it will participate in the arrangement. Each participating clearing agency has a certain amount of time pursuant to the multilateral cross-guaranty agreement to determine its ''available net resources,'' which is the sum, positive or negative, derived after the application of any applicable liquidation procedures by adding the amounts owed by the participating clearing agency to the defaulting member and subtracting the amounts owed by the defaulting member to the participating clearing agency.

FICC desires to make clear in its rules that it will first offset the available net resources of each of its Divisions and

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] FICC's predecessors, the Government Securities Clearing Corporation (''GSCC'') and the MBS Clearing Corporation (''MBSCC''), filed rule filings in 2001 to enter into a multilateral cross-guaranty agreement with The Depository Trust Company, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, and The Options Clearing Corporation (''Multilateral Cross-Guaranty Agreement'') and to make incidental rule changes. Securities Exchange Act Release No. 45868 (May 2, 2002), 67 FR 31394 [File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]. Prior to that time, GSCC and MBSCC were parties to various bilateral cross-guaranty arrangements, which were terminated when the parties entered into the multilateral cross-guaranty agreement.

then present that net amount as its ''available net resources'' for participation with the other clearing agencies. FICC believes that it already has the authority in its rules to do so because the rules provide that it may enter into cross-guaranty agreements and thus follow their provisions.[4] However, FICC believes that it is prudent to make this explicit in its rules for the avoidance of any doubt. The proposed offset is consistent with the rationale for combining GSCC and MBSCC into FICC because it further optimizes the consolidation of risk management processes.

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it clarifies FICC's rules and further optimizes the synergies created by the combination of GSCC and MBSCC into FICC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited nor received. FICC will notify the Commission of any written comments received by FICC.

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)(i) of the Act[5] and rule 19b–4(f)(1)[6] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–FICC–2003–02. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of FICC. All submissions should refer to the File No. SR–FICC–2003–02 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10381 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[4] The parties have amended the multilateral cross-guaranty agreement to reflect the merger of GSCC and MBSCC and the resulting FICC, as well as to reflect the offset between the Divisions of FICC, that is the subject of this rule filing. The offset between the Divisions of FICC is similar to the offset between DTC and its Mortgage-Backed Securities Division (which no longer exists) that was contained in the version of the multilateral cross-guaranty agreement and was included in the rule filings the Commission approved.

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47706; File No. SR–NASD–2003–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Trading of Certain Holding Company Depositary Receipts

April 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On April 17, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to approve the amended proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt standards for the trading of certain Trust Isssued Receipts known as Holding Company Depositary Receipts (''HOLDRs'') on an over-the-counter basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 (''Amendment No. 1''). Amendment No. 1: (1) Makes clarifications and technical corrections to the proposed rule text and the purpose section of the filing; (2) discusses in the purpose section of the proposal Nasdaq's short sale exemption of certain HOLDRs, pursuant to NASD Rule 3350; (3) clarifies, by updating Exhibit 1, which HOLDRs specifically do not satisfy Nasdaq's generic listing and trading requirements pursuant to Rule 19b–4(e); and (4) provides additional detail on the component securities for each HOLDR, including share price, trading volume, and public float data in new Exhibit 3.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade, on an over-the counter basis, the following HOLDRs: (1) Broadband; (2) B2B Internet; (3) Europe 2001; (4) Internet; (5) Internet Architecture; (6) Internet Infrastructure; (7) Market 2000+; (8) Software; (9) Utilities; and (10) Wireless (each a ''HOLDR'' and collectively, the ''HOLDRs'').[4] The HOLDRs currently are listed and traded on the American Stock Exchange LLC (''Amex'') and trade on other national securities exchanges. The following paragraphs contain information applicable to all the HOLDRs generally.[5]

Trust Issued Receipts Generally

HOLDRs, a type of Trust Issued Receipt, are negotiable receipts that are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the Trust Issued Receipts. Trust Issued Receipts are designed to allow investors to hold securities from a variety of companies throughout a particular industry in a single, Nasdaq-or exchange-listed [6] and traded instrument that represents their beneficial ownership in the underlying securities. Holders of Trust Issued Receipts maintain beneficial ownership of each of the underlying securities evidenced by Trust Issued Receipts. Holders may cancel their Trust Issued Receipts at any time to receive the underlying securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the underlying securities outside of the Trust Issued Receipt program. Holders of the receipts have the right to instruct the trustee to vote the underlying securities evidenced by the receipts, will receive reports, proxies and other information distributed by the issuers of the underlying securities to their security holders, and will receive dividends and other distributions declared and paid by the issuers of the underlying securities to the trustee.

Trust Issued Receipts are not leveraged instruments, and therefore do not possess any of the attributes of stock index options. Nasdaq believes that the level of risk involved in the purchase and sale of Trust Issued Receipts is almost identical to the risk involved in the purchase or sale of the common stocks represented by the receipt.

Trust Issued Receipts will be issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in Trust Issued Receipts will be permitted to withdraw his or her underlying securities upon delivery to the trustee of one or more round-lots of 100 Trust Issued Receipts and to deposit such securities to receive Trust Issued Receipts.

Nasdaq Rules Applicable to the Trading of HOLDRs

Trust Issued Receipts, including HOLDRs, will be eligible to be traded through the Intermarket Trading System and will therefore be subject to the trade-through provisions of NASD Rule 5262. HOLDRs, as Trust Issued Receipts, are considered ''securities,'' and thus dealings in HOLDRs will be conducted pursuant to Nasdaq and the NASD's existing equity trading rules. Thus, Nasdaq's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Nasdaq equity rules and procedures will also apply.[7] In addition, regular equity trading hours of 9:30 a.m. and 4 p.m. will apply to transactions in HOLDRs. However, trading rules pertaining to the availability of odd-lot trading in Nasdaq equities will not apply to the trading of HOLDRs, since HOLDRs will only be traded in round-lots. NASD's surveillance procedures for HOLDRs will be similar for those of Portfolio Depository Receipts and Index Fund Shares and will incorporate and rely upon existing NASD surveillance procedures governing equities. Furthermore, unless otherwise specified, the trading of HOLDRs generally will be exempt from the short sale rule set forth in NASD Rule 3350.[8]

Prior to the commencement of trading in HOLDRs, Nasdaq will issue a circular to members highlighting the characteristics of purchases in HOLDRs, including that HOLDRs are not individually redeemable. In addition, the circular will inform members of Nasdaq policies about trading halts in such securities. Specifically, the circular will note that trading of HOLDRs will be halted whenever Nasdaq trading in equity securities is halted as a result of activation of market-wide ''circuit breakers,'' which are tied to large decreases in the Dow Jones Industrial Average. Nasdaq may also halt trading in HOLDRs upon consideration of, among other factors: (1) The extent to which trading has ceased in the underlying security(s); (2) whether trading has been halted or suspended in the primary market(s) for any combination of underlying securities accounting for 20% or more of the applicable current index group value; and (3) the presence of other unusual conditions or circumstances deemed to be detrimental to the maintenance of a fair and orderly market. The trading in HOLDRs that has been the subject of a trading halt or suspension, may resume when Nasdaq determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading.

Disclosure to Customers

Nasdaq will require members to provide all purchasers of newly issued Trust Issued Receipts with a prospectus for that series of HOLDRs.

Trading Issues for Trust Issued Receipts (Including HOLDRs)

A round-lot of any of the above Trust Issued Receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of underlying securities for each round-lot of 100 Trust Issued Receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Trust Issued Receipts may be

[4] For further details on the component securities for each HOLDR, *see* Exhibit 3 to the proposed rule change, *supra* note 3.

[5] Nasdaq notes that this information is based upon descriptions included in the various Trust Issued Receipts prospectuses and depositary trust agreements, the Amex submissions relating to its Trust Issued Receipts listing proposal, and the Commission's order approving the Amex proposal.

[6] *See* Amendment No. 1, *supra* note.

[7] *E.g.,* pursuant to NASD Rule 4613(a)(1)(D), a minimum quotation increment of one penny will apply to transactions of Trust Issued Receipts on Nasdaq.

[8] Nasdaq has provided criteria that Trust Issued Receipts must satisfy to qualify for and maintain the short sale exemption. For further details, *see* proposed rule change SR–NASD–2003–32. As of April 11, 2003, the trading of all HOLDRs, except for the B2B Internet HOLDRs and the Internet HOLDRs, were exempt from the short sale rule set forth in NASD Rule 3350. Thus, only short sales of B2B Internet HOLDRs and Internet HOLDRs must occur on an ''up bid.''

acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. In order to ensure that transactions in Trust Issued Receipts are effected only in such amounts, no member may enter through the facilities of Nasdaq, for the account of a customer or for its own account, a quote or order for Trust Issued Receipts other than for a round-lot or round-lot multiple.

Nasdaq believes that HOLDRs will not trade at a material discount or premium to the assets held by the issuing trust, because the arbitrage process should promote correlative pricing between the HOLDRs and the underlying securities. If the price of a HOLDR deviates enough from the portfolio of underlying securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the HOLDR at a discount, immediately cancel them in exchange for the underlying securities and sell the shares in the cash market at a profit, or sell the HOLDR short at a premium and buy the securities represented by the receipts to deposit in exchange for the HOLDR to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

Maintenance of the HOLDRs Portfolio

Except when a reconstitution event occurs, as described below, the securities represented by a HOLDR will not change. According to the prospectus of Trust Issued Receipts, under no circumstances will a new company be added to the group of issuers of the underlying securities, and weightings of component securities will not be adjusted after they are initially set.[9]

Reconstitution Events of HOLDRs

Trust agreements will provide for, and prospectuses for HOLDRs will describe, the automatic distribution of specified underlying securities in the trust's portfolio to the beneficial owners of HOLDRs in the circumstances referred to in such trust agreements and prospectuses as ''reconstitution events.'' The reconstitution events occur under the following circumstances:

(1) If the underlying securities of a company evidenced by a HOLDR no longer has a class of common stock registered under section 12 of the Act, then those securities will no longer be considered underlying securities and the trustee will distribute the securities of that company to the owners of HOLDRs;

(2) If the Commission finds that a company with underlying securities evidenced by the HOLDRs is a company that should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the securities of that company to the owners of the HOLDRs;

(3) If the underlying securities of a company evidenced by a HOLDR are no longer outstanding as a result of a merger, consolidation or other corporate combination the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of HOLDRs, unless the consideration is additional underlying securities (*i.e.,* the acquiring company's securities are already included in the HOLDR as underlying securities), in which case such additional securities will be deposited into the trust; and

(4) If an underlying issuer's underlying securities are delisted from trading on a primary national securities exchange or Nasdaq market and are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the underlying securities are delisted.

If the trustee removes a underlying security from the trust due to the occurrence of one of the reconstitution events described above, the trustee, in accordance with the depositary trust agreement, will deliver the underlying security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Issuance and Cancellation of HOLDRs

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, HOLDRs only in a round-lot of 100 or in round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 HOLDRs, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

An investor may obtain HOLDRs by either purchasing them on a national securities exchange or Nasdaq, or by delivering to the trust during its normal business hours the requisite securities evidencing a round-lot of HOLDRs. The trustee will charge an issuance fee of up to $10.00 per 100 HOLDRs. If a holder wants to cancel HOLDRs and withdraw the underlying securities, the holder may do so by surrendering the receipts to the trust during normal business hours. The trustee will charge a cancellation fee of up to $10.00 per 100 HOLDRs. Lower charges may be assigned for bulk issuances and cancellations. The holder will receive the underlying securities no later than the business day after the trustee receives the request.

Termination of HOLDRs

The trust shall terminate upon the earlier of: (i) The removal of the HOLDRs from listing on a national securities exchange or Nasdaq if they are not listed for trading on another national securities exchange or Nasdaq within five business days from the date the receipts are delisted; (ii) the trustee resigns and no successor trustee is appointed within sixty days from the date the trustee provides notice to the initial depositor of its intent to resign; (iii) 75 percent of beneficial owners of outstanding HOLDRs (other than Merrill Lynch, Pierce, Fenner & Smith Incorporated) vote to dissolve and liquidate the trust; or (iv) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

Criteria for Initial and Continued Listing

Except as otherwise noted in Exhibit 1, Nasdaq believes that the HOLDRs satisfy Nasdaq's continued listing and trading criteria as set forth in NASD Rule 4420(l), which is generally consistent with the continued listing and trading criteria currently used by the Amex, the New York Stock Exchange (''NYSE''),[10] and the regional exchanges.

Because of the continuous issuance and cancellation of Trust Issued Receipts, Nasdaq believes that it is necessary to maintain appropriate flexibility in connection with listing and trading a specific trust. If Trust Issued Receipts are to be listed on Nasdaq under Rule 4420(l), Nasdaq will establish a minimum number of receipts that must be outstanding at commencement of Nasdaq trading, and such minimum number will be included

[9] Nasdaq represents that the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on underlying securities, and the relative weightings among the underlying securities may change based on the current market price of the underlying securities. *See* NASD Rule 4420(l)(4).

[10] *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (approving listing and trading of Trust Issued Receipts and Internet HOLDRs on the Amex); Securities Exchange Act Release No. 45718 (April 9, 2002), 67 FR 18965 (April 17, 2002) (approving the listing and trading of Trust Issued Receipts on the NYSE).

in any required submission to the Commission. Nasdaq anticipates requiring a minimum of 150,000 outstanding receipts before trading can commence.

In connection with continued listing and trading, and because the number of holders can be subject to substantial fluctuations depending on market conditions, Nasdaq believes that it would be inappropriate and burdensome on Trust Issued Receipt holders if Nasdaq considers suspending trading in or delisting a series of receipts with the consequent termination of the trust, unless the number of holders remains severely depressed over an extended time period. Therefore, Nasdaq will consider suspending or delisting a trust from trading when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the trust has more than sixty days remaining until termination and there have been fewer than fifty record and/or beneficial holders of the Trust Issued Receipts for the previous thirty or more consecutive trading days;

(b) If the aggregate number of Trust Issued Receipts outstanding is less than 50,000;

(c) If the aggregate market value of Trust Issued Receipts publicly held is less than $1 million; or

(d) If such other event occurs or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Nasdaq will not, however, be required to suspend or delist from trading, based on the above factors, any Trust Issued Receipts for a period of one year after the initial listing of such Trust Issued Receipts for trading on Nasdaq. In addition, if the number of companies represented by the underlying securities drops to less than nine, and each time thereafter the number of companies is reduced, Nasdaq will consult with the Commission to confirm the appropriateness of continued listing of the Trust Issued Receipts.

Nasdaq Rule 4420(l) also contains specific ''generic'' listing criteria under which Nasdaq may commence trading Trust Issued Receipts pursuant to Rule 19b–4(e) under the Act. Those criteria are substantially similar to the criteria that have been applied to the initial listing of HOLDRs on the Amex. Specifically, each of the companies represented by the securities in the portfolios underlying the HOLDRs trusts (each of such companies referred to herein as a ''component security'') were required to meet the following minimum criteria when they were selected: (1) Each component security common stock was registered under Section 12 of the Exchange Act; (2) the minimum public float of each component security was at least $150 million; (3) each component security was either listed on a national securities exchange or be traded through the facilities of Nasdaq and a reported national market system security; (4) the average daily trading volume for each component security was at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the component security traded during the preceding sixty-day trading period was at least $1 million. The initial weighting of each component security in the portfolio was based on its market capitalization, however, if on the date such weighting was determined, a component security represented more than 20% of the overall value of the receipt, then the amount of such security was to be reduced to no more than 20% of the receipt value.[11]

Based on the fact that each of the HOLDRs was initially listed on the Amex, Nasdaq assumes that each component security met the criteria described above. Presently, however, Nasdaq represents that each of the HOLDRs that Nasdaq proposes to trade on an over-the-counter basis has one or more component securities that fail to meet the minimum criteria set forth above. As a result, while the HOLDRs are substantially in compliance with the aforementioned minimum standards, the HOLDRs do not satisfy Nasdaq's generic standards for listing and trading Trust Issued Receipts pursuant to Rule 19b–4(e). Specifically, as of November 25, 2002, Nasdaq represents that one or more component securities of each HOLDR do not meet the minimum public float requirement in clause (2) above, the average daily trading volume requirement in clause (4) above, and/or the average daily dollar value requirement in clause (5) above. These HOLDRs are more fully described in Exhibit 1 of the proposed rule change.[12]

Notwithstanding that fact, Nasdaq believes that its proposal to trade the HOLDRs on an over-the-counter basis is appropriate, and thus should be approved. The HOLDRs continue to be substantially in compliance with the minimum initial listing criteria listed above, and thus, are substantially similar to the products previously approved by the Commission. These HOLDRs also continue to be traded on the Amex, the NYSE and several regional exchanges. Nasdaq believes that permitting it to trade these HOLDRs on an over-the-counter basis will afford investors the advantage of an additional market to trade the HOLDRs, and avoid the unfair discrimination against Nasdaq that would otherwise result from precluding Nasdaq from trading these securities while the aforementioned markets continue to do so.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[13] in general and with Section 15A(b)(6) of the Act,[14] in particular, in that the proposed rule change 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 a national market system, and, in general, to protect investors and the public interest. In particular, the HOLDRs provide investors with a convenient and less expensive way of participating in the securities markets. In addition, the HOLDRs provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating a broad portfolio of stocks at negotiated prices throughout the business day.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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, as amended.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[11] These criteria are also the same as the ''generic'' listing criteria set forth in NYSE Rule 1202.

[12] See Amendment No. 1, *supra* note 3 (providing an updated Exhibit 1). The following component securities are at issue: (1) Broadband: TERN, CMTN, and NXTV; (2) B2B Internet: QRSI, ICGE, CMRC, SQST, VERT, NXPS, and IMGX; (3) Europe 2001: TRLY, ARMHY, SNRA, BKHM, AUTN, IONA, and MICC; (4) Internet: CNET and INKT; (5) Internet Architecture: ROXI; (6) Internet Infrastructure: BVSN, EPNY, PRSF, VITR, AKAM, KANA, INKT, INAP, and NAVI; (7) Market 2000+: TM, BTY, and OOM; (8) Software: SAPE and NUAN; (9) Utilities: RRI; and (10) Wireless: AETH and NTRO.

[13] 15 U.S.C. 78o–3.

[14] 15 U.S.C. 78o–3(6).

including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–33 and should be submitted by May 19, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act,[15] and the rules and regulations thereunder applicable to a national securities association.[16] Specifically, the Commission finds that this proposal, which establishes standards for trading the HOLDRs over-the-counter, will provide investors with a convenient and less expensive way of participating in the securities markets. Nasdaq's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that Nasdaq's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[17]

As noted in the Amex approval order, the Commission believes that HOLDRs will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade the HOLDRs representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. The HOLDRs will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the HOLDRs.

Although the HOLDRs are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of Trust Issued Receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for Trust Issued Receipts is based on a basket of securities.[18]

Trading of the HOLDRs Over-the-Counter

The Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the trading of the HOLDRs over-the-counter. HOLDRs are equity securities that will be subject to the full panoply of NASD and Nasdaq rules governing the trading of equity securities on Nasdaq, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.[19]

In addition, Nasdaq has developed specific listing and delisting criteria for the HOLDRs that will help to ensure that a minimum level of liquidity will exist for the HOLDRs to allow for the maintenance of fair and orderly markets. The delisting criteria also allow Nasdaq to consider the suspension of trading and the delisting of a HOLDR if an event occurred that made further dealings in such securities inadvisable. This will give Nasdaq flexibility to delist the HOLDRs if circumstances warrant such action. Nasdaq's proposal also provides procedures to halt trading in the HOLDRs in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes Nasdaq's belief that the HOLDRs will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. Nasdaq also represents that the potential for arbitrage should keep the market price of a HOLDR comparable to the overall value of the underlying securities.

Furthermore, the Commission believes that Nasdaq's proposal to trade the HOLDRs should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the HOLDRs.

Finally, Nasdaq will apply NASD surveillance procedures for the HOLDRs that will be similar to the procedures used for investment company units and will incorporate and rely upon existing NASD surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with the trading of the HOLDRS over-the-counter, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of the HOLDRs provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

[15] 15 U.S.C. 78o–3(6).

[16] The Commission findings in this approval order are prospective only from the date of this order. Prior to Nasdaq's trading of Trust Issued Receipts, the Commission staff notified Nasdaq staff that these listing and trading rules and short sale rule change contained herein were necessary. The Commission is concerned that Nasdaq failed to seek Commission approval of such proposed rules and rule changes until well after Nasdaq began trading Trust Issued Receipts, despite prior notification by Commission staff to do so. The Commission expects Nasdaq to surveil the trading of these products for compliance with applicable rules, including NASD Rule 3350.

[17] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] The Commission has concerns about continued trading of Trust Issued Receipts whether listed or over-the-counter, if the number of component securities fails to reflect a cross section of the selected industry. Accordingly, Nasdaq has represented that it would consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

[19] Trading rules pertaining to the availability of odd-lot trading do not apply because the Holders only can be traded in round-lots or round-lot multiples.

Disclosure and Dissemination of Information

The Commission believes that Nasdaq's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading the HOLDRs. The prospectus will address the special characteristics of a particular HOLDR basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in the HOLDRs who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a HOLDR directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Nasdaq member firms that purchase the HOLDRs from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that prior to the commencement of trading the HOLDRs, Nasdaq will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note members' prospectus delivery requirements, and highlight the characteristics of purchases in HOLDRs, including that the HOLDRs are not individually redeemable. The circular also will inform members of Nasdaq policies regarding trading halts in HOLDRs.

As described above, the Commission has previously approved similar Amex and NYSE rules that permit the listing and trading of individual Trust Issued Receipts, including the trading of Trust Issued Receipts over-the-counter. In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and Nasdaq's rules and surveillance programs that govern their trading.

The Commission notes that the HOLDRs that Nasdaq proposes to trade over-the-counter currently trade on other national securities exchanges. The Commission therefore believes that it is appropriate to approve these HOLDRs for trading over-the-counter on Nasdaq, as their trading should produce the same benefits to Nasdaq and to investors.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that Nasdaq's proposal to trade the HOLDRs over-the-counter will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change, as amended, could produce added benefits to investors through the increased competition between other market centers trading the product.

Specifically, the Commission believes that by increasing the availability of the HOLDRs as an investment tool, Nasdaq's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

As noted above, the Commission has approved the listing and trading of HOLDRs at other exchanges, under rules that are substantially similar to Nasdaq's rules.[20] The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[21] The HOLDRs at issue are currently trading on other securities exchanges pursuant to UTP. The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filings. Accordingly, 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**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–2003–33), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10389 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[20] *See* note 7, *supra.*

[21] *Id.*

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47705; File No. SR–NASD–2003–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Listing and Trading Standards for Trust Issued Receipts

April 21, 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 March 7, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On April 17, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to approve the amended proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish listing standards under NASD Rule 4420(l) for the listing and trading, or trading over-the-counter, of Trust Issued Receipts. Nasdaq also proposes to adopt generic listing standards that permit the listing and trading, or trading over-the-counter, of Trust Issued Receipts pursuant to Rule 19b–4(e) of the Act.[4] The text of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 (''Amendment No. 1''). Amendment No. 1: (1) Makes clarifications and technical corrections to the proposed rule text and the purpose section of the filing; (2) clarifies that a Trust Issued Receipt is a Nasdaq- or exchange-listed and traded instrument; and (3) clarifies that the Commission may review and determine, pursuant to Section 19(b)(2) of the Act, whether continuation of Nasdaq's short sale exemption under Rule 3350 is appropriate.

[4] 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1) under the Act, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules,

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the proposed rule change is available at the Office of the Secretary, Nasdaq, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to adopt rules to provide standards that permit the listing and trading, or the trading over-the-counter, of Trust Issued Receipts, including generic listing standards of Trust Issued Receipts pursuant to Rule 19b–4(e) of the Act. Nasdaq proposes to adopt listing and trading standards applicable to Trust Issued Receipts consistent with the criteria used by the American Stock Exchange LLC (''Amex''), the New York Stock Exchange (''NYSE''), and other exchanges to trade Trust Issued Receipts on Nasdaq and/or on an over-the-counter basis. Thus, Nasdaq proposes to adopt standards that permit the listing and trading, or the trading over-the-counter, of Trust Issued Receipts under Section 19(b)(2) of the Act.[5] In addition, Nasdaq proposes to adopt ''generic'' listing and trading standards for the listing and trading, or trading on an over-the-counter basis, of Trust Issued Receipts under Rule 19b–4(e) of the Act.[6]

Trust Issued Receipts Generally

Trust Issued Receipts are negotiable receipts that are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the Trust Issued Receipts. Trust Issued Receipts are designed to allow investors to hold securities from a variety of companies throughout a particular industry in a single, Nasdaq- or exchange-listed and traded instrument that represents their beneficial ownership in the underlying securities. Holders of Trust Issued Receipts maintain beneficial ownership of each of the underlying securities evidenced by Trust Issued Receipts. Holders may cancel their Trust Issued Receipts at any time to receive the underlying securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the underlying securities outside of the Trust Issued Receipt program. Holders of the receipts have the right to instruct the trustee to vote the underlying securities evidenced by the receipts, will receive reports, proxies and other information distributed by the issuers of the underlying securities to their security holders, and will receive dividends and other distributions declared and paid by the issuers of the underlying securities to the trustee.

Trust Issued Receipts are not leveraged instruments, and therefore do not possess any of the attributes of stock index options. Nasdaq believes that the level of risk involved in the purchase and sale of Trust Issued Receipts is almost identical to the risk involved in the purchase or sale of the common stocks represented by the receipt.

Trust Issued Receipts will be issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in Trust Issued Receipts will be permitted to withdraw his or her underlying securities upon delivery to the trustee of one or more round-lots of 100 Trust Issued Receipts and to deposit such securities to receive Trust Issued Receipts.

Criteria for Initial and Continued Listing and/or Trading

Nasdaq believes that the listing and trading criteria proposed in its new rule are generally consistent with the listing and trading criteria currently used by, among other exchanges, the Amex and the NYSE.[7]

Because of the continuous issuance and cancellation of Trust Issued Receipts, Nasdaq believes that it is necessary to maintain appropriate flexibility in connection with listing and trading a specific trust. If Trust Issued Receipts are to be listed or traded on Nasdaq, Nasdaq will establish a minimum number of receipts that must be outstanding at commencement of Nasdaq trading, and such minimum number will be included in any required submission to the Commission. Nasdaq anticipates requiring a minimum of 150,000 outstanding receipts before trading can commence.

In connection with continued listing and trading, and because the number of holders can be subject to substantial fluctuations depending on market conditions, Nasdaq believes that it would be inappropriate and burdensome on Trust Issued Receipt holders if Nasdaq considers suspending trading in or delisting a series of receipts with the consequent termination of the trust, unless the number of holders remains severely depressed over an extended time period. Therefore, Nasdaq will consider suspending or delisting a trust from trading when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the trust has more than sixty days remaining until termination and there have been fewer than fifty record and/or beneficial holders of the Trust Issued Receipts for the previous thirty or more consecutive trading days;

(b) If the aggregate number of Trust Issued Receipts outstanding is less than 50,000;

(c) If the aggregate market value of Trust Issued Receipts publicly held is less than $1 million; or

(d) If such other event occurs or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Nasdaq will not, however, be required to suspend or delist from trading, based on the above factors, any Trust Issued Receipts for a period of one year after the initial listing of such Trust Issued Receipts for trading on Nasdaq. In addition, if the number of companies represented by the underlying securities drops to less than nine, and each time thereafter the number of companies is reduced, Nasdaq will consult with the Commission to confirm the appropriateness of continued listing or trading of the Trust Issued Receipts.

Trading Trust Issued Receipts Pursuant to Rule 19b–4(e)

To accommodate the efficient listing and trading, or trading on an over-the-counter basis, Nasdaq proposes to adopt generic listing and trading standards for

procedures and listings standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(e).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 240.19b–4(e).

[7] *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (approving the listing and trading of Trust Issued Receipts and Internet HOLDRs on the Amex); Securities Exchange Act Release No. 45718 (April 9, 2002), 67 FR 18965 (April 17, 2002) (approving the listing and trading of Trust Issued Receipts on the NYSE).

Trust Issued Receipts pursuant to Rule 19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') will not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[8] if the Commission has approved, pursuant to section 19(b) of the Act,[9] the SRO's trading rules, procedures and listing requirements for the product class that include the new derivative securities product, and the SRO has a surveillance program for the product class.[10] Nasdaq believes that the Commission's approval of the proposed generic listing requirements for Trust Issued Receipts will allow Nasdaq to trade qualifying products without the need for notice and comment and Commission approval under Section 19(b) of the Act.[11] Nasdaq's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities.

The Commission has previously approved requests made by the Amex, the NYSE, and other exchanges to provide generic standards to list and/or trade Trust Issued Receipts.[12] Nasdaq believes that its proposed listing and trading requirements for Trust Issued Receipts are substantially similar to the generic listing and trading requirements of the Amex, the NYSE, and other exchanges.

Nasdaq Rules Applicable to the Trading of Trust Issued Receipts

Nasdaq represents that dealings in Trust Issued Receipts will be conducted pursuant to Nasdaq and the NASD's existing equity trading rules. Thus, Nasdaq's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Nasdaq equity rules and procedures would also apply.[13] In addition, regular equity trading hours of 9:30 a.m. and 4 p.m. will apply to transactions in Trust Issued Receipts. However, trading rules pertaining to the availability of odd-lot trading in Nasdaq equities will not apply to the trading of Trust Issued Receipts, since they can only be traded in round-lots. NASD's surveillance procedures for Trust Issued Receipts will be similar for those of Portfolio Depository Receipts and Index Fund Shares and will incorporate and rely upon existing NASD surveillance procedures governing equities.

Nasdaq proposes that the trading of Trust Issued Receipts that meet the following criteria at the time they are established will be exempt by Nasdaq from the short sale rule set forth in NASD Rule 3350: (1) The trust holds underlying securities issued by at least 20 companies; (2) each underlying security is actively traded within the meaning of the exception for actively-traded securities set forth in Rule 101(c)(1) of Regulation M; and (3) the initial weighting of the underlying securities issued by each issuer constitutes less than 20% of the total value of the Trust Issued Receipt.[14] The exemption from Rule 3350 will be eliminated for transactions in a particular Trust Issued Receipt if: (1) Any single security in the Trust Issued Receipt represents more than 51% of the total value of the receipt; (2) a reconstitution event results in a reduction in the number of companies to less than 20; or (3) an underlying security fails to be actively traded within the meaning of the exemption for actively-traded securities set forth in Rule 101(c)(1) of Regulation M. Prior to the occurrence of any of the above events, Nasdaq may consult with the Commission staff to determine the appropriateness of the exemption's continuation. At that time, the Commission, pursuant to Section 19(b)(2),[15] may determine that continuation of the Rule 3350 exemption is appropriate notwithstanding the decrease in the number of or inactivity of one or more securities in the Trust Issued Receipt. Secondary market portfolio or individual sales of the underlying securities which may be made in connection with cancellations of Trust Issued Receipts are not exempt from Rule 3350. This rule will apply (or not apply) to such transactions as to any other portfolio or individual trade.

Prior to the commencement of trading in Trust Issued Receipts, Nasdaq will issue a circular to members highlighting the characteristics of purchases in Trust Issued Receipts including that Trust Issued Receipts are not individually redeemable. In addition, the circular will inform members of Nasdaq policies about trading halts in such securities. Specifically, the circular will note that Trading of Trust Issued Receipts will be halted whenever Nasdaq trading in equity securities generally is halted as a result of activation of market-wide ''circuit breakers,'' which are tied to large decreases in the Dow Jones Industrial Average. Nasdaq may also halt trading in Trust Issued Receipts upon consideration of, among other factors: (1) The extent to which trading has ceased in the underlying security(s); (2) whether trading has been halted or suspended in the primary market(s) for any combination of underlying securities accounting for 20% or more of the applicable current index group

[8] 17 CFR 240.19b–4(c)(1).

[9] 15 U.S.C. 78s(b).

[10] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[11] 15 U.S.C. 78s(b).

[12] Specifically, Nasdaq proposes to provide generic standards to list or trade, pursuant to Rule 19b–4(e), any Trust Issued Receipts that meet the following criteria: (1) Each component security must be registered under section 12 of the Exchange Act; (2) each component security must have a minimum public float of at least $150 million; (3) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (4) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; (5) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and (6) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

[13] Pursuant to NASD Rule 4613(a)(1)(D), a minimum quotation increment of one penny will apply to transactions of Trust Issued Receipts on Nasdaq.

[14] Nasdaq does not believe that the trading of Trust Issued Receipts that meet these criteria would be susceptible to the practices that Rule 3350 is designed to prevent. A primary purpose of Rule 3350 is to prevent the market price of a stock from being manipulated downward by unrestricted short selling. Nasdaq anticipates that the market value of a Trust Issued Receipt will rise or fall based on the changes in the value of the underlying securities, and that the price of the Trust Issued Receipt would not decline absent a decline in the value of the underlying securities. Thus, the secondary market price of a Trust Issued Receipt should not vary substantially from the current value of the underlying securities. In addition, any temporary disparities in the relative market values between a Trust Issued Receipt and the underlying securities would tend to be corrected immediately by arbitrage activity. Nasdaq notes that the Commission has agreed with this conclusion in the cases of SPDRs, MidCap SPDRs, Country Baskets, DIAMONDS and Select Sector SPDRs, all of which are securities whose prices are reflective of a portfolio of securities held in trust. *See* letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to James F. Duffy, Senior Vice President and General Counsel, Amex (January 22, 1993) (regarding SPDRs); letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission to James F. Duffy, Executive Vice President and General Counsel, Amex (April 21, 1995) (regarding MidCap SPDRs); letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to Michael Simon, Milbank, Tweed, Hadley & McCloy (March 22, 1996) (regarding Country Baskets); letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, Commission, to James F. Duffy, Amex (January 9, 1998) (regarding DIAMONDS); and letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, Commission, to Stuart M. Strauss, Gordon, Altman, Butowsky, Weitzen, Shalov & Wein (December 14, 1998) (regarding Select Sector SPDRs).

[15] *See* Amendment No. 1, *supra note 3*.

value; and (3) the presence of other unusual conditions or circumstances deemed to be detrimental to the maintenance of a fair and orderly market. The trading in Trust Issued Receipts that has been the subject of a trading halt or suspension, may resume when Nasdaq determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading.

Disclosure to Customers

With respect to investor disclosure, Nasdaq notes that all investors in Trust Issued Receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a Trust Issued Receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all members purchasing Trust Issued Receipts from the trust for resale to customers will deliver a prospectus to such customers.

The Trust Issued Receipts Portfolio

For Nasdaq to approve Trust Issued Receipts for trading, whether by listing or trading over-the-counter pursuant to Rule 19b4–(e), the companies represented by the securities in the portfolio underlying the Trust Issued Receipts must meet the following minimum criteria:

(1) Each company's common stock must be registered under section 12 of the Act;

(2) The minimum public float of each company included in the portfolio must be at least $150 million;

(3) Each security must either be listed on a national securities exchange or be traded through the facilities of Nasdaq and be a reported national market system security;

(4) The average daily trading volume for each security must be at least 100,000 shares during the preceding sixty-day trading period; and

(5) The average daily dollar value of the shares traded during the preceding sixty-day trading period must be at least $1 million.

The initial weighting of each security in the portfolio will be based on its market capitalization, however, if on the date such weighting is determined, a security would represent more than 20% of the overall value of the receipt, then the amount of such security will be reduced to no more than 20% of the receipt value. Once initially set, the securities represented by a receipt will not change, except in accordance with the reconstitution events described below.

Trading of Trust Issued Receipts

A round-lot of 100 Trust Issued Receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. The amount of underlying securities for each round-lot of 100 Trust Issued Receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. Trust Issued Receipts may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. In order to ensure that transactions in Trust Issued Receipts are effected only in such amounts, no member may enter through the facilities of Nasdaq, for the account of a customer or for its own account, a quote or order for Trust Issued Receipts other than for a round-lot or round-lot multiple. The initial offering price for a Trust Issued Receipt will be established on the date the receipts are priced for sale to the public.

Trust Issued Receipts will be eligible to be traded through the Intermarket Trading System and will therefore be subject to the trade-through provisions of NASD Rule 5262. In addition, Trust Issued Receipts that meet specified conditions will not be subject to the short sale rule set forth in Rule 3350. Pursuant to NASD Rule 4613(a)(1)(D), a minimum quotation increment of one penny will apply to transactions in Trust Issued Receipts.

Nasdaq believes that Trust Issued Receipts will not trade at a material discount or premium to the assets held by the issuing trust. Nasdaq represents that the arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities (*e.g.*, the Trust Issued Receipts and the portfolio of underlying securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts should promote correlative pricing between the Trust Issued Receipts and the underlying securities. If the price of the Trust Issued Receipt deviates enough from the portfolio of underlying securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the Trust Issued Receipts at a discount, immediately cancel them in exchange for the underlying securities and sell the shares in the cash market at a profit, or sell the Trust Issued Receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the Trust Issued Receipts to deliver against the short position. In both instances, the arbitrageur locks in a profit and the markets move back into line.

Maintenance of the Trust Issued Receipts Portfolio

Except when a reconstitution event occurs, as described below, the securities represented by a Trust Issued Receipt will not change. Notwithstanding, the static nature of the portfolio, the number of each security represented in a receipt may change due to certain corporate events such as stock splits or reverse stock splits on the underlying securities or when a reconstitution event occurs. In addition, the relative weightings among the underlying securities will change based on the current market price of the underlying securities and upon the reconstitution events discussed below. Under no circumstances will a new security be added to the list of securities after a particular receipt program is established, nor will weightings of component securities be adjusted after they are initially set. If the portfolio of securities underlying the Trust Issued Receipts drops to fewer than nine, Nasdaq will consult with the Commission to confirm the appropriateness of continued listing of such Trust Issued Receipts.

Reconstitution Events

Trust agreements will provide for, and prospectuses for Trust Issued Receipts will describe, the automatic distribution of specified underlying securities in the trust's portfolio to the beneficial owners of Trust Issued Receipts in the circumstances referred to in such trust agreements and prospectuses as ''reconstitution events.'' The reconstitution events occur under the following circumstances:

(1) If the underlying securities of a company evidenced by a Trust Issued Receipt no longer has a class of common stock registered under section 12 of the Act, then those securities will no longer be considered underlying securities and the trustee will distribute the securities of that company to the owners of the Trust Issued Receipts;

(2) If the Commission finds that a company with underlying securities evidenced by the Trust Issued Receipts is a company that should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the securities of that company to the owners of the Trust Issued Receipts;

(3) If the underlying securities of a company evidenced by a Trust Issued Receipt are no longer outstanding as a

result of a merger, consolidation or other corporate combination, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of Trust Issued Receipts, unless the consideration is additional underlying securities (*i.e.*, the acquiring company's securities are already included in the Trust Issued Receipt as underlying securities), in which case such additional securities will be deposited into the trust; and

(4) If an underlying issuer's underlying securities are delisted from trading on their primary exchange or market and are not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the underlying securities are delisted.[16]

If the trustee removes an underlying security from the trust due to the occurrence of one of the reconstitution events described above, the trustee, in accordance with the depositary trust agreement, will deliver the underlying security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

Issuance and Cancellation of Trust Issued Receipts

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, receipts only in a round-lot of 100 Trust Issued Receipts and round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 Trust Issued Receipts, the bid and asked prices will be quoted on a per receipt basis. The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

A holder may obtain Trust Issued Receipts by either purchasing them on Nasdaq or an exchange by delivering to the trust during its normal business hours the requisite securities evidencing a round-lot of Trust Issued Receipts. The trustee will charge an issuance fee of up to $10.00 per 100 Trust Issued Receipts. If a holder wants to cancel Trust Issued Receipts and withdraw the underlying securities, the holder may do so by surrendering the receipts to the trust during normal business hours. The trustee will charge a cancellation fee of up to $10.00 per 100 Trust Issued Receipts. Lower charges may be assigned for bulk issuances and cancellations. The holder will receive the underlying securities no later than the business day after the trustee receives the request.

Termination of the Trust

The trust shall terminate upon the earlier of: (i) The removal of the receipts from listing on Nasdaq or a national securities exchange if they are not listed for trading on Nasdaq or a national securities exchange within five business days from the date the receipts are delisted; (ii) the trustee resigns and no successor trustee is appointed within sixty days from the date the trustee provides notice to the initial depositor of its intent to resign; (iii) 75 percent of beneficial owners of outstanding Trust Issued Receipts vote to dissolve and liquidate the trust; or (iv) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the beneficial owners as promptly as practicable after the termination event.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[17] in general and with section 15A(b)(6) of the Act,[18] in particular, in that the proposed rule change 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 a national market system, and, in general, to protect investors and the public interest. In particular, Trust Issued Receipts provide investors with an alternative to trading a broad range of securities on an individual basis, and give investors the ability to trade Trust Issued Receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–32 and should be submitted by May 19, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act,[19] and the rules and regulations thereunder applicable to a national securities association.[20] Specifically, the Commission finds, as it did with the Amex and other exchanges, that the proposal establishes listing standards for Trust Issued Receipts that will provide investors with a convenient and less expensive way of participating in the securities markets. Nasdaq's

[16] This provision is designed for the purpose of permitting an underlying security to move its listing between a national securities exchange or Nasdaq without requiring the automatic distribution of the underlying security to beneficial owners of the receipts. Should underlying securities be moved to a market other than a national securities exchange or Nasdaq, (*e.g.*, the OTC Bulletin Board) such securities will be automatically distributed to the beneficial owners of the receipts.

[17] 15 U.S.C. 78o–3.

[18] 15 U.S.C. 78o–3(6).

[19] 15 U.S.C. 78o–3(6).

[20] The Commission findings in this approval order are prospective only from the date of this order. Prior to Nasdaq's trading of Trust Issued Receipts, the Commission staff notified Nasdaq staff that these listing and trading rules and short sale rule change contained herein were necessary. The Commission is concerned that Nasdaq failed to seek Commission approval of such proposed rules and rule changes until well after Nasdaq began trading Trust Issued Receipts, despite prior notification by Commission staff to do so. The Commission expects Nasdaq to surveil the trading of these products for compliance with applicable rules, including NASD Rule 3350.

proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that Nasdaq's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[21]

As noted in the Amex approval order, the Commission believes that Trust Issued Receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade Trust Issued Receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. Trust Issued Receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investors owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the Trust Issued Receipts.

Although Trust Issued Receipts are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for Trust Issued Receipts is based on a basket of securities.[22]

Trading of Trust Issued Receipts—Listing and Trading Over-the-Counter

The Commission finds that the Nasdaq's proposal contains adequate rules and procedures to govern the trading of Trust Issued Receipts, whether by listing or trading over-the-counter. Trust Issued Receipts are equity securities that will be subject to the full panoply of Nasdaq rules governing the trading of equity securities on Nasdaq, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.[23]

In particular, the Commission notes that the trading of Trust Issued Receipts that meet the criteria mentioned above will be preliminarily exempt from the short sale rule set forth in NASD Rule 3350. Nasdaq has also represented that if certain circumstances occur, the exemption from Rule 3350 will be eliminated. At that time, the Commission, pursuant to section 19(b)(2),[24] may determine that continuation of the Rule 3350 exemption is appropriate notwithstanding the decrease in the number of or inactivity of one or more securities in the Trust Issued Receipt.

In addition, Nasdaq has developed specific listing and delisting criteria for Trust Issued Receipts that will help to ensure that a minimum level of liquidity will exist for Trust Issued Receipts to allow for the maintenance of fair and orderly markets. The delisting criteria also allows Nasdaq to consider the suspension of trading and the delisting of a Trust Issued Receipt if an event occurred that made further dealings in such securities inadvisable. This will give Nasdaq flexibility to delist Trust Issued Receipts if circumstances warrant such action. Nasdaq's proposal also provides procedures to halt trading in Trust Issued Receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes Nasdaq's belief that Trust Issued Receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. Nasdaq also represents that the potential for arbitrage should keep the market price of a Trust Issued Receipts comparable to the overall value of the underlying securities.

The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in Trust Issued Receipts.

Finally, Nasdaq will apply NASD's surveillance procedures for Trust Issued Receipts that will be similar to the procedures used for investment company units and will incorporate and rely upon existing NASD surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Trust Issued Receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of Trust Issued Receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Disclosure and Dissemination of Information

The Commission believes that Nasdaq's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading Trust Issued Receipts. The prospectus will address the special characteristics of a particular Trust Issued Receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in Trust Issued Receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a Trust Issued Receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all NASD members who purchase Trust Issued Receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any Trust Issued Receipts, Nasdaq will issue a circular to members explaining the unique characteristics and risks of this type of security. The circular will note members' prospectus delivery requirements, and highlight the characteristics of purchases in Trust Issued Receipts. The circular also will inform members of policies regarding trading halts in Trust Issued Receipts.

[21] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] The Commission has concerns about continued trading of the Trust Issued Receipts whether listed or traded over-the-counter, if the number of underlying securities falls to reflect a cross section of the selected industry. Accordingly, the NASD has represented that it would consult the Commission concerning continued trading, once the trust has fewer than nine underlying securities, and for each subsequent loss of a security thereafter.

[23] Trading rules pertaining to the availability of odd-lot trading do not apply because Trust Issued Receipts only can be traded in round-lots.

[24] *See* Amendment No. 1, *supra* note 3.

Trading Trust Issued Receipts Pursuant to Rule 19b–4(e)

The Commission further believes that adopting generic listing standards for these securities pursuant to Rule 19b–4(e) under the Act should fulfill the intended objective of the rule by giving Nasdaq the ability to potentially reduce the time frame for bringing these securities to the market, or for permitting the trading of these securities over-the-counter, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the listing and trading of Trust Issued Receipts pursuant to Rule 19b–4(e) on Nasdaq, or over-the-counter. All Trust Issued Receipt products listed under the generic standards will be subject to the full panoply of NASD and Nasdaq rules and procedures that now govern both the trading of Trust Issued Receipts and the trading of equity securities.

As described above, the Commission has previously approved similar Amex, NYSE, and other exchange rules that permit the generic listing and trading of individual Trust Issued Receipts. In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the SROs' rules and surveillance programs that govern their trading. The Commission concluded then, as it does now, that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the Trust Issued Receipts.

The Commission notes that Nasdaq's proposed generic listing standards are substantially similar to the Amex, NYSE, and other SROs. The Commission therefore believes that Trust Issued Receipts that satisfy Nasdaq's proposed generic listing standards should produce the same benefits to Nasdaq and to investors.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Nasdaq's proposal to trade Trust Issued Receipts, over-the-counter, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change, as amended, could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of Trust Issued Receipts as an investment tool, Nasdaq's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

As noted above, the Commission has approved the listing and trading of Trust Issued Receipts at the Amex, under rules that are substantially similar to the Amex, NYSE, and other exchange rules.[25] The Commission published the Amex rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.[26] Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (File No. SR–NASD–2003–32), as amended, be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10390 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[25] *See* note 6, *supra.*

[26] *Id.*

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47718; File No. SR–OCC–2002–27]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Relating to Non-Equity Options Exchanges

April 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 16, 2002, the Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change incorporates two undertakings made by OCC as party of Filing No. SR–OCC–2002–02 as stated policies under section 1 of Article VIIB, Non-Equity Exchanges, of OCC's By-Laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Filing No. OCC–2002–02 [3] set forth changes to OCC's by-laws to permit OCC to provide clearing services to new options exchanges without issuing new equity to such exchanges. In connection with the Commission's approval of SR–

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 34–46469 (September 6, 2002), 67 FR 58093 (September 13, 2002).

OCC–2002–02, OCC agreed to include as stated policies in its by-laws two undertakings previously furnished to the Commission.[4] This proposed rule change incorporates those undertakings as Interpretations and Policies under section 1 of Article VIIB of OCC's By-Laws. The two policies provide that:

1. Non-Equity Exchanges will be promptly provided with information that the Chairman considers to be of competitive significance to such Non-Equity Exchanges that was disclosed to Exchange Directors at or in connection with any meeting or action of the Board of Directors or any Committee of the Board of Directors.

2. A requesting Non-Equity Exchange shall be afforded the opportunity to make presentations to the Board of Directors or an appropriate Committee of the Board of Directors.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it should ensure the fair representation of participants and stockholders of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would 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 not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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)(i) of the Act[5] and rule 19b–4(f)(1)[6] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. 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.

[4] *Id.* at note 6.

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OCC–2002–27. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–27 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10378 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47715; File No. SR–Phlx–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Broker-Dealer Transaction Fee for Equity Option Transactions

April 22, 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 April 11, 2003, 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 Exchange proposes to amend its schedule of dues, fees and charges to decrease the broker-dealer transaction fee for ''block'' equity option transactions as follows: Broker/Dealer[3] (non-AUTO-X)

Up to 2,000 contracts—$.35 per contract
Between 2001 and 3,000 contracts—$.25 per contract (for all contracts)
Residual above 3,000 contracts—$.20 per contract above 3,000 contracts (with the first 3,000 contracts charged $.25 per contract)

This fee will be applied per transaction (not per month).[4] The Exchange proposes to implement this fee on transactions settling on or after April 11, 2003.[5] Footnote 10 of the Exchange's fee schedule is also being amended to change the term ''orders'' to ''transactions.'' All other equity option transaction charges will remain unchanged.

The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, and the Exchange.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This charge applies to members for transactions, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of a Register Options Trader (''ROT'') entered from off-floor.

[4] Member organizations may need to file a form with the Exchange to identify eligible block trades.

[5] This fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 28, 2001)(SR–Phlx–2002–32).

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

Currently, the Exchange imposes a flat $0.35 per contract for broker-dealer transactions not executed via the AUTO-X feature of AUTOM,[6] the Exchange's automated options trading system. The intent of the present fee change is to add breakpoints above which the per contract charge for broker-dealer transactions will be reduced, thereby potentially attracting additional options business to the Exchange, particularly large transactions. For example, under the proposal (i) a transaction of 1,700 contracts will be charged $0.35 per contract, (ii) a transaction of 2,500 contracts will be charged $0.25 per contract for all contracts, and (iii) a transaction of 3,500 option contracts will be charged $0.25 for each of the first 3,000 contracts and $0.20 for each of the remaining 500 contracts.[7] Footnote 10 of the Exchange's fee schedule is also being amended to change the term ''orders'' to ''transactions.''

The purpose of the proposed rule change is to generate additional revenue for the Exchange by attracting additional order flow through lowering the cost of executing certain large block equity option transactions. The proposed rule change should also make the Exchange's fees for trading equity option contracts on the Phlx more competitive with other options exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes the proposal is reasonable and equitable because it decreases transaction costs for broker-dealers executing equity options transactions on 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 inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[10] and rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–26 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10377 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[7] Of course, the contra-side to a transaction may also be subject to transaction and other charges.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47714; File No. SR–Phlx–2003–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Buy Orders in Securities Exempt for the Short Sale Rule

April 22, 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 April 3, 2003, 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 Phlx. 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 Supplementary Material .07 to Phlx rule 229 to modify the Exchange's Automatic Price Improvement (''API'') program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to rule 10a–1 under the Act[3] (the ''Short Sale rule'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10a–1.

The text of the proposed rule change is set forth below. Additions are in italics. Deletions are in brackets.

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

* * * * *

Supplementary Material

* * * * *

.01–.06 No Change

.07 (a)–(b) No Change

(c) Price Improvement for PACE Orders

(i) Automatic Price Improvement—Where the specialist voluntarily agrees to provide automatic price improvement to all customers and all eligible market orders in a security, automatically executable market and marketable limit orders in New York Stock Exchange and American Stock Exchange listed securities received through PACE for 599 shares or less shall be provided with automatic price improvement from the PACE Quote when received either $.01 or a percentage of the PACE Quote when the order is received for equities trading in decimals beginning at 9:30 a.m., except where:

(A) A buy order would be improved to a price less than the last sale *(except as provided in (F) below)* or a sell order would be improved to a price higher than the last sale (except as provided in (E) below); or

(B) A buy order would be improved to the last sale price which is a downtick *(except as provided in (F) below)* or a sell order would be improved to the last sale price which is an uptick (except as provided in (E) below). The PACE System will determine whether the last sale price is a downtick or an uptick. The [Pace] *PACE* System does not recognize changes from the previous day's close.

In these situations, the order is not eligible for automatic price improvement, and is, instead, automatically executed at the PACE Quote. A specialist may voluntarily agree to provide automatic price improvement to larger orders in a particular security to all customers under this provision.

A specialist may choose to provide automatic price improvement of: (i) $.01 where the PACE Quote is either $.05 or greater, or $.03 or greater, or (ii) where the PACE Quote is $.02 or greater, a percentage of the PACE Quote when the order is received, up to 50%, rounded to the nearest penny, and at least $.01, in a particular security to all customers.

(C) Automatic price improvement will not occur for odd-lot orders, nor where the execution price before or after the application of automatic price improvement would be outside the primary market high/low range for the day, if so elected by the entering member organization.

(D) The POES window of Supplementary Material .05 above does not apply where an order is subject to automatic price improvement or manual price protection.

(E) Sell Order Enhancement I—A specialist may choose to give automatic price improvement to all sell orders of 100 shares or more, as determined by the specialist, in a particular security which would be improved to the last sale on an uptick; or

Sell Order Enhancement II—A specialist may choose to give automatic price improvement to all sell orders of 100 shares or more, as determined by the specialist, in a particular security which would be improved to a price higher than the last sale.

(F) Buy Order Enhancement—A specialist may choose to give automatic price improvement to all buy orders, as determined by the specialist, in any security that is exempted from or otherwise not subject to Securities Exchange Act rule 10a–1.

.08–.22 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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 expand the number of orders eligible to receive price improvement by allowing Exchange equity specialists to offer API to all buy orders in securities that are exempted from or otherwise not subject to the Short Sale rule.[4] The Exchange's API program allows specialists to provide automatic price improvement to automatically executable market and marketable limit orders in New York Stock Exchange, Inc. and American Stock Exchange LLC listed securities received through Phlx's Automated Communication and Execution System (''PACE'')[5] for 599 shares or less of either $.01 or a percentage of the PACE Quote when the order is received.[6] Specialists may choose to offer API in each individual specialty security. If API is offered in an individual security, then it must offer it to all customers and all eligible market orders in that security.

Currently, API is not available to certain buy orders if the execution price of those buy orders would be less than the last sale or at the last sale, provided such execution would create a downtick.[7] The purpose of these restrictions is to prevent the possibility of a violation of the Short Sale rule on the part of a specialist selling against the buy order. In securities that are exempted from or otherwise not subject to the Short Sale rule (such as many of the Index Fund Shares, Trust Shares and Trust Issued Receipts that are traded or may be traded on the Phlx),[8] the Exchange believes that there is no possibility of a violation of the Short Sale rule by the specialist when selling to buy orders in these securities.[9] By allowing API for buy orders in these securities, the Exchange believes that customers should receive more opportunities for price improvement. While specialists in such securities may choose to give price improvement to all such buy orders under this proposal, this is a voluntary additional feature of API. The Exchange states that participation in the API program will remain voluntary, as is participation in PACE.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act, including section 6(b) of the

[4] The Exchange also proposes to correct a typographical error in the presentation of the word ''PACE'' in Supplementary Material .07(c)(i)(B) to Phlx rule 229.

[5] PACE is the Exchange's automated order routing, delivery, execution and reporting system for listed securities. *See* Phlx rule 229.

[6] *See* Supplementary Material .07 to Phlx rule 229.

[7] *See* Supplementary Material .07(c)(i)(A) to Phlx rule 229.

[8] *See* Phlx rule 803(i)-(j), (l).

[9] The Exchange states that it would issue a regulatory circular to its members informing them of which securities are exempt from the Short Sale rule, and thus available for API under the proposed rule change. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Christopher Solgan, Attorney, Division, Commission, on April 16, 2003.

[10] *See* Phlx rule 229.

Act,[11] and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, in that it is intended to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest by expanding the opportunity for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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 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–2003–25 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–10380 Filed 4–25–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Main Street Mezzanine Fund, L.P. License No. 06/06–0326; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Main Street Mezzanine Fund, L.P., 1300 Post Oak Boulevard, Houston, Texas 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2000)). Main Street Mezzanine Fund, L.P. proposes to provide a debt-with-warrants financing to Avail Consulting, LLC, 2929 Allen Parkway, Houston, Texas.

The financing is brought within the purview of section 107.730(e) of the Regulations inasmuch as a Principal of Main Street Mezzanine Fund, L.P. also serves on the Board of Directors of Avail Consulting, LLC. Avail Consulting, LLC is therefore considered an Associate of Main Street Mezzanine Fund, L.P., as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction within 30 days of the date of this notice to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 16, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–10287 Filed 4–25–03; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCIES: Federal Aviation Administration, DOT and National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of a vacancy on the NPOAG for a member representing air tour operator interests and invites interested persons to apply to fill the vacancy.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Executive Resource Staff, Western Pacific Region Headquarters, 15000 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800, E-mail: *Barry.Brayer@faa.gov*, or Howie Thompson, Natural Sounds Program, National Park Service, 12795 W. Alameda Parkway, Denver, Colorado, 80225, telephone: (303) 969–2461.

DATES: Persons interested in serving on the advisory group should contact Mr. Brayer or Mr. Thompson on or before May 19, 2003.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Pub. L. 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator and the Director (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government service.

The current NPOAG is made up of three members representing the air tour industry, four members representing environmental interests, and two members representing Native American interests. Current members of the NPOAG are: Heidi Williams, Aircraft Owners and Pilots Association; David Kennedy, National Air Transportation Association; Alan Stephen, Twin Otter/Grand Canyon Airlines; Chip Dennerlein, State of Alaska Fish and Game; Charles Maynard, formerly with Great Smoky Mountain National Park; Susan Gunn, The Wilderness Society; Steve Bosak, National Parks Conservation Association; and Germaine White and Richard Deertrack, representing Native American tribes.

Public Participation in the Advisory Group

In order to retain balance within the NPOAG, the FAA and NPS invite persons interested in serving on the NPOAG to represent air tour operator interests to contact either of the persons listed in **FOR FURTHER INFORMATION CONTACT**. Requests to serve on the NPOAG should be made in writing and postmarked on or before May 19, 2003. The request should indicate whether or not you are an air tour operator, member of an association representing this interest group, or have another affiliation with air tour operations over national parks. The request should also state what expertise you would bring to air tour operator interests while serving on the NPOAG. The term of service for NPOAG members is 3 years.

Issued in Washington, DC, on April 21, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service, Federal Aviation Administration.

[FR Doc. 03–10288 Filed 4–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4972

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4962, Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

DATES: Written comments should be received on or before June 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

OMB Number: 1545–0193.

Form Number: Form 4972.

Abstract: Internal Revenue Code section 402(e) and regulation section 402(e) and regulations section 1.402(e) allow recipients of lump-sum distributions from a qualified retirement plan to figure the tax separately on the distributions. The tax can be computed on the 10 year averaging method and/or by a special capital gain method. Form 4972 is used to compute the separate tax and to make a special 20 percent capital gain election on lump-sum distributions attributable to pre-1974 participation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 35,000.

Estimated Time Per Respondent: 2 hrs. 44 min.

Estimated Total Annual Burden Hours: 95,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–10405 Filed 4–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–36

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–36, Industry Issue Program.

DATES: Written comments should be received on or before June 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Industry Issue Program.

OMB Number: 1545–1837.

Revenue Procedure Number: Revenue Procedure 2003–36.

Abstract: Revenue Procedure 2003–36 describes the procedures for business taxpayers, industry associations, and others representing business taxpayers to submit issues for resolution under the IRS's Industry Issues Resolution Program.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Average Time Per Respondent: 40 hours.

Estimated Total Annual Reporting Burden: 2,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 18, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–10406 Filed 4–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–T, Allocation of Estimated Tax Payments to Beneficiaries.

DATES: Written comments should be received on or before June 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Estimated Tax Payments to Beneficiaries.

OMB Number: 1545–1020.

Form Number: Form 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 1,010.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: April 17, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–10407 Filed 4–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2106–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2106–EZ, Unreimbursed Employee Business Expenses.

DATES: Written comments should be received on or before June 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Unreimbursed Employee Business Expenses.

OMB Number: 1545–1441.

Form Number: Form 2106–EZ.

Abstract: IRC section 62 allows employees to deduct their business expenses to the extent of reimbursement in computing adjusted gross income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 50% of the expense. Form 2106–EZ is used by employees who are deducting expenses attributable to their jobs and are not reimbursed by their employer for any expenses or who own a vehicle used for business purposes and use the standard mileage rate.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,337,019.

Estimated Time Per Respondent: 1 hr. 36 min.

Estimated Total Annual Burden Hours: 5,339,230.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 16, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–10408 Filed 4–25–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 81

Monday, April 28, 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.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

Correction

In notice document 03–9852 beginning on page 19825 in the issue of Tuesday, April 22, 2003 make the following corrections:

1. On page 19825, in the first column, under **ADDRESSES**, in the third line ''1600'' should read ''600''.

2. On the same page, in the second column, in the first paragraph, in the sixth line ''*ipappalardo@ftc.gov*'' should read ''*jpappalardo@ftc.gov*''.

3. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the third line ''suggests'' should read ''suggest''.

[FR Doc. C3–9852 Filed 4–25–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 160

[CMS–0010–IFC]

RIN 0938–AM63

Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings

Correction

In rule document 03–9497 beginning on page 18895 in the issue of Thursday, April 17, 2003, make the following correction:

On page 18895, in the first column, in the **DATES** section, under *Expiration Date:*, in the third line, ''September 16, 2003,'' should read, ''September 16, 2004.''

[FR Doc. C3–9497 Filed 4–25–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01–1]

The Church of the Living Tree; Denial of Application

Correction

In notice document 03–8590 beginning on page 17403 in the issue of Wednesday, April 9, 2003, make the following correction:

On page 17404, in the first column, in the second line, the sentance beginning ''However'' should read as follows: ''However, by letter dated August 11, 2003, Mr. Stahl advised the then-Deputy Administrator of DEA's error, and the agency subsequently rescinded the prior final order by order dated November 21, 2000.''

[FR Doc. C3–8590 Filed 4–25–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
April 28, 2003

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA–97–2350]

RIN 2126–AA23

Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA revises its hours-of-service (HOS) regulations to require motor carriers of property to provide drivers with better opportunities to obtain sleep, and thereby reduce the incidence of crashes attributed in whole or in part to drivers operating commercial motor vehicles (CMVs) while drowsy, tired, or fatigued. This action is necessary because the FMCSA estimates that between 196 and 585 fatalities occur each year on the Nation's roads because of drowsy, tired, or fatigued CMV drivers transporting property. The FMCSA estimates that this final rule when adhered to fully will save between 24 and 75 lives each year as a result of giving truck drivers an increased incremental amount of time to obtain rest and sleep.

DATES: The effective date is June 27, 2003, except for § 395.0 which is effective from June 27, 2003, through June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Mary M. Moehring, Division Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, FMCSA, (202) 366–4001, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

The following is an outline of the preamble.

Preamble Table of Abbreviations
Statutory Requirement
Agency Determination
Advance Notice of Proposed Rulemaking
Supporting Documents Notice of Proposed Rulemaking
Development of the Notice of Proposed Rulemaking
ATA Recommendation Submitted While NPRM Was Under Review at OMB
Notice of Proposed Rulemaking
Comments to the NPRM
General Overview
Use of an Independent Consulting Firm
FMCSA Response
Use of Science
FMCSA Response
Discussion of Specific Issues of Concern to Commenters
Categories of operations
FMCSA Response
Passenger carrier operations
FMCSA Response
NHS Act Exemptions
For-hire Trucking
Associations and Carriers That May Have NHS Act Sec. 345 Subject Operations
Special Operations
Private Carriers of Freight
Safety Advocacy Groups
FMCSA Response
Sleeper berth requirements
Motor Carriers
Safety advocacy groups
Law Enforcement
FMCSA Response
Carrier notification of drivers during their off-duty hours
Motor Carriers
Safety advocacy groups
FMCSA Response
Daily work/rest cycle
General concept
ATA and DLTLCA Recommendations
Industry Comments
Private Carriers of Freight
Truckload Carriers
LTL Carriers
Driver Associations
Special Operations
Shippers
Safety Advocacy Groups
FMCSA Response
Daily off-duty time
Industry comments
Private carriers of freight
Truckload carriers
LTL carriers
Driver associations
Safety advocacy groups
FMCSA Response
Daily on-duty time
Industry comments
Private carriers of freight
Truckload carriers
LTL carriers
Driver associations
Special operations
Safety advocacy groups
FMCSA Response
Daily driving time
Industry comments
Private carriers of freight
Truckload carriers
LTL carriers
Driver associations
Special operations
Safety advocacy groups
FMCSA Response
Distinctions in duty time
General concept
ATA Recommendation
Other industry comments
Safety advocacy groups
FMCSA Response
Weekly or longer cycle
General concept
ATA Recommendation
Other industry comments
Safety advocacy groups
FMCSA Response
Weekly recovery periods
General concept
Industry comments
Safety advocacy groups
FMCSA Response
Short rest breaks during a work shift
General concept
ATA Recommendation
Other industry comments
Safety advocacy groups
FMCSA Response
Economic Impacts
Proposed costs
Industry reaction
Other industry comments
Advocacy groups
Proposed benefits
Safety advocacy groups
FMCSA Response
Electronic on-board recorders (EOBRs)
Industry comments
Other industry comments
Law enforcement comments
Safety advocacy groups
Vendors' comments
FMCSA Response
Proposed compliance and enforcement
Industry comments
Law enforcement
Safety advocacy groups
FMCSA Response
Regulatory Impact Analysis
PATT Alternative
ATA Alternative
FMCSA Staff Alternative
Safety impacts
Safety benefits
Changes in Crash Damages Due to Schedule Changes
Changes in Fatigue-related Fatalities Due to Schedule Changes
Adjustments to Benefits Due to Secondary Effects
Costs of the alternatives
Net benefits
Discussion of net benefit results
Limitations and Sensitivities
Costs and Benefits Relative to the Status Quo
Changes Compared to May 2, 2000 NPRM
Categories of operations
Passenger carrier operations
NHS Act Exemptions
Sleeper berth requirements
Carrier notification of drivers during their off-duty hours
Daily work/rest cycle
Daily off-duty time
Daily on-duty time
Daily driving time
Distinctions in duty time
Weekly or longer cycle
Weekly recovery periods
Short rest breaks during a work shift
Electronic on-board recording devices
Use of Department of Labor time records
Conclusion
Section-by-section evaluation
Appendix B to Part 385 Explanation of Safety Rating Process
390.23 Relief from regulations.
395.0 Compliance date for certain requirements for hours of service of drivers.
395.1 Scope of the rules in this part.
395.3 Maximum driving time for property-carrying vehicles.
395.5 Maximum driving time for passenger-carrying vehicles.

395.13 Drivers declared out of service.
395.15 Automatic on-board recording devices.

Rulemaking analysis and notices

Preamble Table of Abbreviations

The following are abbreviations of terms used as well as abbreviations of commenters' names in the preamble.

ANPRM—Advance Notice of Proposed Rulemaking
AHAS—Advocates for Highway and Auto Safety
AAA—American Automobile Association
ABA—American Bus Association
ACOEM—American College of Occupational and Environmental Medicine
AMSA—American Moving and Storage Association
ARTBA—American Road and Transportation Builders Association
ARA—Agricultural Retailers Association
ATC—Agricultural Transporters Conference
ATA—American Trucking Associations, Inc.
AGC—Associated General Contractors
AAR—Association of American Railroads
CTA—California Trucking Association
CRASH—Citizens for Reliable and Safe Highways
CDL—Commercial Driver's License
CVSA—Commercial Vehicle Safety Alliance
CFI—Contract Freight, Inc.
DLTLCA—Distribution and Less-than-Truck-Load (LTL) Carriers Association
DOL—U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.
DOT—Department of Transportation
FARS—Fatality Analysis Reporting System
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FMCSA—Federal Motor Carrier Safety Administration
FMCSR—Federal Motor Carrier Safety Regulations
FRA—Forest Resources Association
GES—General Estimates System
GRP—Gross Regional Product
IME—Institute of Makers of Explosives
IIHS—Insurance Institute for Highway Safety
IBA—International Bakers Association
IBT—International Brotherhood of Teamsters
IC—Collection of information
ICC—Interstate Commerce Commission
ICCTA—Interstate Commerce Commission Termination Act
IVI—Intelligent Vehicle Initiative
Landstar—Landstar System, Inc.
LTL—Less Than Truckload
LCM—Logistics Cost Model
MCMIS—Motor Carrier Management Information System
MFCA—Motor Freight Carriers Association
NAICS—North American Industry Classification System
NASTC—National Association of Small Trucking Companies
NASS—National Automotive Sampling System
NERA—National Economic Research Association
NHS—National Highway System Designation Act of 1995
NHTSA—National Highway Traffic Safety Administration
NITL—National Industrial Transportation League
NIOSH—National Institute for Occupational Safety and Health
NPTC—National Private Truck Council
NRMCA—National Ready-Mixed Concrete Association
NSC—National Safety Council
NSTA—National School Transportation Association
NSF—National Sleep Foundation
NPRM—Notice of Proposed Rulemaking
OOIDA—Owner Operators Independent Drivers Association
PATT—Parents Against Tired Truckers
PMTA—Pennsylvania Motor Truck Association
PMAA—Petroleum Marketers Association of America
RIA—*Regulatory Impact Analysis and Small Business Analysis for HOS Options,* December, 2002
RODS—Records of Duty Status
RSP—Regulatory Studies Program, Mercatus Center, George Mason University
TL—Truck Load
UMA—United Motorcoach Association
UMTIP—University of Michigan Trucking Industry Program
VMT—Vehicles Miles Traveled
Watkins—Watkins Motor Lines, Inc.

Statutory Requirement

Section 408 of the ICC Termination Act (Pub. L. 104–88, December 29, 1995, 109 Stat. 803, 958) (ICCTA) requires rulemaking to increase driver alertness and reduce fatigue-related incidents.

Agency Determination

When Congress created FMCSA, it provided that, ''[i]n carrying out its duties the Administration shall consider the assignment and maintenance of safety as the highest priority * * *'' [49 U.S.C. 113(b)]. As indicated above, Sec. 408 of the ICCTA directed the agency—then part of the Federal Highway Administration (FHWA)—to begin rulemaking dealing with a variety of fatigue-related safety issues, including ''8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness) * * *'' [109 Stat. 958]. The agency's statutory focus on safety and the specific mandate of Sec. 408 both demand that this rulemaking improve commercial motor vehicle (CMV) safety. While recognizing the primacy of its safety mission, the agency must comply with a variety of statutes and executive orders requiring detailed analysis of the cost of regulations and consideration of their impact on regulated entities and other segments of society.

The FMCSA analyzed three alternative regulatory proposals in depth. Compared to the *status quo,* which includes a degree of non-compliance with the current HOS rules, the option proposed by the American Trucking Associations (ATA), would have marginally reduced fatigue-related fatalities and somewhat increased the cost of regulatory compliance. This results in a negative cost/benefit ratio. The option suggested by Parents Against Tired Truckers (PATT) would have reduced fatalities far more than the ATA option, but would have generated significant increases in compliance and operational expenses. This results in a cost/benefit ratio far more negative than the ATA option.

The third alternative was proposed by the FMCSA staff. The analysis shows that this option would save many more lives than the ATA alternative, though not quite as many as the PATT option. While it would cost more than the ATA option, it would be much cheaper than the PATT alternative. The net result is a cost/benefit ratio slightly more negative than the ATA option but not nearly as negative as the PATT option.

The FMCSA has adopted the third alternative for this final rule. The rule represents a substantial improvement in addressing driver fatigue over the current regulation. Among other things, it increases required time off duty from 8 to 10 consecutive hours; prohibits driving after the end of the 14th hour after the driver began work; allows an increase in driving time from 10 to 11 hours; and allows drivers to restart the 60- or 70-hour clock after taking 34 hours off duty. Together, these provisions (and others discussed in detail below) are expected to reduce the effect of cumulative fatigue and prevent many of the accidents and fatalities to which fatigue is a contributing factor. Because the agency's statutory priority is safety, we have adopted a rule that is marginally more expensive than the ATA option but which will reduce fatigue-related accidents and fatalities more substantially than that option. The FMCSA believes that the rule represents the best combination of safety improvements and cost containment that can realistically be achieved.

Advance Notice of Proposed Rulemaking

On November 5, 1996, the FHWA published an advance notice of proposed rulemaking (ANPRM) for this ICCTA proceeding (61 FR 57252). The FHWA received and transcribed comments at six nationwide public

listening sessions in March 1997 and placed these comments in the docket. The FHWA recorded more than 1,588 written (paper and electronic submissions) and transcribed oral comments to this docket after the November 1996 ANPRM. The FHWA extended the comment period for the ANPRM once to June 30, 1997.

The ANPRM discussed 33 relevant research studies the FHWA was aware of in 1996. The FHWA requested that the public provide additional research studies it believed to be relevant. The ANPRM comments provided or referenced an additional 30 studies. The FHWA obtained and examined these studies and identified additional research from 1997 through 1999 while developing an NPRM. See the index to all relevant research studies and the annotated literature review. The FHWA began developing a set of alternatives to analyze based on more than 120 research studies included in the docket.

Supporting Documents Notice of Proposed Rulemaking

On April 20, 1998, the FHWA published a notice of proposed rulemaking (NPRM) requesting comments on a proposed definition of ''supporting documents'' for the HOS regulations (63 FR 19457) in response to the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103–311, 108 Stat. 1673 (August 26, 1994) (HMTAA). Section 113 of the Act requires the Secretary of Transportation to prescribe regulations amending 49 CFR Part 395 to improve both (1) compliance by CMV drivers and motor carriers with the HOS requirements, and (2) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

The April 1998 NPRM proposed that motor carriers develop and maintain effective auditing systems to monitor the accuracy of the drivers' Records of Duty Status and HOS. The NPRM proposed that failure to create and maintain such a system would result in motor carriers being required to retain various types of business documents. The use of electronic recordkeeping methods was also proposed as a preferred alternative to paper records.

Development of the Notice of Proposed Rulemaking

The entire effort to revise the HOS regulations has been based on the concept that new rules would be science-based. This was the theme throughout the development of alternatives leading up to the publication of the May 2000 NPRM. Science was often cited by industry as the basis upon which the HOS rules should be reformed. Several modal administrations within the DOT, including the FMCSA, had undertaken significant research into fatigue causation and the dynamics of sleep. There was general recognition that the existing rules for the truck and bus industries had been implemented well before there had been a clear scientific understanding of fatigue causal factors (*e.g.,* time of day, amount and timing of sleep, time awake, and time on task). The agency collected many relevant studies by authorities in the area of fatigue. It also completed its own comprehensive *Commercial Motor Vehicle Driver Fatigue And Alertness Study,* a joint undertaking with Canada and the trucking industry. In preparing the May 2000 proposal, the agency assembled an expert panel of recognized authorities on traffic safety, human factors, and fatigue to review the science and evaluate potentially effective and reasonably feasible regulatory alternatives. The resulting agency proposal relied heavily on scientific conclusions based on the research and analysis in Belenky, G., McKnight, A.J., Mitler, M.M., Smiley, A., Tijerina, L., Waller, P., Wierwille, W.W., Willis, D.K., (1998), *Potential Hours-Of-Service Regulations For Commercial Drivers; Report of the Expert Panel on Review of the Federal Highway Administration Candidate Options for Hours of Service Regulations.*

Regulatory reform of drivers' HOS in the truck and bus industries had been the subject of consideration by the agency for close to ten years before publication of the May 2000 NPRM. The FHWA's Office of Motor Carriers maintained an intensive driver fatigue research program starting in 1989. Truck and motorcoach driver fatigue had been identified and discussed by many industry analysts and safety advocates as a significant motor carrier safety issue. Major aspects of the proposal had been the subject of trade journal stories for nearly a year before the NPRM was published.

ATA Recommendation Submitted While NPRM Was Under Review at OMB

On December 3, 1999, the agency submitted the draft NPRM for review to the Office of Management and Budget (OMB) as required by Executive Order 12866.[1] The ATA submitted *Recommendations for Future Hours of Service Rules* to the DOT two weeks later on December 15, 1999. The ATA proposed that the agency ''* * * issue a notice of proposed rulemaking and ultimately a final rule based on the ATA recommendations.'' The ATA stated that its proposal was based ''* * * on sound science, public safety and the needs of the American economy.'' The 16th item of the ATA recommendation stated that ''[u]pon publication of the [FMCSA] proposal, ATA should contract with a firm to analyze the government's cost/benefit analysis, and if warranted, conduct its own cost-benefit analysis for comparison.''

The ATA addressed its recommendation both to the Secretary of Transportation and the OMB director. The agency had already considered and analyzed five alternatives it believed were reasonably feasible to implement. The agency chose not to withdraw its draft NPRM from review at OMB to add a sixth ATA alternative and delay the draft NPRM further. The OMB approved the agency's draft NPRM for publication on April 24, 2000.

Notice of Proposed Rulemaking

On May 2, 2000, FMCSA published an NPRM covering a comprehensive revision of the HOS regulations (65 FR 25540). The FMCSA received and transcribed 700 comments at eight nationwide public hearings in May, June, and July 2000 and placed these comments in the docket referenced at the beginning of this document. After holding the first seven public hearings, the agency identified several recurring themes and issues that warranted additional stakeholder and public discussion. The agency conducted three two-day public roundtable discussions in September and October 2000 in Washington, D.C. for that purpose. A transcript of each day of the public roundtable discussions is also in the docket. The FMCSA extended the comment period for the May 2000 NPRM twice, first to October 31, 2000, and then to December 15, 2000. The FMCSA has recorded more than 53,750 written (paper and electronic submissions to the docket) and transcribed oral comments in response to the May 2000 NPRM.

Comments to the NPRM

General Overview

The comments to the May 2000 proposal reflected widespread recognition of the enormity of the undertaking, and many commenters, even those strongly opposed to the NPRM, acknowledged the difficulty in sifting through the data and presenting the issues. The hearings gave many an opportunity to express themselves on a

[1] OMB Office of Information and Regulatory Affairs Internet page for ''Regulations Pending and Reviews Completed Last 30 Days'' dated 08 Dec 99.

variety of issues. The roundtable discussions provided an opportunity to focus on the specific major issues mentioned at the hearings and helped some commenters to explain their reasons for opposing or supporting the NPRM. The reactions of many commenters reflected apprehension about the effects on their jobs, earnings, businesses, method of operation, competitive status, and protection from what they perceived to be a drastic change from the status quo.

The generally unfavorable comment and reaction to the NPRM led to expressions of Congressional concern regarding any short-term effort to promulgate a final rule. The FY 2001 DOT Appropriations Act, Pub. L. 106–346, prohibited the agency from moving to a final rule during that year. The FY 2002 DOT Appropriations Act, Pub. L. 107–87, prohibited promulgation of a final rule dealing with any of the HOS exemptions in the National Highway System Designation Act of 1995, Pub. L. 104–59, Sec. 345, 109 Stat. 568, 613 (NHS). This action reflects careful consideration of the concerns expressed by members of Congress as well as the more than 53,000 comments to the docket.

Use of an Independent Consulting Firm

The National Safety Council (NSC), American Bus Association (ABA), American Trucking Associations, Inc., and Distribution and LTL Carriers Association (DLTLCA) petitioned FMCSA to retain an independent consulting firm to study the safety and economic impacts of any next action. The DLTLCA believed ''that such an approach, used previously by DOT in the prior proceeding on these hours-of-service rules, is in the interest of all the participants, FMCSA, and the public.''

FMCSA Response

The FMCSA has chosen to grant this petition. The agency hired an independent consultant who performed an exhaustive analysis of several regulatory alternatives, described below.

Use of Science

Numerous trucking industry commenters applauded the agency for its attempt to use science as the basis for HOS reform. Although these commenters found little on which to disagree with the agency about the actual research into the science of fatigue, they consistently faulted the agency for the way it applied that science in the real world. They commented that the proposed rules lacked the flexibility necessary to apply the science in an operationally practical manner. The industry position was perhaps best summed up in the comments of the National Private Truck Council (NPTC). ''While the fatigue research may confirm that people do get tired, and that they can become more tired between midnight and 6 a.m., this must be weighed against the result of pushing nighttime runs into daylight hours.''

The trucking industry also found much to disagree with regarding the analysis of the accident and compliance data used by the agency to justify many of the provisions of the proposal.

The ATA found little support for the agency's position that the proposed rules would save 755 lives annually once industry adhered to the proposal fully.

The ATA repeatedly cited crash statistics of the National Highway Traffic Safety Administration and FMCSA showing fatigue to be a factor in no more than five percent of fatal accidents involving trucks.

The ATA referred to work done by the Michigan State Police in conjunction with the University of Michigan to try to isolate causes of fatal truck crashes in Michigan. They identified 267 truck-involved fatal crashes from 1966 to 1999, 72 of which were determined to be the fault of the truck driver. They stated only five of those 267 crashes, or 1.8 percent, were attributable to fatigue.

The National Association of Small Trucking Companies (NASTC) commented that fatigue is a ''naturally occurring phenomenon'' and man has been provided with naturally occurring defenses, which he has to manage. NASTC believes the agency ought to rely on promoting fatigue management alternatives rather than trying to regulate what is probably individual to each person.

The industry was also critical of the FMCSA for failing to do enough research into the safety consequences of shifting considerable nighttime truck traffic to the daytime.

Several enforcement agencies including the New York State Police applauded FMCSA's effort to utilize sleep research data in developing new rules to combat driver fatigue. It cautioned the agency, however, against placing total reliance ''on the data obtained through this research since this data is certainly open to interpretation.''

The American Automobile Association (AAA) found positive attributes in the proposal. The AAA believed the proposal represented a significant effort to draft science-based HOS regulations. The NPRM, it said, provided a workable framework taking into account science and expert opinion in areas of sleep research and traffic safety.

The AAA, however, believed the agency had misapplied some of the scientific findings. The AAA also stated the proposal should focus on where ''we know we have a problem.'' The AAA believed long haul, over-the-road drivers face challenges that could benefit from improved work/rest practices. The AAA pointed to the Hanowski, Wierwille, Garness, Dingus study *Impact of Local/Short Haul Operations on Driver Fatigue* (2000), Report No. DOT–MC–00–203, a study that had not been completed before the proposal. This study concluded that fatigue may be less problematic for local/short haul drivers, as they are more like workers in non-driving professions than long haul drivers. The AAA strongly recommended that the agency reconsider those parts of the proposed rulemaking that would apply HOS requirements to industries where there is no demonstrable evidence that driver fatigue results in accidents.

The American College of Occupational and Environmental Medicine (ACOEM) also had a cautionary message. Noting that fatigue is an important issue, not only for safety, but also for productivity, the ACOEM observed that occupational medicine's prime job is matching the interface of the worker with the workplace, and then understanding that interface. There is a tremendous amount of research in this area, but it is relatively young, only 20 to 30 years old. The ACOEM found that taking the science and making it operational, as in scheduling, is quite challenging and questioned the value of regulating driving schedules as the fatigue problem is much more complex. The ACOEM recommended deferring further action on the proposal until more information is available.

The National Sleep Foundation (NSF) was very supportive of the proposal. It cited the three general principles in its Policy Statement of February 2000 anticipating the publication of the proposed rules:

> New regulations must be based on current scientific research and understanding regarding fatigue and driver performance.
>
> An effective system to manage fatigue should include prescriptive regulations that can be monitored and enforced by compliance officers and, above all, provide adequate rest periods with reasonable, responsible limits on driving.
>
> HOS rules alone cannot regulate driver fatigue and alertness. Ultimately, it is the shared responsibility of all interested parties to develop a system that helps promote proper fatigue management through education and training.

The NSF concluded, ''Where science is clear, we state the proposed rules conform to the best available science. Where science is less well developed, we state the proposed rules represent a reasonable balance between operational considerations and broad principals of sleep practice.'' (sic) It also noted that the proposed rules tracked closely the NSF's policy statement and the Expert Panel's recommendations, and that they provided significant improvement over the current rules.

The Insurance Institute for Highway Safety (IIHS) mentioned several drawbacks in studies trying to link fatigue to crashes. IIHS stated that one cannot calculate fatigue-related crashes by looking at police reports or National Automotive Sampling System (NASS) reports because they will always understate fatigue. IIHS believes the correct method, called ''population percent attributable risk calculations,'' is to take the increased risk of crashes from driving longer hours and to put that into a formula together with the rate of drivers driving longer hours.

Many commenters urged the use of pilot studies to test some of the rules before generally mandating them on the industry. There was particular interest in piloting the use of on-board recorders.

There was also interest in developing a more holistic approach to the fatigue problem through the use of education and training programs, and screening for sleep apnea and other sleep disorders. This was usually mentioned in the context of fatigue management.

FMCSA Response

There was no serious challenge to the scientific findings that human beings are subject to a circadian, biological clock of about 24 hours, which controls the natural wake/sleep cycles. Nor was there any serious doubt about the science concluding that humans require about eight hours of restorative sleep daily and that a longer off-duty period than currently required is necessary so that the needed sleep can be obtained. The studies citing police accident reports for the causal factors consistently show a lower proportion of crashes with fatigue/drowsiness as a causal factor than do detailed studies of crash causation.

The agency sought to develop rules that were science-based. It did not promise rules that were science-''controlled'' to the point of being completely impractical in operational environments.

After the agency completed reviewing the 53,000 comments, including the hearing and roundtable transcripts, it began deliberating whether all the provisions of the proposal continued to be feasible.

Discussion of Specific Issues of Concern to Commenters

The agency will discuss the comments received in the docket about each of the following issues: categories of operations; passenger carrier operations; NHS exemptions; sleeper berth requirements; carrier notification of drivers during their off-duty hours; daily work/rest cycle; 24-hour work/rest cycle; daily off-duty time; daily on-duty time; daily driving time; distinctions in duty time; weekly or longer cycle; weekly recovery periods; restarts; short rest breaks during a work shift; economic impacts; electronic on-board recorders; proposed compliance and enforcement; and regulatory impact analysis.

Categories of Operations

The FMCSA proposed a categorization of motor carrier operations intended to address the diversity of the industry. The NPRM proposed five types of operations, into which most motor carriers subject to federal jurisdiction would fall. For each category a separate set of duty restrictions was proposed for the drivers in that type of operation. Types 1 and 2 were intended to cover all long-haul drivers, *i.e.*, national and regional operations, respectively. The remaining three types were intended to include the various practices of local operations. The agency proposed the additional requirement of electronic on-board recording (EOBR) devices to monitor drivers in Type 1 and 2 operations, while reducing the paperwork burden for most local operations. Type 3 was intended to cover local split shift drivers who spend most of their on-duty time driving, but most are local (or home-based), and their driving shifts are generally separated by several hours. Type 4 was intended to cover drivers who work in the vicinity of their normal work reporting location, have regular schedules extending less than 12 consecutive hours from the time they report in until they check out. Driving would have been a significant part of Type 4 drivers' work, more than half of their on-duty hours. Drivers currently operating under the *100 air-mile radius* exception in 49 CFR 395.1(e) would have been considered Type 4 drivers, and would have been absorbed into this category, eliminating the need for that exception. The FMCSA also intended that most existing exemptions would be absorbed into one of the local types of operations, primarily Type 5, to reduce the need and the demand for individualized exemptions.

The comments from industry on the categories of carrier operation were generally unfavorable. While many comments applauded the agency's efforts to remove the ''one size fits all'' concerns about existing regulations, most stated the proposal missed the mark. The National Private Truck Council's (NPTC) comments perhaps best captured the industry perception: ''It's true that one size does not fit all, but neither should the agency decide how many sizes there are nor anticipate how many sizes there will be in the future.''

The most consistent objection from motor carriers was that the proposed categories unnecessarily complicated regulation for both the industry and for enforcement.

Many carriers expressed concern that they had trouble finding the type that best described their operation or that their operations spanned more than one type, and sometimes as many as four. When a driver's duties changed from one type to another within a workweek, there was much confusion about whether the proposal required a ''weekend'' to intervene, whether EOBRs would be required for a single run, and which daily or weekly limitations applied. Uniformly, however, comments stated that some productive time would be lost in the transition.

The industry comments did not offer significant advice as to whether a better defined classification system was preferable or workable.

Industry commenters did not seem uncomfortable with the concept of ''long-haul'' trucking, as that is a common term and generally associated with freight movements over a considerable distance, as opposed to local service. Comments, however, did have difficulty with some of the other distinctions used in the NPRM.

Nearly all of the local carriers responding found some problems with the attempted classification, often calling it confusing. However, many found the effort to be supportive of their persistent attempts to secure broad exemptions from HOS regulation for their type of operations.

Types 3, 4, or 5 drew much attention from the other-than-long-haul sectors, but a major focus of many comments was why the rules could not or should not apply to their particular circumstances. Many noted that their operations might fit into Type 4 but for the occasional trips that take more than 12 hours or may require an overnight stay by the driver, while others found

Type 5 more accommodating but could not fit because of an unexplained exclusion of for-hire carriers.

Comments from the enforcement community stated that classification by type would only create confusion and make their jobs at the roadside more difficult and time-consuming.

Public interest groups gave little attention to the general concept of classification and focused rather on the particular restrictions and obligations that were tied to each of the operations.

FMCSA Response

This final rule establishes a uniform set of regulations for all cargo-carrying operations while allowing passenger-carrying operations to continue under the current rules. In addition, Congressionally-mandated and historical exemptions and exceptions are retained. The final rule will not categorize any segment of the industry in the manner that the NPRM proposed. The agency believes the rule strikes a balance between uniform, consistent enforcement and the need for operational flexibility.

The FMCSA developed the categorization proposal to improve safety based on calculated risk, to respond to ''one size fits all'' criticism, and to reflect the diversity of the industry. The primary purpose for the categories was to address the highest risk, long-haul operations, so that those operations with the least risk of serious crashes would not be required to alter their operations.

Comments from across a spectrum of stakeholders found the proposed categorization did not work for a multitude of reasons. The comments have shown that the categories created confusion, problems for enforcement, and did not fully meet the objective of accommodating the diversity of the industry. The distinction between an over-the-road truck driver and a local truck driver, however, had fairly broad acceptance among the motor carrier commenters using trucks. The agency's own research associated a significant portion of the fatigued commercial driver problem with the long-haul operation of tractor-trailer or tractor-semi-trailer combinations. For these reasons, FMCSA has decided to drop the categories proposed in the NPRM.

Passenger Carrier Operations

The proposal made no separate provisions for operators engaged in the transportation of passengers. The current rule also makes no separate provisions for such operators. The FMCSA had no basis to conclude that fatigue affects passenger carrier drivers differently than truck drivers. Thus, the agency believed the same HOS rules should apply. The NPRM recognized certain distinct characteristics in motorcoach operations by proposing different types of trips for which various restrictions would apply. The Type 3 category was meant to accommodate some tour operations and commuter bus services. Motorcoach industry associations, individual carriers and the Amalgamated Transit Union (ATU), representing intercity bus drivers, filed extensive comments, and participated actively in the public hearings and roundtable discussions. The reaction from the motorcoach industry to the proposal was disappointment with the proposed rules in general and more particularly with the agency's failure to recognize the difference between driving a bus and driving a truck.

The Conference Report for the 2001 DOT Appropriations Act contains the following reference to this issue:

> *Motorcoach driver fatigue.* The conferees note that the agency acknowledged in its NPRM on hours-of-service that little is known about the operations of over-the-road buses and motorcoachs. The conferees state that there should be additional study of the operations, driver practices and driver fatigue issues specific to over-the-road buses before any revisions to the existing trucking hours-of-service rules are finalized, and encourage the Secretary to conduct such studies to inform additional regulatory proposals in this area. See H. Conf. Rept. No. 106–940, 106th Cong., 2d Sess., p. 113 (2000).

The American Bus Association (ABA), the United Motorcoach Association (UMA), and other motorcoach, convention, and tour associations, ATU, NSC, and CVSA urged the agency to not subject passenger transportation to the proposed rules, thus allowing them to continue to operate under the currently existing rules. Among the reasons given for their request taken from the ABA comment:

(1) There is no scientific, statistical, or other evidence to support changes for bus drivers;

(2) Commercial passenger vehicles are operated in an environment entirely different from commercial freight carriers;

(3) The exemplary safety record of the industry will be compromised by the proposed rules; and

(4) The economic impact will be devastating.

The ABA agreed with other critics questioning the agency's estimate that 15 percent of truck-involved fatalities are caused by the fatigue of the commercial vehicle driver.

However, the ABA asked what part of that 15 percent was supposed to be related to bus transportation. According to the ABA's review of the Fatality Analysis Reporting System (FARS), an annual average of 42.5 fatalities was attributable to crashes involving intercity buses, which the ABA disputed due to definitional problems. Even taking these data, ABA stated that 15 percent of 42.5 amounts to less than 7 fatalities per year. The ABA argued the commercial passenger carrier industry averaged 0.01 passenger fatalities per 100 million passenger miles for 1995 through 1997 and asserted that this ranked well below the rate for rail and air passenger transportation at 0.04 passenger fatalities per 100 million passenger miles (from *Industry Facts 1999,* NSC, p. 122.)

The ABA also pointed out the significant differences, both operational and mechanical, between buses and trucks that would undermine the agency's basis for the proposed revisions.

In its comments, the ABA pointed out that all intercity bus drivers are paid by the hour and run on preset schedules, thereby eliminating any incentives to violate the present HOS restrictions.

The ABA cited section 408 of the ICCTA for the proposition that DOT is required to consider the economic vitality of the motor carrier industry in its regulation of motor carriers, drivers, and CMVs. The ABA claimed that FMCSA had made no attempt to assess the cost of this proposal to the motorcoach industry and asserts FMCSA had failed to meet its obligations under controlling law and policies.

The ABA reiterated most of the ATA and other commercial freight carrier associations' criticisms of the agency's cost/benefit analysis. It cited the ATA's submission to the docket of the Center for Regulatory Effectiveness' (CRE's) *The CRE Report Card on DOT's Proposed Rule on Hours of Service For The Motor Carrier Industry,* listing 62 legal and other procedural requirements that it believes the FMCSA must use.

The National Tour Association claimed that never in 20 years have its members experienced so much as a minor injury due to a motorcoach accident. Motorcoach travel, in their opinion, is the safest form of commercial passenger travel, and the NTA argues there is no justification for regulating bus and truck operations together. Of the 150 studies cited in the preamble, NTA argued that none deal with bus drivers. The NTA stated the proposal would only cause increased costs and heartache for the bus industry with no safety benefit; in fact, they

stated that the opposite effect is more probable. The proposal, according to NTA, was simply unnecessary and unfair.

The Convention and Visitors Association, which promotes the Washington, DC area as a primary tourism destination, commented that about one-third of all visitors to the Washington, DC area arrive by motorcoach. It estimated that the Washington area would lose 20 percent or 1.5 million visitors because of the inconsistency between the provisions of the proposal and the way the tour bus industry actually operates.

National School Transportation Association (NSTA) members provide transportation services to public school districts and private schools nationwide. Noting the specific exemption from 49 CFR parts 387 and 390 through 399 for transportation of pupils from home to school and school to home, the NSTA observed that school transportation nearly always includes school activity transportation as well. Strict adherence to the proposal would cause a disruption in current operations and could result in a shortage of available drivers. If school bus companies could use their regular route drivers to provide activity transportation, they could not service their contracts, because more drivers are simply not available. The NSTA recommended that all school bus drivers be held to the same standard, whether public or private, because they do the same things. It also recommended a separate category for school bus operations, and suggested that the FMCSA convene a roundtable discussion devoted to this issue. That would allow all issues to be worked out consistent with safety and economic practicality.

CVSA stated the agency must conduct medical and performance research on the bus and motorcoach industry to validate (or invalidate) the position in the proposal. It argued that basing such sweeping rule changes on assumptions that are not substantiated is not prudent public policy.

The NSC stated that the intercity motorcoach industry should be excluded from the HOS proposal. NSC asserted that the statement that the agency has ''assumed that bus drivers operate in ways similar to truck drivers'' was questionable for a rule purported to be based on ''sound science'' and underscored the agency's lack of understanding of the motorcoach industry's unique operating characteristics. NSC further stated there is no safety evidence to support including the motorcoach industry in the proposed changes.

FMCSA Response

The FMCSA is persuaded by comments that it does not have enough data to indicate a problem in the motorcoach industry segment and is not adopting any new rules for motorcoach drivers in this final rule. The FMCSA may consider the feasibility of other alternatives to reduce fatigue-related incidents and increase motorcoach driver alertness in the future.

The FMCSA relied on four motorcoach studies in the NPRM, three completed by the FMCSA's predecessor, the FHWA, and one from Australia. See:

(1) *Strategies to Combat Fatigue in the Long Distance Road Transport Industry, The Bus and Coach Perspective,* 1993, Australia Transport and Communications' Federal Office of Road Safety;

(2) *A Study of the Relationships Among Fatigue, HOS, and Safety of Operations of Truck and Bus Drivers,* 1972, Harris, *et al.*;

(3) *Effects of HOS Regularity of Schedules, and Cargo Loading on Truck and Bus Driver Fatigue,* 1978, Mackie, Robert R., and Miller, James C.; and

(4) *Critical Issues Relating to Acceptance of CVO Services by Interstate Truck and Bus Drivers,* 1995, Penn + Schoen Associates, Inc.

In addition, the FMCSA is nearing completion of the study required by the Conference Report for the 2001 DOT Appropriations Act. The agency is reviewing the draft final report. The FMCSA is not adopting any changes today because: (1) The agency has not yet confirmed that the new study had been designed correctly, that the process used could meet scientific scrutiny, and that the conclusions reached are reasonable; and (2) the public has not had the opportunity to review and comment on the study. When the study is approved, the agency will publish it and consider whether non-regulatory actions or regulatory revisions may be needed.

NHS Act Exemptions

The FMCSA hoped that categorizing operations would reduce the continuing demand for exemptions from the HOS regulations. In the NPRM, the agency noted that creating the Type 5 operation, *Primary work not driving,* would remove the need for special exemptions. This category was intended to include the various utility service workers, construction equipment operators, environmental remediation specialists, oilfield service workers, water well drilling operations, mobile medical equipment drivers, driver-salespeople, as well as other specialized driving operations.

Congress became involved in the consideration of exemptions, culminating in Sec. 345 of the NHS Act where it mandated exemptions from all of the HOS provisions of the Federal Motor Carrier Safety Regulations (FMCSR) for those individuals transporting crops and farm supplies during planting and harvesting seasons and partial relief from the 7 or 8 day HOS limit for groundwater well drilling, construction, and utility service vehicle operations of motor carriers. A fifth provision allowed States to exempt from the commercial driver's license (CDL) regulations employees of towns with a population of 3,000 or less who are called to drive snow plows or salting/sanding vehicles when the regular CDL holder is unavailable or needs assistance. With respect to all, except the groundwater well drilling exemption, the Secretary was authorized to prevent, modify, or revoke each exemption after a rulemaking proceeding upon a determination that the exemption was not in the public interest and would have a significant adverse impact upon the safety of commercial motor vehicles. Under the terms of the statute, two of the exemptions were to take effect immediately, and the other three within 180 days of the date of enactment.

On April 3, 1996, the agency published a final rule codifying the NHS Act exemptions [61 FR 14677]. This rule deferred any rulemaking action concerning whether to modify or revoke any exemption.

The FHWA received a petition on July 3, 1996, from the Advocates for Highway and Auto Safety (AHAS), which, citing the statement in the April 3 notice that the agency had ''decided not to proceed with such a rulemaking proceeding at this time,'' sought to have the agency reconsider the exemptions. The FMCSA granted the AHAS petition.

The FMCSA noted its intention to modify 3 of the 4 NHS-legislated HOS exemptions in the NPRM. In addition, the FMCSA proposed narrow definitions for terms used in the legislation that Congress had not defined. The FMCSA had been interpreting the terms narrowly since April 1996. The NPRM was intended to assist law enforcement officers by explaining exactly what the definitions were for certain terms, such as ''agricultural commodities'' and ''farm supplies,'' based on the agency's narrow interpretations of the terms used.

Except for the agricultural exemption, which was a general exemption from all

HOS regulations for certain agricultural operations in a limited geographic area during planting and harvesting seasons, the exemptions granted were in the form of a 24-hour restart of the 60- or 70-hour restrictions. In creating the Type 5 operational category, the FMCSA's intent was to accommodate all existing 24-hour restart exemptions. The ICC first allowed a 24-hour restart provision for drivers of specially constructed oilfield servicing vehicles on April 13, 1962. It did not discuss the safety or economic impacts in its decision, see 89 M.C.C. 19 and 27 FR 3553. It should be noted that the FMCSA intended that the proposed 32-hour period would operate as a ''restart'' of a workweek with respect to Type 5 operations.

However, associations and individuals representing agricultural transporters, the construction industry, utility vehicle operators, oil-well drillers and other operations that currently have a 24-hour restart provision stated that FMCSA's proposal to use Type 5 as a catch-all for current exemptions simply did not work. Each segment had its own operational idiosyncrasies, many duty schedules in split days off, but more often in unpredictable demand, making it, in their view, impractical for them to use not only Type 5, but also any of the other types proposed.

For-Hire Trucking

The ATA made several arguments against the NPRM's treatment of exemptions or exceptions. First, it contended that several exceptions (in addition to those created by Sec. 345) have been in place for years, and that carriers have built their businesses around them. To summarily remove them without any supporting evidence would create substantial hardship.

Second, it noted that some of the exemptions were granted by the NHS statute with a required procedure for eliminating or modifying them. The ATA alleged the FMCSA failed to follow the required procedures.

Third, it asserted that requiring the states to adopt the proposed federal requirements, eliminating even State exemptions within three years, was unreasonable and unnecessarily interfered with State discretion. The ATA addressed each of the exceptions or exemptions currently in the regulations.

Associations and Carriers That May Have NHS Act Sec. 345 Subject Operations

The Agricultural Retailers Association (ARA) stated that although farming and related supply businesses operate year round, their busiest time is during planting and harvesting seasons. During those times, which are defined by State law, many farmers and suppliers are eligible for an exemption from the HOS regulations under Sec. 345 of the NHS Act.

The ARA commented that most drivers operate locally, on farm roads, and sleep at home every night. Although pleased that the agricultural exemption was to be retained, the ARA commented that the proposal appeared to negate the exemption. The ARA recommended that certain language be deleted.

The ARA also pointed out an apparent inconsistency between the proposed regulatory language and the section-by-section analysis. Both refer to the ''weekend'' provision and when it would apply to drivers, including agricultural exempt operations. One said ''more than five consecutive days'' and the other said ''more than three consecutive days.'' ARA stated both were in error because they would require a driver and truck to be idled for up to 56 hours merely because a driver completed a task at a farm taking three or five days. It recommended the number of exempt driving days requiring a ''weekend'' rest period be set at seven.

The Agricultural Transporters Conference (ATC) stressed the importance of servicing crops at appropriate times, a situation ATC argues is analogous to emergencies. ATC members have been operating under the NHS exemption since 1995 and believe there is no evidence that safety has been compromised. ATC stated that the agriculture definitions in the NPRM are too restrictive and that problems will inevitably arise. For example, a supplier's driver delivers anhydrous ammonia to the farm, applies it to the fields, and then stops at a wholesaler to fill his tank on the way back to the supplier's yard. He would be exempt on the delivery, but not on the pick up.

The Forest Resources Association (FRA) wanted loggers and other forest harvesters to be allowed to operate under the agricultural exemption. According to FRA, its members' drivers deliver 86 percent of all raw forest products consumed in the United States. The FRA commented that drivers typically deliver three loads a day with an average round trip of 126 miles, well within a 100 air-mile radius.

The National Rural Electric Cooperative Association argued that the NPRM did not meet the statutory requirement in Sec. 345 for modifying the exemptions through rulemaking.

The Edison Electric Institute suggested that the FMCSA look to State and local experience for the handling of small, local emergencies like power failures.

Qwest, a private motor carrier, claims that its crash rates are low and that it has experienced no rise in crashes when it increases a driver's time on-duty. In the past, Qwest claims it has worked drivers extra hours pursuant to the emergency exemption of the current HOS rules. On those occasions, Qwest claims it has had no increased crash rate. Qwest also finds no significant difference in its crash rates in States that afford it HOS exemptions as opposed to those that do not. Qwest contends this is evidence that utility service drivers do not present a highway safety risk sufficient to justify HOS regulation. Qwest sought an exemption for telephone line repair drivers, who operate mostly under emergency conditions.

Special Operations

The basic position of the Associated General Contractors (AGC) was that construction industry truck drivers operate under conditions that do not lead to fatigue or alertness problems and that HOS regulations for them are unnecessary. AGC contends that the current regulations were designed for over-the-road drivers, and that Congress recognized this in 1995 by providing the construction industry with a 24-hour restart provision in the NHS Act. AGC argues the FMCSA is seeking to undo what Congress had directed it to do. AGC argues that Congress, in the 1998 reauthorization of the national highway program, increased funding by 44 percent, recognizing the need for infrastructure improvements. The FMCSA's proposal, by placing unnecessary restrictions on construction operations, would threaten to undercut that mission.

Private Carriers of Freight

The PMAA commented that the FMCSA treated the agricultural exemption too narrowly, defining ''farm supplies'' to mean only those products ''directly relating to farming activities of planting, fertilizing, and harvesting crops that are delivered *directly* to a farm.'' The fuel demands of farmers during the planting, harvesting and crop-drying seasons only add to the constant demands of other consumers. This places a great strain on the workday of typical drivers, because of long delays at the terminal rack.

The PMAA argued that FMCSA: (1) Need not preempt the ability of States to manage these matters; (2) should allow intermediate deliveries to be covered under the exemption; and (3)

should permit longer workdays during critical seasons.

Safety Advocacy Groups

The AHAS determined that it could not support the agency's proposal to eliminate the NHS exemptions through use of the Type 5 driving category because the absence of an EOBR requirement would prevent adequate monitoring and enforcement. It argued that the substituted regime of a 78-hour week with only 32 hours off before the next week begins was excessive and that enforcement problems would allow even these liberal limits to be exceeded. In effect, AHAS said the agency would extend NHS-type exemptions to all construction operations, even beyond 50 miles, without sufficient opportunity for comment. The agency's approach to eliminating NHS exemptions appeared to deregulate construction and utility operations. Finally, the elimination of the Tolerance Guidelines as proposed in the NPRM would effectively require States to increase current driving limitations from 10 hours to 12.

The AHAS recommended that the agency treat construction and agricultural exemptions in a separate rulemaking, which would better conform to the requirements of the Administrative Procedure Act.

FMCSA Response

There are no data on fatigue that support either the 24-hour restart provisions for oilfield, construction, ground water, or utility carriers, or the total HOS exemption for agriculture provided by Sec. 345. The NPRM proposed modifying the 24-hour restart into a restart provision of between 32 and 56 hours, depending on when the period began. The agency cited data that did support a 32-hour restart provision. The agency's expert panel verified that data.

The NPRM gave AHAS the opportunity to present its case that modifications for the NHS exemptions were necessary. AHAS did not provide any data.

The NPRM treated the agricultural exemption narrowly, as the agency has done with all the NHS exemptions in interpretations and opinion letters since 1996. Congress did not define the terms for which FMCSA proposed definitions; the agency believes it must define the terms narrowly to maintain safety and prevent abuse. The FMCSA, however, will take no actions contrary to the statutes on the matter of NHS exemptions.

Sleeper Berth Requirements

The appropriate use of sleeper berths to obtain required rest and avoid the accumulation of sleep debt became an issue because of the NPRM finding that drivers need about ten consecutive hours within which to obtain the necessary seven to eight hours of daily sleep. The sleeper berth exception in the current rules allows a driver to accumulate the required eight (otherwise consecutive) hours off-duty in a sleeper berth (that meets the requirements of 49 CFR 393.76) in two periods totaling at least eight hours, neither period being less than two hours.

Studies on the sleeper berth issue have generally found that, for a number of reasons, sleeping in a berth, particularly when the vehicle is moving, is less restorative than sleeping in a bed. The agency has recently released a study begun after it developed the NPRM: Dingus, Neale, Garness, Hanowski, Keisler, Lee, Perez, Robinson, Belz, Casali, Pace-Schott, Stickgold, Hobson, (2002), *Impact of Sleeper Berth Usage on Driver Fatigue,* FMCSA Report No. FMCSA–RT–02–050. This study concludes that sleeping in a moving vehicle impairs the quality of rest. Some studies also have determined that drivers using sleeper berths had a higher crash risk than drivers obtaining their sleep in a bed. The agency's Expert Panel, who reviewed the feasible alternatives during development of the NPRM, recommended that until there was more definitive information available on the relative quality of sleep in a berth, drivers using sleeper berths should be afforded a greater opportunity to obtain additional rest. The FMCSA proposed that only team drivers be allowed to use sleeper berths to split their accumulated required off-duty time, and then only in periods of not less than five hours each. Single drivers would use the sleeper berth during one block of off-duty time.

A study by Abrams C., Shultz, T., & Wylie, C.D. (1997) *Commercial Motor Vehicle Driver Fatigue, Alertness, and Countermeasures Survey* indicated that drivers using sleeper berths reported averaging about six to seven hours at a stretch in the berths. Other industry surveys indicated that drivers reported averaging about four hours at a stretch in the sleeper berths. An ATA survey showed that only five percent of team drivers use the sleeper berth while the vehicle is in motion. An Owner Operators Independent Drivers Association (OOIDA) survey showed that number to be higher, 11 percent.

Motor Carriers

The industry proposed that drivers with conforming sleeper berths be permitted to split the required ten consecutive off-duty hours into two non-consecutive periods, the duration of each to be determined by the drivers. The industry believes that given the fact that the driver must accumulate 10 hours off duty in a 24-hour period, drivers ought to be able to determine the length of the two separate periods. The industry believes drivers are in the best position to know how much rest they need at a particular time. For example, the driver could combine one long sleep period of six or seven hours with one separate, shorter extended rest period of three or four hours to augment the longer sleep. The industry proposed that off-duty time taken immediately before or after a sleeper berth period may also be counted toward the accumulation of the required ten hours off duty. They stated that this merely carries over what is presently permitted under the existing rules, and affords the driver the flexibility to maximize sleep and rest time. Finally, the industry recommended that time spent in the passenger seat, presumably even while the vehicle is in motion under the control of a co-driver, be counted as off-duty time and be credited toward the accumulation of the required ten hours. This passenger-seat time would be subject to the restriction that it must immediately precede or follow sleeper berth time. The rationale is that a driver may need time merely to relax without sleeping before or after his sleep period.

Comments from industry were uniformly in favor of retaining the sleeper berth provision for all drivers, solo and team. The carrier associations, large and small, individual carriers, owner-operators, drivers and unions all found the proposal regarding sleeper berth use unreasonably restrictive. The larger carriers lined up behind the ATA recommendation, and the smaller carriers and the owner-operators sounded similar themes. In fact, the OOIDA questioned why sitting in a jump seat could not be combined with sleeper berth time to accumulate the required rest period. What difference is there, OOIDA asked, between a driver lying awake in a sleeper berth, who cannot sleep, and a driver sitting in the jump seat reading or listening to the radio?

The ATA argued that the proposed sleeper berth provision is inconsistent with available science. It stated that the FMCSA has acknowledged a gap in the current research on sleeper berths and that more research is required. ATA

argued the proposal even seems to contradict the recommendation of the agency's Expert Panel. The ATA stated that science indicates that a combination of a long period with shorter period is better than the proposed split of five and five. The ATA was also critical of the agency's failure to gauge the economic impacts of such a rule change.

Truckload carriers stated that the nature of the long-haul, irregular-route business makes the elimination of split sleeper berth time a major concern because it removes the needed flexibility from the driver.

Similar positions were taken by the LTL sector, noting that drivers must have the ability to manage their work/rest times more freely, including sleeper berth time. Examples were given of drivers managing sleeper berth time to get to the shipper location early and avoid traffic.

Citing research finding that drivers sleeping in sleeper berths while the vehicle was in motion obtained less restorative sleep than those sleeping while the vehicle was at rest, some commenters said they could not understand the agency limiting the exception to team drivers. Although not mentioned in the proposed rule, some found it necessary to ask whether the exception for team drivers would apply to sleeper berth time acquired while the vehicle was in motion. Others found that even the team driver exception was confusing. Still others looked for data supporting a minimum period of five hours.

Many small carriers and owner-operators stated that drivers using sleeper berths need less than the ten consecutive hours proposed in the NPRM. They do not have to travel any distances to get to their sleeping quarters; they just have to climb into the back. Many also strenuously opposed the treatment of sleeper berth time in the proposal, seeing it as discouraging the use of sleeper berths. In their view, the berths are a valuable resource, readily available to the driver to get necessary rest, and their use should be encouraged. OOIDA recommended the agency retain the present sleeper berth exception to the consecutive-hours requirement.

The International Brotherhood of Teamsters (IBT) took issue with the findings of the studies on effectiveness of sleep in a berth. They argued that the determinative factor was not the quality of the accommodations, but rather environmental conditions, like noise levels.

Safety Advocacy Groups

Safety advocates applauded FMCSA for prohibiting split sleeper berth periods for solo drivers and recommended extending the prohibition to team drivers as well. The NSC, however, cautioned the FMCSA to await further scientific data before proceeding one way or another. The AHAS stated that some research studies indicate the restorative benefits of napping are not entirely clear, but conceded that more napping is better than less napping.

Law Enforcement

The CVSA stated the regulations should provide sleeper berth flexibility for both short-term naps and longer sleep periods.

FMCSA Response

Because of the comments and the new studies released after the NPRM's publication, the FMCSA has decided to retain the sleeper berth exception. The agency, however, will modify the off-duty period to align with the new off-duty period adopted in this final rule.

In the *Impact of Sleeper Berth Usage on Driver Fatigue* study, the team driving operation highlighted the benefits of reducing drowsiness. Unlike extremely tired single drivers who may have felt compelled to continue to drive even when it was dangerous to do so, the individual drivers in a team operation generally had no similar compulsion to operate the vehicle when they were extremely tired. From the data collected in this study, it was apparent that the team driving operation translates into fewer bouts of drowsiness, fewer critical incidents, and, in general, safer trucking operations. Critical incidents are those incidents that resulted in a crash because the driver did not perform evasive maneuvers or that would have resulted in a crash, if the driver had not taken evasive maneuvers.

In addition, team drivers appeared to drive much less aggressively, make fewer errors, and rely effectively on their relief drivers to avoid instances of extreme drowsiness while driving. In effect, it appeared as though team drivers undergo a natural ''screening'' process. This was indicated by a number of the truck drivers during the focus groups conducted earlier in this project. Drivers indicated that team drivers must be both considerate of their resting partner and trustworthy with regard to their driving ability. Thus, the level of ''acceptance'' necessary to be a successful team driver seems to serve as an effective screening criterion.

On the other hand, single drivers in the study had many more critical incidents at all levels of severity as compared to team drivers. Single drivers were involved in four times the number of ''very/extremely drowsy'' observer ratings as were team drivers, and were more likely to push themselves to drive on occasions when they were very tired.

Based on the agency's *Commercial Motor Vehicle Driver Fatigue and Alertness Study* (1996), there were relatively few instances (about 2.5 percent) of ''extreme drowsiness,'' with most of these instances being experienced by single drivers, again with a high rate of the occurrence of this level of fatigue on the second or third shift after the first day of a multi-day drive. Thus, it appears that the combination of long driving times and multiple days provides the greatest concern, with several results pointing to the presence of cumulative fatigue. This means that the length of shifts in the later stages of a trip must also be carefully considered.

Having mentioned this concern, it is important to point out that critical incidents and/or driver errors did not increase directly with the hours beyond the regulatory limits. In fact, there was a substantial decrease in the rate of critical incidents during some of the more extreme violations. However, one should exercise great caution when interpreting these results. For the following reasons, they do not necessarily mean that the HOS should be expanded:

(1) It may be possible that the drivers were making a point to drive more carefully and cautiously *because* they were operating outside of the regulatory limits and did not want to get stopped by law enforcement officials; and

(2) They may have risked driving outside of the regulations only because they felt alert and knew that they could continue to drive safely.

There were a number of findings in this study indicating that the quality and depth of sleep was worse on the road, particularly for team drivers. Drivers in teams have significantly more sleep disturbances than do single drivers. In addition, for team drivers who sleep while the vehicle is in motion, factors such as vibration and noise adversely affected their sleep, although lighting and temperature aspects of the environment did not appear to be much of a factor.

However, it was found that many of the sleep disturbances that occurred for single drivers could not be attributed solely to an environmental factor.

The NPRM estimated that 90 percent of all long-haul drivers use sleeper berths. Although the proposed rule would not have prohibited the use of

sleeper berths, it would have diminished their flexibility by requiring single drivers to have one uninterrupted rest period of at least ten hours duration every 24 hours. As pointed out in the comments, however, the proximity and convenience of the sleeper berth reduces the importance of the length of the uninterrupted period. If a driver obtained seven consecutive hours of sleep immediately in the sleeper berth, it would be unnecessary to require him to remain in that location for an additional three hours. The agency agrees with commenters on these points. This is especially true when those three hours of required rest could be used to better advantage to alleviate fatigue later in the workday. Of course, drivers are free under the rules to take rest breaks at any time, using a sleeper berth or otherwise.

Use of sleeper berths in long-haul operations is firmly entrenched in the practice, culture, and equipment of the trucking industry. This does not mean that the use of sleeper berths should not be reviewed in the interest of safety where a legitimate problem is identified and established as such. It does mean, however, that to do so would require more documented evidence of a safety problem than the agency now has. In light of the agency's recently completed research, the very strong opposition and persuasive arguments presented, the agency will continue to allow single drivers to accumulate their required time off duty in two sleeper berth periods.

The FMCSA has improved the regulatory text to ensure a clear understanding of the sleeper berth rule. The FMCSA has borrowed from and modified the Government of Canada's 1994 Commercial Vehicle Drivers Hours of Service Regulations version of the sleeper berth rule (SOR/94–716, s. 5), because it describes the rule in clearer terms than the wording adopted by the ICC in 1938. Although the Canadian version is clearly better, the FMCSA found that it may prevent a driver from eating in a restaurant either (1) after leaving the sleeper berth and before going on duty, or (2) after going off duty and before entering the sleeper berth. The regulatory text has been modified from the Canadian version to enable a driver to have off-duty time in conjunction with sleeper berth time, which the agency has allowed over the years.

Carrier Notification of Drivers During Their Off-Duty Hours

The NPRM proposed a kind of restart that would be triggered by employers or their agents violating a proposed prohibition against interrupting drivers' off-duty periods. The NPRM proposal was designed to address complaints the agency has received over the years regarding unreasonable calls from dispatchers and other carrier employees that caused drivers to lose the opportunity to sleep. As proposed, such an interruption would start the full interrupted off-duty period over again from the time of the interruption. Therefore, if a driver were contacted at 3 a.m. at the end of the sixth hour of his 10-hour off-duty period, the required off-duty period would have to be extended by ten full hours, or until 1 p.m. Similarly, if the proposed 32-hour weekly recovery period were in force, and the driver were contacted by the carrier at the end of the 30th hour, the entire 32-hour period would have been required to start over again at that time. This provision was part of the agency's effort to provide a meaningful opportunity for drivers to obtain rest. Although some comments recognized the good intention, most of those commenting on this part of the proposal indicated significant practical and operational problems with such a restriction on communicating with drivers.

Motor Carriers

The ATA recommended that FMCSA retain its current policy allowing brief contacts with drivers during the off-duty period. Under that policy, those contacts are considered *de minimis* interruptions that do not cause a break in the off-duty period.

Con-Way Transportation Services (Con-Way), a large, non-union LTL carrier, described typical LTL hub and spoke operations, *i.e.* both line haul and local pick-up and delivery activities. About 80 percent of all runs are prescheduled, but 20 percent vary based on tonnage expected. Carriers maintain a flex-board for on-call drivers, who perform loading and unloading. On a given day, most flex-board drivers would load/unload, but if a run were not available, they would be sent home after three or four hours. If things picked up, they could be recalled to take a run. If they could not be called for 10 hours, Con-Way stated scheduling would become impossible. It argued there has to be a way of communicating with drivers to reflect changes in freight volume or operating conditions.

The NASTC stated that about 15 to 20 percent of the time, truckload operations rely on the spot market for back-hauls and that requires timely notification to drivers or the day is lost to the driver, and the load to the company.

Large and small freight carriers, both truckload and LTL, local delivery operations and construction companies all agreed the proposed rule was too restrictive for practical application. Many offered examples of damaging outcomes to themselves and drivers if the ability to communicate during off-duty hours were denied them. Utility companies found that such a prohibition could not work when emergency situations arise that need immediate mobilization of employees. The general advice offered was: ''Do not try to micro-manage off-duty time, particularly where there's no evidence of a problem.''

The IBT saw this not as a driver protection provision, but rather as a potential opportunity for mischief by a dispatcher who is having a problem with a driver. By calling the driver a number of times during his off-duty periods, the dispatcher could significantly curtail that driver's availability to work. The IBT stated that there is a better way to fix the problem, agreeing in part with the ATA suggestion to allow brief contacts. At least one driver, however, commented about what he said was a well-documented unsafe practice of keeping on-call drivers awake to protect and preserve the carriers' irregular work schedules. That practice results in on-call drivers going to work already fatigued.

Safety Advocacy Groups

Although commending the agency for providing a longer daily recovery period and preventing it from being interrupted, the AHAS had concerns that the prohibition would be unenforceable, except perhaps as a result of a complaint investigation.

FMCSA Response

The agency is persuaded that practical enforcement problems preclude moving forward with this element of the proposal. However, as suggested in comments from ATA and AHAS, as well as drivers who have expressed concern in the past, there ought to be a way to deal with unnecessary interruptions. These interruptions while brief in duration have a significant impact on the quality of rest drivers obtain if they occur while the driver is sleeping. Enforcement, however, should always be considered in proposing a prohibition. Communications between a carrier and a driver that causes that driver to lose the opportunity for restorative sleep is a safety issue that falls within the purview of the FMCSA and its state partners. Therefore, FMCSA will continue to gather data to

the greatest extent practicable on the degree to which driver performance is adversely affected by these interruptions during the rest period.

Daily Work/Rest Cycle

General Concept

The circadian cycle of a 24-hour workday was presented in the NPRM's definition of workday as ''any fixed period of 24 consecutive hours,'' and in the number of hours required to be off-duty combined with allowable on-duty periods. The comments reflected a fairly general agreement across the board that the rules should build on the foundation of a 24-hour day and that the current allowance for 8 consecutive hours off duty was insufficient to assure that drivers had the opportunity to get 7–8 hours of sleep. For example, nearly all of the responding motor carriers and motor carrier associations mentioning this issue agreed that the science clearly supports this change. The safety advocacy groups and the scientific responders enthusiastically supported the proposal to revert to a 24-hour work/rest cycle. The issue of how these on-duty and off-duty periods apply to the proposed five types of operations is reserved for another section. This is not to say, however, that there was a total absence of dissent. As we will see with many of the proposed restrictions, there were some problems in the details, and that the problem usually cited was a lack of flexibility.

The motorcoach industry had little interest in this issue, primarily because it has already absorbed the principle into operating practices. Its basic position is that the industry has adjusted well to the existing rules.

ATA and DLTLCA Recommendations

The DLTLCA filed a petition on November 29, 2000, on behalf of itself and nine other trade associations, including the ATA, which, among other things, presented *The Trucking Industry's Hours-of-Service Proposal.* The document was described as the product of a 2-year effort by the petitioners' motor carrier members, who had it reviewed by Drs. Mark R. Rosekind and David F. Dinges, noted experts in sleep science, to ensure consistency with the latest safety research. Referring to a 24-hour rest/work schedule, the petitioners said:

> We now know, based on research regarding the circadian rhythm, our bodies function on a 24-hour cycle. The rules should mirror this biological rhythm so that time on and off duty equals 24 hours. The current rules do not adhere to this pattern since they require 8 hours off duty and allow 15 hours on duty. We recommend a 14-hour on-duty period and 10-hour off-duty period.

As discussed above, the ATA had earlier submitted recommendations to the DOT in December 1999 while the draft NPRM was being reviewed at OMB before publication. The ATA championed the concept of a 24-hour work/rest cycle but did not describe their ''14 duty hours'' as a period limited to 14 consecutive hours.

Regarding the issue of the 10-hour off-duty and 14-hour on-duty components of the 24-hour cycle, the ATA said in its recommendations:

> This is a decrease in allowable work hours from the current rules. When combined with the increased amount of off-duty time (from 8 to 10 hours), a 14-hour on-duty period promotes driver scheduling which mirrors more closely the body's 24-hour clock.

The 1999 ATA recommendations included a daily ''flex-time'' option, which was not mentioned in the November 2000 DLTLCA multi-association petition. Flex-time would allow drivers to add up to 2 hours to the daily on-duty time no more than twice in any 7-day period, provided at least 48 hours separated the two extended on-duty periods and an amount of extra off-duty time equal to the ''extended'' time taken within 24 hours. The ATA said it found the ''flex-time'' provision necessary to accommodate ''certain segments of industry [which] find themselves in a position where a 14-hour workday places the drivers in a position, on an irregular basis, of not being able to complete their assigned tasks.'' In its docket submittal of December 15, 2000, the ATA, referring to the 24-hour work/rest cycle, merely said: ''Work shifts should not be required to begin at the same time each day.'' It also included the daily flex-time provision, and suggested regulatory language to implement this option.

The ATA cited no scientific source for the following three elements of its proposals:

(1) Extending the workweek to 70 hours in 7 days, all of which could be, but probably would not be, driving time;

(2) An averaging provision allowing drivers to work 140 hours in 14 days by averaging one 84-hour workweek with one 56-hour workweek with a minimum of 34 hours off in between; and

(3) Split off-duty time for sleeper berth drivers, and a limited allowance for combining sleeper-berth time with other off-duty time.

At the second FMCSA ''roundtable'' discussion on September 28, 2000, the DLTLCA representative hypothesized that the ATA recommended eliminating the distinction between driving and on-duty not driving time, ''because as a practical matter, no driver is going to be beyond 12 * * * we are never going to be beyond 12 * * * because we have 3 to 4 hours loading time. We have pre-trip inspections. We have all these other activities built in.''

Industry Comments

The National Tank Truck Carriers (NTTC) supported the 24-hour clock as the basis for work/rest cycles. However, it refuted any assumptions that the tank truck industry has operational predictability and asserted that the rigidity of the rules unnecessarily restricted driver flexibility.

Private Carriers of Freight

The NPTC recommended adopting a 24-hour work/rest cycle. The NPTC believes drivers' HOS regulations should be based on a 24-hour clock, reflecting a significant body of science that has determined that human beings have a natural circadian rhythm.

The International Bakers Association (IBA) favored efforts to promote a 24-hour work/rest cycle without requiring work to start at the same time every day.

Truckload Carriers

Large truckload carriers, such as Schneider National, J.B. Hunt, and Landstar, several of which participated in the formulation of industry's counter-proposal, generally favored a 24-hour work/rest cycle. The smaller truckload carriers were a little more reserved in their support for the 24-hour work/rest cycle, and that was primarily due to concern about the lack of flexibility in the proposal.

The NASTC explained that its members have to depend upon the spot market to obtain back-hauls to maximize earnings. The unpredictable nature of such commerce may make it difficult to adhere to a strict 24-hour workday. Several of its members opposed the rigidity of a ''fixed period of 24 consecutive hours.''

LTL Carriers

The reaction of the LTL carriers was also generally positive on the issue of the 24-hour work/rest cycle. This may be because the nature of LTL operations is more closely in line with a 24-hour day. Most LTL carriers reported that runs are generally scheduled so they can be completed within 12 hours with no more than 10 hours driving. They need the flexibility of the extra two hours, however, to deal with exigencies. Yellow Freight System (Yellow), one of the largest LTL carriers and a member of Motor Freight Carriers Association (MFCA), recommended that the agency

withdraw its proposal and reissue its provisions piecemeal starting with the most beneficial—the 24-hour cycle.

Overnite Transportation Company (Overnite), one of the nation's largest LTL carriers, strongly objected to the inference it drew from the proposal that the 24-hour cycle had to remain constant throughout the workweek. It stated the nature of LTL operations would never conform to a uniform 24-hour schedule. If a driver takes a 6-hour run at 8 a.m. after 10 consecutive hours off, he should not have to remain off duty 18 hours until 8 a.m. the next day. He should be able to go on duty after 10 consecutive hours off, and let the daily and weekly duty-time maximums control.

AAA Cooper Transportation found the 24-hour work/rest cycle as a positive step to improve drivers' sleep possibilities.

Driver Associations

The OOIDA submitted an alternative proposal that gave due deference to a 24-hour work/rest cycle. The OOIDA, however, specifically rejected any notion that its proposal would require adherence to a fixed starting time each day.

The IBT and most owner-operators and other small to medium-sized truckload carriers comments did not comment specifically on the 24-hour work/rest cycle.

Special Operations

The American Road and Transportation Builders Association (ARTBA) would use 24 hours as a base. The ARTBA's alternative proposal for a ''construction industry driver'' and the associated daily driving and on-duty time limits within a 24-hour period drew support from the AGC and the National Ready-Mixed Concrete Association (NRMCA).

Shippers

The National Industrial Transportation League supported a 24-hour work/rest cycle but did not provide any detail or statistics.

Safety Advocacy Groups

On the issue of the 24-hour work/rest cycle, safety advocacy groups joined with others from the public sector and scientific community to express strong support of the agency's position.

The AHAS, CRASH, and PATT commended the agency for proposing a 24-hour work/rest cycle, which they believe is supported by an enormous body of research over many years.

The NSC commended the DOT for addressing this contentious issue which has not been fundamentally analyzed in over 60 years, and stated that the agency had done the fundamental research necessary to take it on. The NSC believed the research was strong enough to make the conclusion about reverting to a 24-hour cycle, and strongly supported that part of proposal.

The National Institute for Occupational Safety and Health (NIOSH) of the Department of Health and Human Services agreed that most provisions of the proposed rules would produce positive safety outcomes. It recommended limiting driving within a 24-hour work/rest cycle.

FMCSA Response

There is general agreement on the concept of a 24-hour work/rest cycle and the scientific support for it. The FMCSA agrees with the general concept of ATA's statement that increasing the amount of off-duty time (from 8 to 10 hours) and having a 14-hour on-duty period promotes driver scheduling which would move the regulations closer to the body's 24-hour clock. The FMCSA believes that the strict 24-hour work/rest cycle would be ideal from a scientific viewpoint, but it is simply not practical and too inflexible to require of the industry. A strict 24-hour work/rest cycle would cause unavoidable impacts to motor carrier operations that the agency cannot justify from a safety or economic standpoint.

A requirement that all on-duty time including driving must occur within the 24-hour period creates the flexibility problems that carriers identified in their comments. Each of the options analyzed in the NPRM prevents the operational flexibility the industry desired. Most of the recommendations made by industry commenters to the NPRM, did not include a strict 24-hour period; operational flexibility was given higher priority.

Moving towards a 24-hour work/rest cycle without requiring a rigid starting time could achieve safety benefits while causing less productivity disruptions to motor carrier operations than adopting the strict 24-hour work/rest cycle the NPRM and PATT proposed.

The PATT and ATA alternatives incorporated a 24-hour work-rest cycle. The FMCSA staff also developed an alternative that incorporated a 24-hour work-rest cycle to provide a more operationally feasible alternative for analysis.

The FMCSA has decided to move towards a 24-hour work/rest cycle containing an extended consecutive-hour off-duty period within which drivers can obtain necessary daily sleep. Logically, off-duty time must always be referred to in terms of the minimum, while on-duty time will continue to be referred to in terms of the maximum.

The FMCSA is selecting its staff alternative incorporating a 24-hour work-rest cycle and a 21-hour drive-rest cycle for the final rule because it provides the most favorable combination of reduced fatigue-related incidents, increased driver alertness, and other safety benefits along with minimal costs to society.

Daily Off-Duty Time

Industry Comments

The proposal provided three different consecutive off-duty periods to obtain the same 7 to 8 hours of sleep: 10 consecutive hours off-duty for Types 1 and 2; 9 consecutive hours off-duty for Types 3 and 5; and 12 consecutive hours off-duty for Type 4.

As discussed above, the ATA had earlier submitted recommendations to the DOT in December 1999 while the draft NPRM was being reviewed at OMB before publication. The ATA championed the concept of a 10-hour off-duty period and 14-hour on-duty period of the 24-hour cycle.

The Pennsylvania Motor Truck Association (PMTA), in supporting ATA's alternative proposal for 10 hours off, commented that there was enough time in the day for drivers to rest if necessary while maintaining a productive schedule. It also observed that the FMCSA's proposed rules do not enable drivers to take advantage of downtime at loading docks.

The California Trucking Association (CTA) believes a 10-hour off-duty period is potentially effective.

Tom Carrigan, the director of corporate safety for the Martz Group, testified that in the early days of his career as a Greyhound driver, he could recall reporting to work fully rested and well within legal limits, yet so fatigued that he wondered how he would manage to get out of the terminal, let alone complete his trip. He stated Greyhound provided its drivers with 10 hours of off-duty time between trips and faithfully abided by all of the HOS limitations, yet Mr. Carrigan claimed Greyhound had no control over its drivers' activities while away from work. There were many other occasions when Mr. Carrigan was provided 24 hours or more of off-duty time yet reported for his next trip in a fatigued state due to faulty time management on his part.

Private Carriers of Freight

The NPTC recommended an alternative extending the required daily

off-duty period to nine hours. The NPTC believes there is general and indisputable agreement that truck drivers need more opportunity for rest. The IBA supported 10 consecutive hours daily for rest.

Truckload Carriers

Schneider National recommended a 10 consecutive hour off duty period ''to implement regulations that make sense for the industry, drivers, and the public.''

J.B. Hunt also supported changing to 10 hours off duty instead of the current 8-hour resting period. It stated drivers would get ample opportunity for restorative sleep every day and sleep deprivation should not be an issue.

LTL Carriers

The reaction of the LTL carriers was also generally positive on the issue of off duty time. Overnite submitted a recommendation of a minimum off-duty time of 10 consecutive hours, which could be split for drivers using sleeper-berth equipment.

AAA Cooper Transportation believes the daily 10-consecutive hour period off-duty as a positive step to improve drivers' sleep possibilities.

Con-Way commented that the off-duty period should be 10 hours off duty within which to get 7 to 8 hours of sleep.

Driver Associations

The OOIDA proposed a daily off-duty period of 10 hours instead of the current eight hours. It stated: ''Ten hours off duty will allow drivers more than sufficient time to get restorative sleep each day and will help drivers resist pressure from shippers, brokers, and motor carriers to drive longer hours.''

Safety Advocacy Groups

PATT and NIOSH were very supportive of the proposal's 12 hours of rest.

The IIHS supported the agency's approach of taking the needed amount of daily sleep (7 hours) and the time within which such sleep can be obtained (10 hours). Together with the 60 hours in 7 days limit, the driver gets an average of 12 hours off and accumulation of fatigue would be avoided.

FMCSA Response

Each driver should have an opportunity for eight consecutive hours of uninterrupted sleep every day. The current rules require a minimum of eight consecutive hours off. Many motor carriers do not provide drivers more than the minimum 8 hours off duty, although the present regulations certainly allow them to do so, and many drivers accept tight schedules without objection. These drivers may have to commute home, eat one or two meals, care for family members, bathe, get physical exercise, and conduct other personal activities, all within their 8-hour off-duty period.

To afford the driver an opportunity to obtain a minimum period of 7 to 8 hours to sleep, the research shows that the off-duty periods need to be increased. Nine hours off duty was originally required in 1937. For various reasons, organized labor objected to most of the original regulations, and upon further deliberation, the ICC reduced the 9-hour off-duty period to 8 hours. 6 M.C.C. 557, July 12, 1938.

The NPRM found that several studies strongly suggest the FMCSA should require an even longer consecutive off-duty period than the 9 hours the ICC required in its original 1937 HOS regulations. To provide additional off-duty periods each day for necessary personal activities and rest, docket comments and research strongly suggest the need for total off-duty periods from 10 to 16 hours. Studies in aviation (Gander, *et al.* (1991)), rail (Thomas, *et al.* (1997), Moore-Ede *et al.* (1996)), and maritime environments (U.S. Coast Guard Report No. CG–D–06–97, U.S. Coast Guard (1997) (MCS 68/INF.11)) illustrate the same point. Studies of truck drivers, including Lin *et al.* (1993) and McCartt, *et al.* (1995), point specifically to increased crash risk and recollections of increased drowsiness or sleepiness after fewer than nine hours off-duty.

Studies performed in laboratory settings, as well as studies assessing operational situations, explore the relationships between the sleep obtained and subsequent performance (Dinges, D.F. & Kribbs, N.B. (1991); Bonnet, M.H. & Arand, D.L. (1995); Belenky, G. *et al.* (1994); Dinges, D.F. *et al.* (1997); Pilcher, J.J., & Hufcutt, A.I. (1996); Belenky, G. *et al.* (1987). The results of the studies can be summarized simply: a person who is sleepy is more prone to perform poorly on tasks requiring vigilance and decisionmaking than a person who is alert.

It is virtually impossible for a driver to get an adequate amount of sleep when the driver must subtract time for commuting, meals, personal errands, and family/social life from an 8-hour off duty period, as the ICC found in 1937. Wylie *et al.* (1996), for example, showed that drivers in the study obtained nearly 2 hours less sleep per principal sleep period than their stated ''ideal'' (5.2 hours versus 7.2 hours). However, many of them did not manage their off-duty time efficiently or effectively to obtain sufficient sleep. All commuting, meals, personal hygiene, social interaction within the study setting, the study protocol itself, and sleep had to fit into their off-duty periods. The U.S. and Canadian drivers participating in that study operated under schedules set up to allow driving up to the maximum time periods permitted under U.S. or Canadian regulations. The drivers returned to regular work-reporting locations at the end of a shift. The elapsed time between beginning and ending a shift included many ancillary duties and other activities in addition to driving so that time available for sleep was generally limited to 8 hours. Participants who drove a regular 10-hour daytime schedule every day spent 5.8 hours in bed and 5.4 hours asleep. Study drivers who ran a regular 13-hour schedule starting in the daytime spent 5.5 hours in bed and 5.1 hours asleep. This was about 2 hours less than the drivers would have preferred to sleep. The time-in-bed similarities between the 13-hour and 10-hour daytime drivers was likely due primarily to their proximity to the sleep center—the 13-hour drivers had to commute less than 10 minutes from their home terminal to the sleep laboratory and 10-hour drivers had to commute between 20 to 30 minutes. (All times cited are for the principal sleep periods, and do not include the naps that some drivers took during their work shifts.) Also, the drivers in both of these daytime-driving groups were able to obtain their principal sleep during optimal times of the day, starting in late evening and ending in the early morning.

Other studies have found that the amount of sleep obtained by CMV drivers is variable and often short. Arnold, P. *et al.* (1996), interviewed over 700 CMV drivers in the state of Western Australia, which has no formal HOS regulations. Of the drivers interviewed, about 5 percent reported having no sleep on one day during the prior week, 12.5 percent reported obtaining less than 4 hours of sleep one or more work days in the prior week, and about 30 percent reported obtaining less than 6 hours of sleep on at least one work day. Prior to commencing their current trips, about two-thirds of drivers had between 6 and 10 hours of sleep, but about 20 percent had less than 6 hours of sleep (pp. 27–28). VanOuwerkerk, F. (1988) in a study based on interviews with 650 international European Economic Community (EEC) drivers, noted that drivers reported a median sleep time of

6.7 hours and a median rest period of 7 hours. They reported that the ''minimum rest time [reduction from 11 hours to eight hours not more than two times per week, as permitted under the current EEC Council Directive] has become the rule'' as far as both drivers and enforcement officials were concerned.

In their survey of 511 medium- and long-distance truck drivers in the United States, Abrams, C., Shultz, T., & Wylie, C.D. (1997), found no statistically significant differences in the stated rest needs among the categories of drivers (owner-operator, company driver, regular route, irregular route, solo, team): on an average day, a driver reported needing an average of 7 hours of sleep. There was a slight difference between union and non-union drivers; the former reported needing about 31 minutes less sleep. Just over 90 percent of the drivers reported that they usually used a sleeper berth while on the road. Almost three-fourths of the drivers reported taking their sleep in a single period, spending eight to nine hours in the berth. Just over two-thirds of the drivers who split their sleeper berth period reported usually spending 4 to 5 hours in the berth during one period.

After reviewing the research, comments, and regulatory analysis, the FMCSA selected three alternatives to analyze in detail: the PATT and ATA proposals and its own staff alternative. The PATT alternative would set off-duty time at 12 consecutive hours and the ATA and FMCSA alternatives at 10 consecutive hours.

The FMCSA is convinced that requiring two additional hours of off-duty time to obtain additional sleep and accommodate commuting, meals, personal errands, and family/social life is enough minimum time for the majority of drivers. A driver may need additional time, such as for longer than normal commutes, medical appointments, and family/social life needs, but those additional times can be handled through labor-management arrangements. The agency's 10-hour limit is materially better from a safety standpoint than the current rule. Under the current rule a driver who resides one hour from the normal work reporting location, could conceivably be required to return to the wheel within 8 hours after being released from duty and at most could get only 6 hours of sleep. This final rule's requirement, however, is not so restrictive as to impose an unreasonable burden on productivity and generates the most favorable combination of reduced fatigue-related incidents, increased driver alertness, and other safety benefits, along with minimal costs to society.

Daily On-Duty Time

Industry Comments

The PMTA, in supporting ATA's alternative proposal for 14 hours on duty followed by 10 hours off, commented that there was enough time in the day for drivers to rest if necessary while maintaining a productive schedule. It also observed that the FMCSA's proposed rules do not enable drivers to take advantage of downtime at loading docks, suggesting that the agency adopt a more liberal interpretation of the 14-hour block of on-duty time.

The CTA observed that the 24-hour workday should be split into only two periods, a 14-hour work period and a 10-hour off-duty period.

Private Carriers of Freight

The NPTC recommended a 15-hour on-duty limit. The NPTC commented: ''Any limit on maximum daily on-duty time of less than 15 hours would disrupt many private carriers' operating schedules and practices. We do not believe a limit of less than 15 hours can be cost-justified.''

The IBA supported 14 hours of productive time with flexibility to extend twice a week by one to two hours under ''certain'' (undefined) circumstances.

Truckload Carriers

Schneider National agreed with the ATA recommendation to change from the current 15-hour rule to a 14-hour on-duty rule within any 24-hour cycle ''to implement regulations that make sense for the industry, drivers, and the public.''

J.B. Hunt also supported changing the work/rest cycle to 14 hours on duty and 10 hours off instead of current 10-hour driving/15-hour working/8-hour resting cycle, but also favored the proposed 12-hour work limit in 24-hour workday, preferably with no multi-day cumulative limit. Hunt observed that the biggest negative impact comes from the rigidity of the proposal.

Perfetti Trucking, which actively participated in the hearings and roundtable discussions in addition to submitting written comments, stated drivers should get credit for rest time and that rest time should extend the 14-hour duty period.

The NASTC pointed out a problem with the 14-on, 10-off daily cycle in that all productive time would have to be condensed into a 14-hour block of time. If a driver has to take a nap or rest from 1 to 2 hours, he would pay the price in productivity and would therefore more likely disregard his condition and continue to operate.

LTL Carriers

Watkins Motor Lines, Inc. (Watkins) reported it has approximately 2,400 drivers engaged in pickup and delivery operations or short hauls that would best fit in the Type 4 operations provided in the proposal. These drivers work five days a week, begin work about the same time every day and return to their home terminal at the end of the workday. All of these drivers are scheduled for no more than 12 consecutive hours each day. However, because of unforeseen circumstances (breakdowns, weather, traffic, etc.) on any given day, an average of 4 percent, or 95 drivers, are required to extend their scheduled day by an average of less than 60 minutes.

Overnite recommended a maximum on-duty time of 14 hours.

Con-Way recommends 14 hours on duty with no distinction between driving and non-driving time.

Driver Associations

OOIDA stated: ''The maximum available time of 14 hours that OOIDA proposes is very reasonable and more than sufficient time to allow drivers to accomplish their work.'' The OOIDA, however, specifically rejected any notion that its proposal would require adherence to a fixed starting time each day.

Many other comments from owner-operators and small to medium-sized truckload carriers focused on those provisions in the proposal that they found most troublesome, *i.e.*, failure to display an understanding of the flexibility needed in irregular route, truckload business.

Special Operations

The ARTBA would limit duty time to 16 hours and was supported by the AGC and the NRMCA.

Safety Advocacy Groups

AHAS cited numerous studies finding that risk geometrically increases during the 10th and 11th hours on duty. The studies cited in the preamble as showing that performance degrades dramatically after the 12th hour, AHAS noted, actually stand for the proposition that performance starts to degrade after the 8th hour. The AHAS stated that it would be more comfortable if the proposal limited on-duty time to 12 hours, but believes that would not change the industry's tendency to violate the rules.

PATT, NSC, and NIOSH all concurred with the proposal limiting duty time to 12 hours in each 24 hours.

FMCSA Response

The environment in which motor carriers and their drivers operate is significantly different from the environment in which they operated in 1938. The CMVs and highways they operate on are dramatically improved, making the driving task, while still a demanding one, considerably less arduous than was the case then. The FMCSA believes there can be little doubt that fatigue directly attributable to the exertion required to operate the modern CMV is less of a factor now. Society has learned a lot about the science of sleep since 1938 and understands the more relevant issue is how long the driver can be awake and ''at work'', and still be allowed to drive, before safety is significantly compromised.

After reviewing the research, comments, and RIA, the FMCSA is convinced that 14 hours after the beginning of a duty tour is long enough for most drivers, given the significantly increasing degradation of performance which occurs in the later stages of a work shift.

The FMCSA found that restricting those drivers who return to the normal work reporting location at the end of every shift has the unintended consequence of requiring a significant increase in new drivers. These new drivers would increase both costs and crashes. The analyses showed that by allowing these short-haul drivers the flexibility to work up to 16 hours one day in a week would reduce the number of additional drivers needed for the staff alternative. This flexibility would result in cost savings of nearly $500 million and safety benefits of nearly $10 million.

The FMCSA believes this 14-hour limit for most drivers, and 16-hour limit for short-haul drivers once a week, is materially better from a safety standpoint than the current rule. A driver under the current rule could conceivably still be allowed to return to the wheel several hours after the 15-hour limit has passed (because ''off duty'' breaks that can extend the workday). The limit, however, is not so restrictive as to impose an unreasonable burden on productivity.

In conducting its RIA, the FMCSA made sure it included analysis of private carriers' operating schedules in view of the NPTC claims. The RIA, however, has justified the cost to reduce the number of available off-duty hours to 14 hours after the driver begins work. The FMCSA does not believe 16 hours every day, as supported by the ARTBA, AGC, and NRMCA, would reduce fatigue-related incidents and increase driver alertness as these commenters contend.

AHAS correctly cited studies showing that performance begins to degrade after the 8th hour on duty and increases geometrically during the 10th and 11th hours. The agency's RIA, however, demonstrated that the FMCSA staff alternative produces substantial net safety benefits compared to the current rule, despite allowing up to 11 hours of driving, because it also requires 10 hours off duty, instead of 8, and reduces the backward rotation of drivers' sleep/wake schedules. *See* the discussion above under the FMCSA Response to the Daily Off-Duty Time.

In reviewing the recommendations made by commenters to the NPRM, the FMCSA found the PATT, ATA, and its staff-developed alternatives the most feasible. The PATT alternative would set on-duty time at 12 consecutive hours. The ATA alternative would allow a driver to be on duty 14 cumulative hours with up to 16 cumulative hours twice per 7-day period. The FMCSA alternative would set on-duty time at 14 consecutive hours once the duty tour begins for long-haul and short-haul drivers, while short-haul drivers would have the opportunity to work up to 16 consecutive hours one day per week.

The FMCSA has chosen to promulgate its staff alternative because it provides the best combination of safety and compliance costs.

Daily Driving Time

Industry Comments

The CTA believes the workday should include a 14-hour work period and strongly argued for preservation of intrastate exemptions allowing drivers transporting farm products to drive 12 hours in a 16-hour day.

Private Carriers of Freight

The NPTC recommended adopting a daily driving limit of 12 hours within a 15-hour on-duty limit.

The IBA supported a 14-hour productivity time with flexibility to extend it twice a week by one to two hours under ''certain'' (undefined) circumstances.

Truckload Carriers

Schneider National agreed with the ATA recommendation to change from the current 10-hour driving rule to a 14-hour on-duty rule ''to implement regulations that make sense for the industry, drivers, and the public.''

J.B. Hunt also supported changing the work/rest cycle to 14 hours on duty and 10 hours off duty instead of the current cycle, but it also favored the proposed 12-hour work limit in 24-hour workday. J.B. Hunt believed this would enable a driver to average 10 hours of work a day, extending to 12 hours of work as circumstance demands. Hunt observed that the biggest negative impact comes from the rigidity of the FMCSA proposal.

LTL Carriers

Overnite recommended a maximum of up to 10 hours driving.

Con-Way recommended 14 hours on duty with no distinction between driving and non-driving time.

Driver Associations

The OOIDA recommended no restrictions on daily driving time, which OOIDA believes should be left to the discretion of the driver.

Special Operations

The ARTBA would limit driving time to 12 hours in a single 24-hour day and 72 hours in seven days, and it drew support from the AGC and NRMCA.

Safety Advocacy Groups

AHAS stated that ''[FMCSA] has reversed its own policy stance of record on the dangers of driving more than 10 consecutive hours.'' AHAS pointed to the FHWA's November 1990, *Report to Congress On Commercial Driver Hours of Service,* where the agency openly endorsed research findings about the adverse effects of longer continuous driving times and of cumulative fatigue over several consecutive days of driving. AHAS argued that this report acknowledged that ''[t]he risk of accidents appears to increase with the number of hours driven.'' With regard to the current 10-hour driving limit, AHAS argued the agency had asserted in 1990 that ''this requirement is consistent with the research finding that the potential for accidents rises as the hours of driving increase and the driver is more likely to become fatigued.'' AHAS stated that the FHWA report also ''favorably cites the [IIHS'] 1987 study by Jones and Stein, *[Effects of Driver Hours of Service on Tractor-Trailer Crash Involvement],* showing ''that driving in excess of 8 hours may be associated with a significantly increased risk of crash involvement. This reported increase in relative risk confirmed other findings [citing Mackie and Miller, *Effects of HOS Regularity of Schedules, and Cargo Loading on Truck and Bus Driver Fatigue,* 1978]'.'' AHAS quoted the FHWA report: ''Research indicates that

the time spent on-duty may be a more important factor in driver loss of alertness [citing Harris and Mackie, *A Study of the Relationships Among Fatigue, HOS, and Safety of Operations of Truck and Bus Drivers,* 1972].'' AHAS argued that ''there has been no research since this Congressional report, including research completed for the OMCS over the past decade, which has refuted the accuracy of these observations or of the research on which they are based.''

AHAS also extensively quoted a **Federal Register** notice from 1980 stating:

> The [rationale] for the hours of service regulations is justified by the concept that the longer a person drives, the more [fatigued] that person becomes and consequently, the more prone to becoming involved in accidents.

45 FR 82284, at 82286.

> Fatigue, however it is defined, appears to be the chief factor limiting a person's output. Various studies have shown that when the working day is lengthened, productivity goes down, when the number of hours worked is reduced, performance increases.
>
> The influence of fatigue in accident causation has been demonstrated and where there has been a reduction in hours worked, there has been a reduction in accidents. There is some evidence that 8 hours of work a day, where the work is fairly demanding, is the maximum that should be permitted for highest productivity and lowest accident rate.

45 FR 82284, at 82288.

AHAS also argued that FMCSA's predecessor agency in 1987 endorsed findings that increased consecutive driving hours and consecutive days of driving both directly contribute to driver errors and crashes. See 52 FR 45215. AHAS argued that FHWA made assertions to the same effect in the November 29–30, 1988, Symposium on Truck and Bus Driver Fatigue.

AHAS also argued that ''[n]one of the research findings showing the increased safety and productivity of fewer hours worked and driven than the maximum 10 hours permitted under the current regulation are cited or discussed anywhere in the instant proposed rule.''

AHAS continued that ''no credible studies in the intervening years have countermanded the accuracy and wisdom of these observations. Indeed, scores of new studies have amply and repeatedly corroborated the FHWA's policy statements over the past 20 years about the dangers of driving and working longer hours.''

Finally, AHAS argued that ''the FMCSA has categorically altered its position in this rulemaking on the merits of driving and working longer hours without demonstrating why and how these prior conclusions are no longer valid. AHAS does not believe the agency has countered these documented policy views with any new facts and information which moot their application to the revision of the current HOS standards to ensure that drivers work and drive fewer hours to ensure a reduction in both the relative and absolute risks of truck crashes. Instead, the agency, against all the evidence of record, including their own policy statements over the years, has offered amendments to the current regulation which demonstrably will promote truck and bus drivers to drive longer consecutive hours at a greatly increased risk of crashes due to an increased prevalence of fatigue among commercial operators.''

AHAS believes that nighttime driving is less safe than daytime driving because of the circadian effects on the driver. It rejects, however, as speculative and unsupported by any evidence, the potential that displacement of nighttime operations to daytime could create additional safety problems due to increased congestion.

CRASH's principal objection is that the proposal increases by two hours the amount of time a driver can drive in one day. CRASH cited studies showing that crash risk nearly doubles after 8 hours and doubles again after the 9th hour.

PATT joined AHAS and CRASH in strongly opposing any increase in the 10-hour driving limitation because of research that shows the risk of crashes increases after 8 hours and even more significantly after 9 to 10 hours. PATT recommended limiting driving to 10 hours out of 12 hours of allowable duty time each 24 hours, or to put it another way, no more than 50 hours driving in 60 duty hours per week. On these issues, the safety advocates were in harmony with the position of the IBT.

The IIHS commented that there are ''gold standard'' studies relating crashes of truck drivers to driving hours showing that performance degrades starting after the 5th hour, but the risk dramatically increases after the 10th hour.

NIOSH recommended limiting driving to 10 hours within a 24-hour work/rest cycle of 12 hours on duty and 12 hours off duty. NIOSH also said the FMCSA should consider allowing up to 12 hours of driving per day on rare occasions as required by emergencies or other unusual circumstances where continued driving would be safer than stopping.

FMCSA Response

Just as industry was inclined to interpret the science as allowing greater productivity without facing greater risk, the safety advocates cite the science as requiring the agency to go further to restrict driving time.

Although AHAS argued that there have been no credible studies since 1981 and 1990 countermanding the agency's previous position, FMCSA believes recent studies have provided new information requiring the agency to reevaluate its former policy statements.

America's transportation system has changed significantly since the late 1930's. Long-haul truckers in the 1930's could average only 25 miles per hour (mph)—the top speed was 40 mph—and the best daily run was about 250 miles (11 M.C.C. 203). These truckers used drafty, noisy, and underpowered trucks to labor up long hills and other rough, narrow, and poorly-marked winding roads. The construction of the Interstate Highway System has contributed to significantly higher traffic speeds and volumes. Trucking, once a relatively minor adjunct to the railroads, has become the dominant form of transportation for most commodities. Much of the nation's truck traffic moves on the Interstates and other high-speed roads, sometimes for very long distances using modern, heated/air-conditioned, air-suspension, sleeper-berth, cruise-control equipped tractors for drivers' comfort and safety.

The high volume and speed of traffic on the Interstates and many other roads require a higher level of driver alertness, for the sheer mass of a truck can make it deadly when accidents occur. Of course, trucks also operate in local or regional environments, often in heavy traffic, and drivers are required to perform an ever-wider range of duties. The results of scientific research into fatigue causation, sleep, circadian rhythms, night work, and other matters were unavailable decades ago when the HOS rules were formulated. The FMCSA believes there can be little doubt that fatigue directly attributable to the exertion required to operate the modern CMV is less of a factor now.

By limiting daily duty hours, the NPRM would have imposed a more regular work/rest cycle, assuming that very few, if any, drivers would drive their entire on-duty period. This is consistent with testimony from carriers and drivers alike about customary practices. The AHAS pointed out, however, that the degraded performance in the eleventh and twelfth hours on duty should not, at least regularly, be spent behind the wheel. The AHAS position does create potential issues with operational practicality. The AHAS insisted science would require the agency to include both a reduction in a

driver's nighttime operations and an increase in time off to compensate for driving at night when the sleep debt accumulates because daytime sleep is inferior to nighttime sleep. It dismissed as purely speculative any impact on safety from displacing many drivers from nighttime to daytime operations and the great number of inexperienced drivers necessary to replace the drivers whose availability would be substantially limited.

The FMCSA initially considered the proposals submitted in the ATA comments and in the petition of the DLTLCA the same; however, when the agency began considering whether the ATA recommendation could be potentially effective and reasonably feasible, we found significant differences with the DLTLCA proposal that raised serious questions about the effectiveness and reasonableness of both. The ATA asserted that its proposal was based upon research showing that humans function on approximately a 24-hour cycle, and therefore that new rules should promote rest/work cycles synchronous with the body's natural 24-hour biological rhythms.

The so-called circadian cycle or rhythm has two general tendencies on the wake/sleep cycle of humans. During daylight hours, the human body tends to be wakeful, and during nighttime, the human body tends toward sleepiness. Therefore, people would not only tend toward drowsiness during the late night and early morning hours, they would also tend to have more difficulty obtaining restorative sleep during the daylight hours. The latter situation may lead to the accumulation of sleep debt, resulting in increased tendency toward drowsiness not only in subsequent nighttime periods of required wakefulness but at other times as well.

This is not to say there are no safety benefits to be derived from promoting regular work/rest cycles, and industry is to be commended for proposing one. It should be noted, however, that nothing in the current rules would preclude more regular schedules.

The FMCSA believes that allowing one additional hour of driving activity can be safely accommodated within the context of a somewhat reduced overall tour of duty as discussed above. The FMCSA staff alternative selected for evaluation includes no driving after 14 hours from the start of duty tour notwithstanding intermittent breaks off duty for meals, naps, and other rest. In arriving at 14 hours, the agency believes drivers would realistically take some breaks during that time and the work period may well accumulate 12 or 13 hours, with up to 11 hours driving.

The FMCSA relied upon 12 studies to select a 10 consecutive hour off-duty period, a 14-hour tour of duty, and a maximum of 11 hours of driving. The 12 studies are included within the agency's review of all research studies used in the NPRM. The agency's review is by Freund, D.M., November 1999, ''An Annotated Literature Review Relating to Proposed Revisions to the Hours-of-Service Regulation for Commercial Motor Vehicle Drivers,'' that is in the docket. The FMCSA staff alternative concluded that, after 14 hours from the start of the work period, it is time to stop driving, as the risk of fatigue-affected incidents is increasing rapidly.

The PATT alternative would set driving time to no more than 10 cumulative hours. The ATA alternative would allow drivers to drive up to 14 cumulative hours with up to 16 cumulative hours twice per 7-day period. The FMCSA staff alternative would allow driving time up to 11 cumulative hours for long-haul and short-haul drivers. The FMCSA has decided to allow drivers to drive up to 11 cumulative hours for all long-haul and short-haul freight drivers.

Although the agency focused on science in developing the NPRM, it cannot allow science alone to dictate the form or content of a rule, as many safety groups advocate. On the other hand, while reviewing economic, operational, and environmental issues with great care for this final rule, FMCSA has not allowed itself to be bound by those considerations either.

Distinctions in Duty Time

General Concept

The expert panel assembled by the agency to review the options under consideration before publication of the NPRM recommended eliminating the distinction between on-duty time and driving time. The scientific basis for the recommendation is the belief that driving is no more tiring than many of the other tasks a truck driver would be called upon to perform.

The agency's practical basis for the proposed elimination was to reduce the paperwork burden. Under the existing rules, drivers are required to account for both driving time and non-driving duty time. Eliminating the distinction, moreover, would achieve consistency with the terminology used by the Wage and Hour Division of the U.S. Department of Labor (DOL), allowing FMCSA to rely on DOL records in place of driver records of duty status.

ATA Recommendation

When developing its recommendations, the ATA stated it was aware of the expert panel's findings that driving is no more fatiguing than other work. Therefore, it proposed to eliminate the distinction between driving time and other on-duty time as unnecessary, leaving the possibility of 14 consecutive hours of driving. The ATA opined that hours of driving time would always be less than the overall duty time within which the driving takes place. The ATA cited its HOS survey in which commenters reported driving an average of 9.1 driving hours in an 11.4-hour day.

The DLTLCA commented that they ''went along with ATA'' although they wanted a 12-hour limit on driving. They stated that the 12-hour driving limitation was consistent with DOT's proposal and its research, and noted that five states already allow 12 hours of driving (for intrastate trips). The industry petitioners ''recognized that the business, operational and safety needs of trucking companies and their customers will continue to consume several hours of a driver's time each day,'' so that ''a limit of driving time to 12 hours would result.''

The NPTC alternative was much more direct. With little explanation, the private carriers recommended a maximum of 12 hours driving in a 15-hour on-duty period.

Other Industry Comments

The MFCA made no comment specifically on this issue, because its constant position is that the present rules should remain in force. The fact that the IBT strongly opposed eliminating the distinction seems to support the validity of this assumption.

The NTTC supported the elimination of any distinction between duty-time and driving-time.

Throughout the public hearings on the NPRM, notwithstanding vocal support for the ATA recommendation, nearly all carriers and most drivers testified that daily driving rarely exceeded 10 hours, and then it was only due to some exigent circumstance. For example, Con-Way surveyed its line-haul drivers, who were described as combination drivers and dock-workers. Most runs are at night and the driver's average duty time was 10.88 hours. Their average driving time, however, was only 6.22 hours and their average load time was 4.5 hours. Con-Way also did a study of all its line-haul operations on one day, which was the last workday of the month and admittedly a worst-case scenario. 3900

drivers were dispatched and 42 percent exceeded 12 hours on duty, but none exceeded ten hours of driving.

The IBT maintained a consistent position throughout the proceedings, dating back to its initial response to the ANPRM in June of 1997. One of the four elements of a rule that IBT could support was maintaining the distinction between driving and non-driving duty. The IBT observed that the agency's proposal failed three of its tests, including this one. It argued that eliminating the distinction is what permits driving time to be extended, and agreed with the safety advocates that some drivers would push the envelope and drive 14 hours a day. The IBT noted that the union is successful in getting driving limitations into contracts because of the DOT rules.

The Snack Food Association, the National Soft Drink Association, and the PMAA all reported that drivers in these segments of the industry are also salespeople and customer service representatives. They spend considerable portions of their daily duty time in non-driving activities, and actual driving time would not exceed 10 hours.

The construction industry's recommendation to create another category—''construction industry driver'' within a 100 mile radius of operation—would continue a distinction between driving time and on-duty time. Because of the seasonal and weather-dependent nature of the industry, the proposal, supported by AGC and ARTBA, would:

(1) Extend limits to 12 hours of driving and 16 hours of duty during a 24-hour period;

(2) Extend weekly limits to 72 hours driving and 80 hours on duty;

(3) Average driving and duty time over 14 days;

(4) Allow 90 hours of driving during the first 8 days, a 34-hour restart, and a 45-hour driving limit over the remaining 4½ days, followed by a 24-hour restart; and

(5) Provide for a 24-hour restart of time accumulation at any time, presumably even to avoid the 34-restart.

The need for such increased driving time is not apparent from testimony and comments regarding industry practices. An alternative suggested by the AGC sheds some light. In construction, most drivers have no responsibility for loading and unloading. Mostly, they wait in line for loads and then wait in lines at sites to unload. Therefore, AGC would retain the distinction between driving and non-driving duties, but change what is meant by on-duty time to exclude time waiting in lines to load and unload.

The American Moving and Storage Association (AMSA), which also claims that its operations are unique, reported that drivers do not really spend the majority of their on duty hours behind the wheel, averaging about 75,000 miles a year. AMSA claims most of the driver's on duty hours are spent loading and unloading.

The Institute of Makers of Explosives (IME) complained that the 12-hour on-duty restriction for Type 4 drivers will severely impact on ''shot service,'' which entails loading ''shot'' holes with explosives, setting the charge, and initiating the shot. The operators for IME members apparently need at least a 14-hour day to provide the flexibility needed for that activity, but not to accommodate more driving.

Small truckload carriers, represented by NASTC, opposed both reducing daily on-duty time and removing the distinction between driving and non-driving time. They stated that, under the present rules, a driver can drive up to 15 hours in any given 24-hour period, giving a range of 750 miles. Under the proposed rule, the range would be reduced to 600 miles.

The OOIDA's survey, on the other hand, found its members spend an average of 10 hours per day driving and 2.4 hours per day loading and unloading. An average of 10 hours of driving per day, of course, would mean that on some days the 10 hours would be exceeded.

Private carriers, according to NPTC, advocated a limit of 12 driving hours within a maximum of 15 duty hours daily. The need for this increase in driving time was unexplained except that the NPTC stated it was consistent with safe operating practices. Wal-Mart, moreover, stated the 12-hour on-duty limitation within 14 consecutive hours is more restrictive than the 10-hour driving limitation and 15 hours on duty. Under the proposal, drivers would have to drive more within a smaller window to maximize earnings.

Safety Advocacy Groups

Safety advocates contended that failure to distinguish on-duty time from driving time would increase violations of HOS regulations.

The AHAS asserted that pay-per-mile practices would cause drivers to continue to maximize driving time at the expense of the required ten consecutive hours off duty and two hours of rest periods. It argued that because drivers can presently use non-driving duty time each day to perform non-driving tasks, this ''has helped'' to limit even more flagrant abuses that would occur if there were no non-driving hours available in the regulations. The principal concern of the safety advocates was the belief that allowing 12 hours of unspecified ''duty time'' would necessarily translate into 12 consecutive hours of driving. They cited numerous studies finding that risk dramatically increased during 10th and 11th hours, and predicted that pressures from efficiency-minded schedulers would assure that the industry would fully exploit this additional driving time.

CRASH stated that eliminating the distinction between driving time and other on-duty time would result in motor carriers squeezing drivers for every possible minute of driving time, and carriers would pressure drivers to work during rest periods.

The IIHS commented that the safety community would prefer a driving limit of eight to nine hours in a 24-hour period. They are realistic enough to know that they should be content with keeping close to the status quo.

The NIOSH, agreeing that most provisions in the proposal would produce a beneficial safety outcome, recommended limiting driving to ten hours within a 24-hour work/rest cycle of 12 hours of duty and 12 hours free. It also stated, however, that the agency should consider allowing up to 12 hours of driving per day on rare occasions as required by emergencies or other unusual circumstances where continued driving would be safer than stopping.

FMCSA Response

The FMCSA and PATT alternatives distinguished between duty and driving time, the ATA's did not. The FMCSA has decided to retain the distinction between driving and on-duty-not-driving time. Each driver required to prepare records of duty status must continue to record all driving time separately from all time on-duty.

The paperwork reductions sought by the agency in eliminating the distinctions in drivers' work hours received little support. That objective even drew some criticism because the proposed substitute for the paper log, the EOBR, is incapable of directly monitoring non-driving duty time. The ATA opposed the use of DOL records, as did the MFCA, which contends that few motor carriers are even aware of their responsibility under the DOL regulations.

The ATA recommendation would eliminate the distinction between driving and other on-duty time, ostensibly securing a more favorable work/rest cycle for drivers. The ATA

and other sponsors of the industry alternative stated that their support for a 14-on duty, 10-off duty work/rest cycle is a ''substantial positive change'' for which they should receive some compensation to offset productivity losses. That compensation would be in the form of more daily driving hours, potentially making 14 consecutive hours of driving legal. In the context of ''pay-by-the-mile'' incentives, that possibility looms large, although the industry sponsors were confident that the exigencies of the working day would impose a natural 12-hour driving limit.

Support for this alternative from the rest of the for-hire industry was fractional. Aside from the small truckload carriers, there was a fairly broad consensus in favor of retaining the current limits on driving time, subject to greater flexibility in usage. Imposing a 10-hour driving limit in a 24-hour period would have a substantial impact on small truckload carriers. They are presently permitted to drive up to 16 hours in a 24-hour period under a 10-hours-on duty/8-hours-off duty rotation. If limiting actual driving to eleven hours is a legitimate safety measure, it would not seem equitable to allow exceptions simply because drivers could make more money under more liberal rules. On the other hand, if most drivers operate safely under current rules, it would seem inequitable to subject them to more stringent regulations that would cut into their earning capacity or disrupt their life.

The FMCSA has decided to continue the distinction between driving time and on-duty time. The comments, particularly from safety groups, adamantly opposed allowing as much as 12 hours of driving time. Because the FMCSA believes that a reasonable person could find that the last hour of a driver's duty tour would be expected to be driving time that comes near the end of a 13- or 14-hour workday, the FMCSA is persuaded that 11 hours is a more reasonable limit. Within the limits of a tour of duty usually lasting no more than 14 hours, the FMCSA believes there is little doubt that modern CMVs can be driven safely up to 11 hours, particularly because rest breaks can be expected to naturally occur during the course of that tour.

Weekly or Longer Cycle

General Concept

The scientific basis for proposing weekly restrictions is the finding from research studies that sleep debt from multiple periods of insufficient (poor quality or insufficient quantity) sleep is the major cause of cumulative fatigue. The recommended countermeasure is a recovery period during which restorative sleep may be obtained and the ''sleep debt'' repaid. The concept of a weekly recovery period was presented in the NPRM in the definition of workweek, *i.e.*, ''any fixed and regularly recurring period of seven consecutive workdays,'' and in the number of hours required to be off-duty before beginning the next workweek.

The comments raised concerns over the agency's proposal for a ''workweek,'' starting with the definition, which many thought confusing. In some segments of the industry the concept of a Monday to Friday workweek is alien. The language of the definition (''fixed * * * workweek'') did appear to give these carriers cause for alarm, which the agency acknowledged during the hearings and roundtable discussions. A more logical definition of ''workweek'' might have been ''the workdays between extended off-duty periods,'' although how the term might be used in regulatory context is not clear. The recovery period or ''weekend'' requirement will be discussed elsewhere in this document.

ATA Recommendation

The ATA recommendation would limit drivers to 70 hours on duty in a 7-day period (with no distinction between driving and other on-duty time). It would provide a minimum recovery period of 34 hours, which would serve as a restart provision. The ATA recommendation also provides an averaging option of 140 hours on duty in 14 days. Under this option, according to the petitioners, a driver could accumulate 84 hours on duty in the first seven days before a 34-hour recovery period would be required. A driver taking advantage of this option would then be limited to 56 hours on duty over the remaining 5½ days.

Other Industry Comments

The alternative proposal of the NPTC would simply maintain the present 60-hours-in-seven-days or 70-hours-in-eight-days limitations.

OOIDA's proposal would place no limits on cumulative time beyond the daily restrictions.

Large truckload carriers generally supported the industry alternative of limiting on-duty time to 70 hours in 7 days with provision for a 34-hour restart. They also supported the 14-day averaging option.

J.B. Hunt supported the proposed 12-hour work limit in a 24-hour workday, but with no cap on the length of the workweek, reasoning that drivers would get ample opportunity for restorative sleep every day and sleep deprivation should not be an issue. If a cap were necessary, Hunt would implement a limit of 140 on-duty hours in 14 days with a 36-hour restart period. The 36-hour off-duty break would have to be taken during or at the conclusion of 14-day period, which then would start another 14-day period. This means a driver could average 10 hours of work a day, but could extend to 12 hours of work, as circumstances required.

Landstar commented that it fully supports using 24-hour and 7-day work/rest cycles, but found provisions in the proposal that do not make sense from either a safety or practical aspect. It recommended a limitation of 70 hours driving in a 7-day period, followed by 24 hours off duty, which would actually be an 8-day week.

The State trucking associations collaborated in the ATA alternative and therefore must be considered to have supported it.

PMTA noted that the loss of the 70 hours in 8 days provision under the existing rules will cause major schedule disruptions and reduce productivity by 15 percent.

CTA commented that a maximum 60-hour workweek is too restrictive. It will aggravate the driver shortage, place more inexperienced drivers in more trucks on the road, reduce drivers' incomes, and severely harm the economy.

The unionized LTL carriers demurred on this issue, apparently reflecting the position of the MFCA that they were content with the present rules and saw no reason for change.

Many LTL carriers joined in support of the ATA recommendation co-sponsored by the DLTLCA.

Con-Way promoted the industry alternative with the averaging option of 140 hours over 14 days and a 34-hour restart.

Overnite, however, took a more conventional position: On-duty time should be limited to 62 hours in a 7-day period. That would simply be a conversion of the present restriction of 70 hours in 8 days, or productivity neutral.

The small truckload carriers represented by NASTC adhered to a philosophy that drivers should have the opportunity to drive during the ''week'' and be home on weekends with their families. Therefore, they recommended the present limit of 70-hours in 8 days be retained. They further recommended an exception, which would allow drivers returning home to continue at a 10-hours-on and 8-hours-off pace until he reaches his destination. So long as the drivers maintained that pace on

their return journey, there could be no violation of the 70-hours-in-8-day rule. However, if the drivers exceeded the 70-hour limit on the home trip, they would be required to take a minimum of 56 hours off.

OOIDA took the position that requiring 10 hours off and limiting available duty time to 14 hours daily is sufficient regulation to assure opportunity to rest for drivers throughout the industry. Any further limitations should be entirely at the driver's discretion.

The NPTC pointed out a concern in the proposal's fixed workweek. Its reading of the proposal is that it would force drivers into a ''fixed seven-day workweek'' with the two consecutive days off at the end, regardless of how many hours they worked during the week. Therefore, ''a driver could apparently work 24 hours over three days, take two days off and then be required to take *another* two days off at the end of the 'workweek.' Since the driver clearly would have adequate rest by any standard, there is no possible safety rationale for this requirement.'' The NPTC recommends retaining the current cumulative 7- and 8-day on-duty limits.

Wal-Mart, on the other hand, preferred the ATA recommendation's workweek of 70 hours in 7 days. This would allow Wal-Mart to maintain the flexibility of its 7 days on, 7 days off schedule and actually enhance safety.

The PMAA sought clarification of the proposal's ''workweek,'' and offered an example. Driver A starts work at 8 a.m. Sunday and quits at 8 p.m. He continues this for 5 days, ending at 8 p.m. Thursday. After the mandatory 56-hour weekend, he could start a new week at 8 a.m. Saturday, but would he be violating a ''seven consecutive days'' provision.

The moving industry and the construction industry, each contending for a sixth category that would better address their unique needs, had problems with the proposed workweek. The moving industry comments indicated it needs more flexibility because movers could not operate on a fixed 7-day schedule.

The logging industry also pleaded a hardship because it can only transport tree-length loads in daylight hours under State size and weight laws, which severely restricts operations in the winter months. Their problem dealt more with the fixed nature of a ''workweek'' as defined in the proposal, and presented an example of losing the first two days of a workweek to rain and the inability to restart a new workweek as defined.

The oil and gas drillers stated that their industry is a 7-day/24-hour operation, so workweeks have little meaning. In some cases drivers are scheduled on rotations of 9 days on and 3 days off to provide full coverage.

Safety Advocacy Groups

Advocates stated that the proposed workweeks were too long, focusing on the possibility that an entire 60-hour workweek could be spent behind the wheel. It also stated that a 60-hour workweek would cause a build up of sleep debt because longer daily shifts adversely affect the ability to obtain restorative sleep. The AHAS objected to the NPRM's allowance of alternating long and short workweeks and weekends, claiming that this only promotes fatigue, primarily because the long workweek is followed by the short weekend under the proposal. They also objected to the liberal allowances proposed for long work schedules for Type 5 drivers (whose driving duties, limited to five hours a day, are only incidental to their primary duties). AHAS recommended extending the minimum recovery period by 24 hours to 56 hours, including three periods from 11 p.m. to 7 a.m. and reversing the alternating weekends so that long follows long, etc.

CRASH was pleased the agency was proposing to retain the 60-hours-in-7 day limitation, but stated that allowing incidental drivers to work up to 78 hours in a week was a grave mistake.

PATT recommended limiting driving to 10 hours out of allowable 12 hours on duty each 24 hours, and also put it another way, no more than 50 hours driving in 60 duty hours per week.

The NSC recognized the issue of cumulative fatigue and supported required time off after 7 days.

FMCSA Response

The agency agrees with industry commenters' concerns that the proposed ''fixed and recurring 7-day periods,'' within which duty limitations would apply, is simply not practical. The clear inference to be drawn from the ''workweek'' definition is that once a driver begins a workweek, for example, at 7 a.m. on a Monday, the next workweek would also have to start at 7 a.m. on the following Monday. When coupled with the required ''weekend,'' carriers saw this as a huge infringement on their ability to maintain productivity. A driver in a weather-sensitive occupation could start work on Monday after a weekend off, then be idle for Tuesday and Wednesday due to rain, return on Thursday to resume the workweek with no credit for the Tuesday-Wednesday ''weekend.''

The flaws and unintended consequences in the proposed fixed workweek are undeniable. A strictly fixed workweek was what the agency intended, to be consistent with DOL regulations. Throughout the freight industry, particularly but not limited to the truckload sector, established workweeks are rare. Any attempt to ''shoehorn'' existing operations into some concept of what ought to be, as at least one commenter observed, is ''fraught with peril.'' The resulting costs in lost productivity would probably outweigh benefits.

The NPRM did propose to place limits on on-duty time over the course of a seven-day period to prevent accumulation of sleep debt. Abandoning the idea of a fixed workweek means that an alternative must be found, and at least three are readily available. The first is to define the workweek in terms of time between ''weekends.'' In other words, the so-called week would start to run after the accumulation of a stated period of consecutive off-duty time.

In terms of the NPRM, one alternative would allow the 32-hour period containing two periods between midnight and 6 a.m. to be used as a restart provision. In seeking clarification, the representative from the DLTLCA had pointed out that the proposal's ''weekend'' provision only made sense if it were treated as a restart. Whether the proposed ''weekend'' could survive as a restart mechanism, or whether another period would be preferable, are discussed elsewhere in this document.

The second alternative is to retain the limitations in the existing rules with adjustments, in order to redirect the restriction toward duty time rather than driving time. This option is similar to what private carriers proposed. The current rules restrict any further *driving* after a driver accumulates 60 hours on duty in a seven-day period or 70 hours on duty in an eight-day period. If the focus were to be on *duty time,* the restriction would simply limit drivers to 60 hours of any duty in a seven-day period and 70 hours in an eight-day period. This is the most neutral alternative. It would provide a floating block of time, as in the existing rules.

The availability for duty would be determined by looking back over the immediately preceding seven or eight days, similar to the way availability for driving is determined under current rules. Fortunately, potential negative impacts on productivity did not materialize. FMCSA found that in the 7-day option, for example, an LTL driver

may routinely end a run at the home terminal in the 60th hour. The driver's routine would include assisting in unloading, which is permitted under the existing regulations, and would continue to be allowed under the alternative being adopted today.

The third possibility is the ATA recommendation, which is more complex and requires some explanation. The first part of the proposed ''weekly on-duty period'' is straightforward. A driver may not be on duty more than 70 hours in any seven consecutive days. This would replace the current 60-in-seven and 70-in-eight restrictions, except that the ATA recommendation refers to duty time and not driving. The industry's interpretation of the 14-hour duty segment could also confuse the construct of a workweek. Use of the flex-time provision should eliminate this confusion. Under the ATA recommendation, the ''seven-day period'' would end with the beginning of 34 consecutive hours off duty. In other words, once a driver is off duty for a minimum of 34 consecutive hours another seven-day period would begin to run when the driver resumes work.

FMCSA calculates that if each 14-hour block of productive time were extended by an average of 4 hours to compensate for meal periods, rest breaks, and off-duty downtime at shipper facilities, the result would be six 18-hour ''workdays'' in the seven-day period. This example may be somewhat extreme, but no more so than some of the examples presented in the comments to demonstrate lost productivity.

The second part of the industry's ''weekly on-duty period,'' *i.e.*, the 14-day averaging option, is a little more complicated. The industry petition likened its 140-hours-in-14-days averaging option to the agency's proposed option for two-week averaging. Under the agency's proposal, long-haul drivers could opt to accumulate 72 duty hours in the first week, followed by 48 duty hours in the second week for a weekly average of 60 hours. The purpose of the agency proposal was to enable long haul drivers to use a short weekend while on the road and reserve a longer weekend for the time when they were in their home area. It was not well received for several reasons, particularly because of confusion about the ''fixed workweek.'' Invariably, according to commenters, drivers would be stranded in a remote location and away from their families for their long weekend, a new version of Murphy's Law, apparently.

The industry averaging option would purportedly allow drivers to average 10 duty hours a day over a 14-day period by accumulating up to 84 on-duty hours in the first six days (6 days times 14 hours per day). After 34 consecutive hours off duty, the driver would then be limited to 56 hours on duty during the second seven consecutive days. If he accumulated those 56 hours in the following slightly more than three and a half days, he would have to take a minimum of nearly three full days off before driving again. If Murphy's Law held true, however, those drivers would still inevitably find themselves in a remote location for those three days. And the three days would be mandatory off-duty time, even under the ATA recommendation.

This flexibility could present enforcement problems, as drivers seeking to use the 14-day option could be found in violation of the 70-hours-in-seven-days restriction before they demonstrated compliance with the second week's limitation. Reversing the long and short workweeks could solve the enforcement problem, but it would become too complicated an issue for roadside enforcers. It would also require carrying 14 days worth of logs or using an on-board recording device capable of storing 14 days of duty-time records. Another issue would be the operation of the 34-hour off-duty provision as a restart under the ATA recommendation in the context of the 14-day option. Drivers and carriers could easily be confused after the second period and return to work after a 34-hour break without fully repaying the time owed from the first week.

Acute and cumulative sleep debt arises from sleep deprivation generally, and particularly loss of sleep during nighttime hours. The argument over workweeks places too much reliance on imperfect science. The comments of the ACOEM were particularly instructive in this regard. The ACOEM recognized that fatigue is an important concern for both safety and productivity in commercial driving, but cautioned against placing too much emphasis on what it considers incomplete science. Only the ACOEM recommended deferral of any further action on the proposal until an adequate scientific basis is available.

The agency agrees there is not sufficient scientific or operational justification for a fixed 7-day week. The economic impact of such a ''week'' on scheduling efficiencies and driver compensation is simply too great, given the uncertain benefits in fatigue reduction.

The agency has concluded that the current 60-hour-in-7-day and 70-hour-in-8-day limitations continue to be generally acceptable for CMV drivers operating in the United States.

Weekly Recovery Periods

General Concept

Having already addressed daily off-duty periods, two related issues are dealt with in this section. They are weekly rest breaks or ''weekends'' and restart provisions. These concepts are related, but could have entirely different effects depending on how they are implemented. The mandatory weekend recovery period was perhaps the single most criticized element in the proposed rules.

In the NPRM, the agency introduced the concept of a weekly off-duty period or ''weekend,'' which was intended to provide a regularly recurring opportunity to compensate for any accumulated sleep debt. The NPRM noted ''the research indicates that to negate the effect of accumulated week-long sleep deprivation and restore alertness to the human body it is necessary to have at least two consecutive nights off duty.''

Several commenters correctly pointed out that imposing a regulatory requirement for a weekly off-duty period containing two midnight to 6 a.m. blocks assumes that every driver is subject to weeklong sleep deprivation. The agency may have overreached trying to prevent the most extreme abuses by imposing restraints on the whole driver population. There are numerous examples in the comments and testimony to the effect that most drivers have ample opportunity for normal sleep every night and presumably would never be subject to severe sleep deprivation as a result of their working conditions.

The most frequent objections to the agency's ''weekend'' proposal, however, were the economic and safety implications of restricting nighttime driving. Comment after comment stated how requiring two consecutive nights off would create havoc on the already overcrowded highways in the daylight hours. The requirement would also, according to numerous commenters, disrupt current and entirely safe business operations and result in much greater replacement costs than forecast in the preliminary regulatory evaluation.

The proposal did not offer any opportunity for a restart of the weekly clock after a certain amount of consecutive off-duty time had accumulated. The agency even proposed to restructure the statutory exceptions in Sec. 345 of the NHS Act, within the proposed weekend recovery period. The

only reason for a restart provision is to allow increased productive time notwithstanding the general regulatory requirements when consecutive off-duty hours substantially exceed daily minimums. In other words, restarts are exceptions to the general rule. The agency considered a general 24-hour restart in 1992, but withdrew the proposal when it determined that there was insufficient data available to support the action on safety grounds. Comments to the NPRM raised the issue again, both in objecting to the treatment of the statutory exceptions and in offering an alternative to the agency's 1992 proposal.

Industry Comments

The for-hire industry offered no alternative weekly or other greater-than-daily recovery period, except in the context of its two-week averaging alternative to cumulative restrictions discussed elsewhere in this document. Its 70-hours-in-7-days cumulative period would operate as the present regulations do, *i.e.*, look back over the past seven days to determine if duty time is available to a driver. The DLTLCA petition did, however, request a cost/benefit analysis on an extended rest period within the range of 24 to 34 hours, which could then serve as a restart. The specific recommendation of the petitioners was for a 34-hour restart provision that would effectively end a consecutive seven-day period within which accumulation of duty time is taking place. Once the driver had been off duty for 34 consecutive hours, which would include a mandatory 10-hour daily recovery period, the petition argued that the driver should be considered fully recovered so that another seven-day period could start to run. The 34-hour period was conceived by combining one 10-hour off-duty period with one full 24-hour day, which could return the driver to the same cycle he was operating when the 34-hour period started. This could add an extra 14-hour shift every 7 days. It would also enable short weeks to be restarted. For example, a flex-board driver could be called in to work two consecutive days of 14-hour shifts at the beginning of a seven-day period and then be idle the following day. Once his off-duty time amounted to 34 consecutive hours, a seven-day period would begin all over again.

Landstar stated that its review of the available research and its experience lead it to believe the NPRM was flawed. Landstar cited Cabon, Mollard, and Coblentz, *Sleep Deprivations and Irregular Work Schedules,* Proceedings of the Human Factors Society 35th Annual Meeting—1991, Paris, France and McCartt, Rohrbaugh, Hammer, and Fuller, *Factors Associated with Falling Asleep at the Wheel Among Long Distance Truck Drivers,* Accident Analysis and Prevention. Landstar used these studies to argue that ''the research shows that a period of sleep, no matter how long, cannot 'reset' or restore the human body. Sleep, which has been 'lost', cannot be 'made up.' If an operator misses sleep, that missed sleep cannot be restored by a two day off-duty break. Studies also indicate that rest on the road is not the same quality of rest one experiences when at home.''

Landstar also stated that ''at the same time, 'missed' sleep is important. The effect of lost sleep is cumulative. The impact of lost sleep is compounded as an operator misses more and more sleep. Yet, when it is time for the operator to rest,'' Landstar cited Coleman, Richard, *Wide Awake at 3:00 a.m. by Choice or by Chance,* as showing ''the length of his sleep is affected most by (1) his body time (*i.e.*, where he is in his circadian rhythm) and (2) the cumulative amount of his sleep deprivation.'' Landstar argues that ''when it is time for the operator to rest, once he sleeps for the length of time required by his body (as affected by his body time and amount of sleep deprivation), he is restored and ready to resume alert performance of his activities. In most every instance, the amount of rest required by an operator will be substantially less than the required 32 to 56 hour period set forth in this proposed rule.''

Landstar stated that Cabon, Mollard, and Coblentz further ''show that rest is affected not by the specific hours (*i.e.*, midnight to 6 a.m.) that one rests, but instead by an operator sleeping according to his own established regular schedule of working and resting, whatever that regular schedule may be for the individual operator. Studies show that it is irregular sleeping schedules that lead to troubles with biological rhythms. Sleeping according to the operators' established schedule provides rest, but sleeping during abnormal hours affects the quality of sleep and can cause sleep deprivation.'' In the context of earlier starting times, Landstar also found scientific support for the notion that regular hours of sleep, no matter when they occur, are preferable.

The NPTC alternative for private carriers contained no greater-than-daily recovery period, preferring to operate under the present rule's restrictions on cumulative operations. They did note, however, that ''the flexibility to provide non-consecutive days off is critical to many private fleets and is adequate for drivers to achieve needed rest.''

The OOIDA proposal specifically rejected any mandatory recovery period beyond the daily 10 hours of rest.

Safety Advocacy Groups

The AHAS believed a minimum weekly off-duty time block of 32 hours is too short to counter fatigue and sleep debt. They contended that drivers would regularly violate the ''weekend'' recovery period because of the difficulty of enforcement. They also concluded that even two consecutive nights off is inadequate to compensate for the accumulated fatigue caused by longer shifts. Finally, the AHAS recommended extending the minimum recovery period by 24 hours to 56 hours, including three periods from 11 p.m. to 7 a.m.

FMCSA Response

The science supports the notion that drivers should be provided recovery periods after a sustained period of daily work to avoid the build-up of cumulative fatigue and/or sleep deprivation. This notion was the basis for the proposed rule that every driver must have a ''weekend'' off every seven days, *i.e.,* a period of time including two consecutive midnight to 6 a.m. periods. The agency was attempting to ensure that drivers had a weekly opportunity to obtain restorative sleep and avoid a significant build up of a sleep deficit. Industry comments criticized what they considered the lack of scientific evidence to support the need for an extended period of rest. Depending upon the driver's schedule, a separate midnight-to-6 a.m. recovery period may be unnecessary, or it may be necessary after a period less than 7 days duration if the driver has been assigned night work.

The industry's position is that the required ''weekend'' reflects the agency's intent to significantly curtail nighttime driving. That is incorrect. The agency clearly stated in the NPRM that it was not acceding to the Expert Panel's recommendation on limiting nighttime driving. However, the NPRM with an off-duty period including two midnight–6 a.m. periods (effectively 11 p.m. to 7 a.m.) would have caused some displacement of drivers from nighttime duties.

The proposed rules contained a requirement for a daily recovery period providing the driver a regular opportunity to obtain restorative sleep and hence avoid acute sleep deprivation in large measure. In many cases, drivers can sleep every night; others obtain mostly nighttime sleep; and some rarely sleep at night. We know the science

indicates that, because of the circadian influence, sleep during daylight hours is generally less restorative than sleep at nighttime. That in itself can lead to sleep deprivation and consequent build up of sleep debt, but not always if carriers carefully monitor schedules to avoid too many successive nights of work and if drivers follow proper sleep regimen. The alternative would be to control the cause of sleep deprivation by limiting the hours that may be worked in a given period. Although there is nothing scientific or magical about seven days, the present rules have been employing that time period as a baseline for many years.

The present rules impose restrictions on driving after 60 duty hours in seven days for drivers of carriers who operate only six days per week, or 70 duty hours in eight days for those who operate every day of the week. Simply continuing those limitations in a revised proposal including a 10-hour daily recovery period in a flexible day should satisfy many carriers, particularly LTL carriers and local delivery operators. As noted earlier, the restrictions in the existing rules only apply to further driving, so that a violation of the rule occurs only when the driver begins or continues driving after the prescribed duty time has accumulated. Therefore, a driver could easily squeeze in a few more non-driving duty hours at the end of the workweek (or after 60 or 70 duty hours had already accumulated in the corresponding period).

An alternative would be to target accumulated duty time and apply the restrictions accordingly. That would mean that further on-duty time must cease when 60 or 70 duty hours within the corresponding period have accrued. The loss of those few additional non-driving duty hours would undoubtedly raise costs in some segments of the industry.

The ATA recommendation would combine the 60- and 70-hour limitations into one 70-hours-in-seven-days limit, and would apply it to all duty time. Therefore, the opportunity to squeeze in *extra* duty hours after completing driving responsibilities in the 70th hour would not be available. At least one carrier calculated that a limitation of 61.25 hours in seven days is the mathematical equivalent of 70 hours in eight days. It did not attempt to factor in the accrual of any additional duty time possible under the present regulations. The DLTLCA alternative also provided for a 34-hour restart, which would make it possible to accrue as many as 84 duty hours in any seven-day period. The ATA recommendation, therefore, would provide opportunities for considerable gains in productivity.

After reviewing the research, comments, and RIA, the FMCSA is convinced that a minimum 34 consecutive hours of off-duty time can begin a new 7- or 8-day period, during which a driver could drive or be on duty a cumulative total of 60 or 70 hours (*i.e.,* the 7- or 8-day ''clock'' is restarted by a 34-hour off-duty period). The FMCSA selected 34 hours based on the industry's arguments that it be based on scientific guidance, operational needs, common sense, and realistic assumptions. ATA cited Carskadon and Dement, ''Effects of Total Sleep Loss on Sleep Tendency,'' (1979) which they say suggests that people who have experienced total sleep loss, or have accumulated significant sleep debts over an extended period, may need 2 nights of sleep to completely recover. ATA also argued that ''a recovery and restart period of 34 hours off-duty will allow a driver to have two uninterrupted sleep periods of 7–8 hours * * * Moreover, compliance with the minimum 34 hours would result in a driver restarting work at approximately the same time of day as his or her prior shift. This will avoid the shifting of daytime to nighttime schedules which research indicates can disturb the circadian rhythm and decrease alertness.'' This allows drivers to get at least two sleep periods, without restraining the driver by the unworkable midnight-to-6-a.m. period from the NPRM.

The PATT alternative did not provide a ''restart'' provision. The ATA alternative provided that drivers who obtain 34 consecutive hours of off-duty time could begin a new 7-day period, during which they could drive or be on duty a cumulative total of 70 hours (*i.e.*, the 7-day ''clock'' is restarted by a 34-hour off-duty period).

The FMCSA is selecting its staff alternative incorporating a 34 consecutive hour off-duty time can begin a new 7- or 8-day period for the final rule because it provides the most favorable combination of increased driver alertness and reduced fatigue-related incidents.

Short Rest Breaks During a Work Shift

General Concept

In proposing a daily work/rest cycle, the FMCSA stopped short of dividing the 24-hour period into two blocks (on and off duty), as was proposed by industry. The agency sought to place further restrictions on the 14-hour block. One of the reasons for the restriction was to acknowledge operational differences among motor carriers. Another reason was the proposed elimination of the distinction between driving time and other on-duty time. The principal reason, however, for reserving two hours out of the 14-hour block for rest periods was to ensure that road drivers, who spend most of their time in the driving mode, were afforded the opportunity to improve safety by alleviating potential drowsiness through strategic use of break time. The FMCSA assumed that drivers would rarely, if ever, spend an entire 14-hour period behind the wheel. There are simply too many naturally occurring personal and occupational demands that would require the driver's presence elsewhere. The FMCSA stated, therefore, that regularizing such personal time away from driving would not be a burden on productivity and would empower drivers to insist upon necessary break time.

ATA's Recommendation

Behind the ATA's recommendation in converting to a 24-hour work/rest cycle was apparently the understanding that whereas 10 consecutive hours would belong to the driver, the remaining 14 hours belonged to the carrier. In the NPTC proposal, only nine hours would belong to the driver. As noted earlier, an aspect of the ATA recommendation that the FMCSA considered problematic is that personal breaks taken by the driver during the 14-hour block would only extend that block thereby upsetting the integrity of a recurring 24-hour work/rest cycle.

Other Industry Comments

Industry was uniformly opposed to mandatory rest breaks for a variety of reasons. The theme running through the comments was that the requirement is unnecessary.

The ATA advised the agency to promote, but not mandate, rest breaks that do not diminish driver's work time.

The PMTA commented that requiring rest breaks would cause driver shortages. PMTA stated there is enough time in the day for drivers to rest, if necessary, while maintaining a productive schedule. It also contended that the proposed rules do not enable drivers to take advantage of downtime at loading docks.

The NPTC asserted that mandating breaks interferes with the carrier's ability to manage distribution schedules. It also argued that the paucity of available rest areas would make it difficult to find a place to take breaks.

The National Soft Drink Association stated that required breaks adding up to two hours for Types 1, 2, and 5 are

unnecessary and costly. It contended that breaks occur naturally throughout the workday.

The IBA also stated that flexible rest breaks were already being taken at the driver's discretion.

ARTBA found that the requirements for two hours of uninterrupted breaks and the 5-hour driving limit under Type 5 operations were both too restrictive and unwarranted intrusions by government into employer-employee relationships.

The Institute of Makers of Explosives observed that the Department's own Hazardous Materials Regulations requiring explosives-laden vehicles to be attended at all times precludes the mandatory breaks provided in the proposal.

Intermodal operators stated that mandatory breaks, along with the other proposed requirements, would adversely impact their operations, and probably cause many companies to go out of business.

American Freightways opposed mandatory breaks, believing that drivers should determine if, when, and for how long breaks are necessary.

ABF Freight Systems noted an inconsistency in the proposal. Although the proposal stated that Types 1 and 2 drivers are more likely to be involved in an accident, they are allowed to log breaks off duty, thus preserving on-duty time. Type 4 drivers, who go home and sleep in their own beds every night, are limited to 12 hours per day, including lunch and breaks.

Worldwide Van Lines supported the ATA's 14–10 breakdown so long as the 14 hours are productive hours. It might consider a one-hour break that is currently in vogue in the moving industry. It would prefer to allow carriers and owner-operators the flexibility to schedule rest periods consistent with safety and operational requirements.

Safety Advocacy Groups

Although supportive of rest breaks, AHAS had some reservations. First, It stated that drivers will abuse them and spend the time on non-driving duties, and second, it was concerned with a driver's post-nap sleep inertia and how it might contribute to a crash before the driver was fully awake after the nap.

FMCSA Response

With a limitation of 11 hours on daily driving, the FMCSA believes the need for additional break time diminishes. Rest breaks are still a significant tool in combating fatigue and FMCSA will encourage their use. But the difficulty in enforcing required breaks reduces the likelihood of realizing the benefits intended.

The ATA and PATT alternatives did not incorporate any breaks occurring during a tour of duty. The FMCSA staff alternative provides that any breaks occurring during a tour of duty will not extend the work day.

Economic Impacts

Perhaps the gravest concern expressed by the motor carrier industry was the projected cost of the proposed rules. Virtually all of the industry commenters took issue with the agency's cost/benefit analysis, believing, for the most part, that the agency exaggerated the benefits in terms of accident avoidance and significantly underestimated the compliance costs.

Proposed Costs

Comments from the industry side reflected the common theme that the costs associated with the proposed rule were prohibitive, much higher than the costs projected by the agency. Predicted consequences were not limited to individual company failure, but extended to a ruinous impact on the economy. Other commenters lamented the economic condition of the motor freight industry, which they regarded as critical. Operating as they do on thin margins, many companies contended that they could not absorb the increasing price of fuel, let alone the regulatory costs proposed by DOT and OSHA (in its ergonomics rule).

The increased costs were primarily associated with the number of drivers and vehicles required to deliver the same amount of freight with what was perceived to be substantially reduced productive time allowable under the proposal. Estimates varied, but it appeared that most commenters arrived at their conclusions by applying a straight-line comparison of the maximum amount of productive time for each driver allowable under the present rules with the maximum duty hours stated to be allowable under the proposal.

Industry Reaction

The position of the motor freight industry on the economic impact of the proposal was perhaps best summarized in the DLTLCA petition filed on November 29, 2000. This association represents regional less-than-truckload (LTL) carriers engaged in transportation and distribution of LTL freight locally and regionally. The petitioners found the preliminary economic evaluation, particularly the cost/benefit analysis, to be ''woefully inadequate.'' They contrasted this effort with a study commissioned by the FHWA in 1980–1981 to assess the economic and safety impacts of proposed revisions to the HOS regulations.

Regarding the proposed rules, the DLTLCA surveyed 150 LTL carrier members, which concluded the proposal would increase costs by 5 percent. The regional LTL market is $10 billion and the national LTL market is another $10 billion. So that industry's estimated costs would be three times what the FMCSA estimated.

The ATA stated that the trucking industry employs 9.7 million people, including three million truck drivers, has annual revenues of $486 billion (1998 estimates) and logs 414 billion miles on the road each year (110 billion miles by large trucks over 16.5 tons).

The ATA reported the results of a survey it conducted of members, which estimated that the average loss of productivity would be 17 percent. ATA instructed the commenters to compare drivers' logs in actual operation with ''what they think could be done under proposed rules.''

The ATA also commissioned the National Economic Research Association (NERA) to review the agency's preliminary regulatory evaluation, particularly the cost/benefit analysis. The entire NERA report was submitted to the docket by the ATA, but the primary findings are set forth here for ease of reference:

(1) The FMCSA's economic analysis failed to support the proposed rule. After corrections for what were identified as methodological and mathematical errors and omissions, NERA's economic analysis determined that the cost of the proposed rules were more than five times as large as the benefits—for a net loss of $15.4 billion over ten years;

(2) The FMCSA's bundling of the rule's components obscured the Administration's own findings. Separating the costs and benefits associated with the paperwork reduction component of the rule revealed that the rule's other components—a reduction in driver's hours and an on-board monitor requirement—failed a cost-benefit test, even based on the FMCSA's own assumptions;

(3) The FMCSA understated the costs of compliance by underestimating the number of new truck drivers required; by ignoring the cost of non-wage benefits, recruiting and training, additional trucks, and supporting personnel and infrastructure; and by underestimating the costs of on-board monitoring equipment. Correcting for these errors increased the cost of the

proposed rule by $15.7 billion over the next 10 years. NERA considered this to be a conservative estimate, as many other costs, which are difficult to quantify but which could be substantial, were not included;

(4) The FMCSA overstated benefits by overestimating the number of fatal crashes attributable to truck driver fatigue. Once the baseline was adjusted for crashes from other causes, benefits fell by $3.1 billion over 10 years. NERA estimated that the proposed rule would lead to approximately 19 avoided fatalities per year, compared to the FMCSA's finding of 115 per year;

(5) The FMCSA failed to substantiate the rule's potential effectiveness. The Administration stated the number of fatigue-related fatalities would fall by 20 percent—without reference to any specific studies or statistical support. In fact, available crash statistics indicate that only 3 percent of fatigue-related fatalities can be attributed to drivers driving more than 12 hours; and

(6) The FMCSA failed to recognize the negative consequences of the rule for small regional and long haul trucking companies. Many of these companies operate on thin profit margins and face competition from other modes unaffected by the proposed rule. These companies also face increased costs from other proposed regulations, such as OSHA's ergonomics rule. Consequently, they could not readily absorb additional costs or easily pass additional costs through to their customers.

The ATA argued that the agency ignored numerous factors when conducting its benefit-cost analysis, including the number of new drivers, additional wages, driver non-wage benefits, recruiting costs, additional equipment, supporting infrastructure costs, additional maintenance, insurance premiums, LTL restructuring, electronic on-board recorder (EOBR) purchase and maintenance, and increased inventory carrying costs. The ATA did not rely exclusively on the NERA report for this criticism, particularized in its comments, and was even critical of NERA for being too conservative.

Other Industry Comments

Although many motor carriers estimated substantial costs arising from various aspects of the proposal, their computation methods were not always clearly articulated.

Covenant Transportation, a truckload carrier, shed some light on the methodology used by many carriers to estimate the costs of the proposal on their operations. Covenant compared the number of productive hours per month available to a driver under the existing rules (280) with the number of productive hours it stated would be available under the proposed rules (240) and arrived at a difference of 17 percent. It did the same comparison for vehicles and concluded that 17 percent more trucks would be needed. Covenant opined that converting to relay operations would not work. The loads do not match up. It stated the trucking ''industry is very, very sick.'' The new rules would drive the small operators out of business. The main cause of sickness, according to Covenant, is driver pay. The company increased pay four times in the last four years so that the average at the time it submitted comments was about $42,000 per annum, which it said was not enough. Whatever enough may be, ''until you reach that magic number, turnover will continue to kill you.''

J.B. Hunt Transport, Inc., a carrier with one of the largest truckload operations, found that if the proposal were not amended, productivity would decrease 2 percent on face value. That estimate was based on comparing 61.25 hours a week permitted under the present 70-hours-in-8-days limit with 60 hours in 7 days as proposed, but noted that this was only the surface. The biggest negative impact would come from the rigidity of the proposal. The loss of flexibility, if not corrected, would cost Hunt an estimated $250 million per year and increase rates to customers by an estimated 20 percent.

Contract Freight, Inc. (CFI), a large truckload carrier, did an analysis by mile, which it noted is the bottom line in trucking. Comparing logbooks of current drivers with what CFI could project under the proposed rules showed a 13 percent reduction in miles. CFI also included logistics costs, relocating facilities, positioning drivers, etc. that would add another 7 percent reduction in miles. To move the same amount of freight that it does with 2100 tractors, CFI estimated that it would need 400 more, and with a ratio of 2.9 trailers to each tractor, CFI would need almost 1200 more trailers. CFI stated that it used to do the most relays of any trucking company, but believed that it would not be possible to do the same volume of relays under the NPRM. CFI calculated average driver trips for one of its ''priority teams,'' which runs about 18,000–19,000 miles per month. An average single CFI driver runs about 10,500 miles per month, while a low producing single CFI driver will run about 9,000.

Schneider National, Inc. with its affiliated companies employ in excess of 15,000 drivers with a fleet of over 13,000 tractors and 34,000 trailers. Schneider stated that the FMCSA dramatically underestimated the financial costs of its proposal and, by focusing only on fatigue-related crashes, FMCSA also failed to recognize that the proposal might result in an increase in the number and severity of other accidents if the proposal were implemented as drafted. The limitation of 12 hours on duty in any 24-hour period, together with the ''weekend,'' will reduce productivity by 25–30 percent and require an additional 100,000 inexperienced drivers and vehicles to move the same amount of freight.

Werner Enterprises, Inc. operated 7,425 trucks, 6,225 of which are company-owned and 1,200 of which are independent contractors. Werner stated that the proposal was at best safety neutral, but extremely costly. It supported ATA's analysis of the proposed rule and did provide some detailed analysis of the economic impact of the proposal on Werner and its drivers. Arriving at a 20 percent productivity decrease, meaning also that drivers would lose 20 percent of their income, Werner projected an annual operating cost increase of $290 million. If Werner were to stay in business, these costs would have to be passed on to shippers and consumers.

Bestway Express, employing 325 drivers, cited the U.S. Chamber of Commerce's crediting of trucking for the sustained economic boom through calendar year 2000, noting that efficient transportation took 5 percent off the cost of consumer goods. For the industry as a whole, Bestway stated that the proposal would add $100 billion for inventory costs, $50 billion for additional trucking services, $25 billion for inventory carrying costs and that it would cause U.S. jobs to be lost to Mexico.

NASTC stated that under current rules, a driver could drive up to 15 hours in any given 24-hour period, giving him a range of 750 miles. Under the proposed rule, his range would be reduced to 600 miles. Because of a ''pay-to-wait'' provision, a requirement in the proposal to log waiting time as on-duty time, NASTC predicted the productivity loss could go to 25 to 33 percent.

The ATC Leasing Company stated that it represents a majority portion of the truck transport industry in the country. It involves the drive-away operation of newly manufactured trucks from factories to dealers or to intermediary facilities for modification. In 1999, ATC reports that 540,443 Class 5 through Class 8 vehicles were produced in the

United States. ATC estimates it delivered approximately 75 percent of those vehicles. The vehicles are usually delivered in saddle-mounted combinations with a to-be-delivered truck as the power unit. Upon reaching his delivery destination, a driver typically removes the temporary identification devices and proceeds by public transportation to his next pick-up point.

State trucking associations generally concluded that the proposal did not account for significant costs.

The U.S. Chamber of Commerce believed the FMCSA's estimate of costs per driver was unrealisticly low.

The Intermodal Association of North America's (IANA) survey reported direct operating cost increases of 20 to 30 percent, primarily from the reduction of on-duty time limits from 15 to 12 hours a day and the mandatory off-duty periods when shifting from one type to another.

Advocacy Groups

The Mercatus Center of George Mason University conducts a Regulatory Studies Program (RSP) dedicated to advancing knowledge of the impact of regulations on society. The proposed HOS rulemaking for truckers was chosen for such an assessment, and the resultant report was submitted as a comment to the docket. It concluded ''the DOT and FMCSA estimates of the likely effects of the proposed regulation are tenuous if not faulty on a number of bases.''

The RSP recommended better enforcement of current rules. Built-in flexibility and common sense rules appeared to RSP to present a better field for improving highway safety.

The National Sleep Foundation described the NERA study submitted by ATA as nothing more than an advocacy piece that failed to look at alternative scenarios. The NSF considered the analysis in the report to be a series of conclusions and self-serving narrative with no quantification.

Safety advocates and other public interest groups faulted some of the methodology used by industry to compute expenses and were critical of industry's lack of foresight in adapting to change and in confronting the inefficiencies they state are so prevalent in dealing with shippers and receivers.

Proposed Benefits

In addition to criticizing the NPRM's cost calculations, many commenters also found fault with the allegedly overestimated benefits. The industry in general took issue with the figures used by the agency in projecting the safety benefits to be gained from the proposal. Although acknowledging that there is a serious fatigue-related safety problem, they stated that it does not approach the magnitude assumed by the agency to justify the draconian solutions proposed.

A basic reaction to the proposal was the issue of problem identification, and many distanced themselves from what they said was the core problem group: long-haul, for-hire freight carriers. The motorcoach industry was particularly adamant about the elemental differences between hauling freight and transporting passengers. They did not argue, as others did, for an exemption from regulation, rather they insisted that no evidence had been developed or presented indicating there was any safety problem arising from bus industry performance under the existing regulations. Therefore, in their view disruptive change was totally unwarranted.

Short-haul distributors of wholesale and retail commodities distinguished themselves from long-haul carriers and cited the agency's own studies showing a lesser safety problem in their operations. The construction industry, for example, noted that its truck operations are short-haul, sporadic, and incidental to other functions, and therefore are not at risk to accumulate fatigue while driving. Construction industry commenters also stated that the NPRM would actually impede safety by extending the time construction zones remain open and delaying the completion of safety improvements being made to the highways.

Utility companies strongly contend that the nature of their work and services warranted total exclusion from HOS regulations. Limiting the ability of utilities to respond to service interruptions would be much more likely to create other safety problems than to prevent crashes involving responding vehicles, they stated.

LTL carriers, where union representation is more prevalent, commented their drivers' schedules conform to the existing rules. The carriers believe these schedules, negotiated with the drivers through the IBT, eliminate many of the fatigue-inducing factors while preserving the needed flexibility that they find so lacking in the proposal.

The LTL industry believes that if particular segments of the regulated community are already performing safety at or close to the maximum allowable hours under the existing rules, there could be no benefits from changing the rules applicable to them, only costs.

As noted above by the NERA and RSP analyses, as well as other commenters, most of the benefits cited by the NPRM involved paperwork savings, which are not safety improvements. Virtually every commenter who noted the understated costs of increased drivers and equipment needed to implement the proposed rules also noted that the NPRM did not account for the safety impact of more trucks and more inexperienced drivers on the highway at more congested hours of the day.

Industry commenters cited studies done by and for the DOT showing fatigue to be a factor noted in police reports in only 1.5 to 3.0 percent of all truck-involved fatalities. The ATA and others pointed out what they considered a basic flaw in the agency's calculation of lives saved by the proposal, *i.e.*, 20 percent of the fatalities attributable to fatigue. Some commenters noted that, even using what they considered an inflated attribution, other agency studies show the truck driver to be *at fault* in no more than 30 percent of truck-involved crashes. Therefore, instead of using 775 fatalities resulting from fatigue related crashes as the basis for arriving at 155 lives saved (20 percent), the agency should have used only 30 percent of the 775 figure, or 233. Computing its stated 20 percent reduction from that figure produces a maximum of about 47 lives saved.

The ATA pointed out what it considered additional flaws in the FMCSA's computation of projected benefits, including these four:

(1) FMCSA overestimated the role of fatigue in truck crashes. The agency estimated 15 percent of all truck-involved fatal crashes were ''fatigue-relevant,'' a new, non-scientific term coined by FMCSA for this rule. The 15 percent figure combined the 4.5 percent of those crashes where fatigue was the primary cause with another 10.5 percent where fatigue was assumed to have contributed to mental lapses that caused the crash. Citing several studies in the DOT database, the ATA believed the range is 2.8 to 6.1 percent, 4 percent on average, but strenuously objects to inflating that figure by including fatigue involvement in mental lapses, inattention and distraction.

(2) FMCSA failed to use the proper baseline number of fatalities in its cost/benefit analysis. The agency used 5,035 (average of all truck-involved fatalities from 1991–96) as the basis for its estimates of crash elimination benefits. However, driver error is not the cause of all fatal crashes (maybe 90 percent), nor is the truck driver at fault in more than 30 percent of multi-vehicle truck-involved fatalities. Citing FMCSA and

UMTRI studies, ATA considered 942 to be the proper baseline number for multi-vehicle, fatal-to-non-truck-occupant crashes and 800 the proper number for single-vehicle, fatal-to-truck-occupant crashes. The baseline fatality number should be between 200 and 240, instead of FMCSA's base of 755;

(3) FMCSA used effectiveness assumptions which ATA contends could not be viewed as reasonable or even possible. ATA contended the agency stated the proposal would be 5 percent effective with Type 3, 4 and 5 drivers. ATA claimed the agency included no cost figures for this category, saying that for the majority of drivers in compliance with existing rules the costs would be minimal. ATA objected, finding the two assumptions inconsistent; and

(4) FMCSA ignored the best available compliance information. The agency relied on three different surveys to support its contention that a ''significant percentage'' of drivers violate the HOS regulations. ATA claimed FMCSA has data from thousands of compliance reviews that it totally ignored. Instead of asking for data and analysis from the public on an array of issues, FMCSA ought to analyze the best compliance data available '' its own completed compliance reviews.

Many of the industry comments about overstated benefits could be summed up in the comments of the Minnesota Trucking Association: ''The proposal will not have the intended safety benefits because DOT failed to consider the law of unintended consequences:

(1) DOT failed to account for the accident exposure from over 48,000 new trucks needed to move the same amount of freight;

(2) The proposed rules would cause greater congestion in urban areas both from the greater number of trucks, and more trucks shifted from nighttime hours due to the mandatory 'weekends'; and

(3) The proposed rules would cause a dramatic increase in the number of young, inexperienced drivers on the road creating even greater risks of accidents.''

Safety Advocacy Groups

The IIHS disputed the figure of 49,000 new drivers as too many because it does not account for efficiencies and old drivers returning for better working conditions.

AHAS criticized the agency's economic analysis because it failed to measure proposed rules against the existing rules, ''as most agencies do.'' AHAS agreed with the FMCSA's finding that the contribution of fatigue to crashes has been undervalued and cited the Australian parliament's massive report finding that 20 to 30 percent of road accidents involve driver fatigue. One cannot rely on police reporting because police are unable to detect or infer fatigue as a triggering factor.

CRASH observed: ''Trucking deregulation, a booming economy and the concepts of ''just in time deliveries'' and ''rolling warehouses'' have produced a deadly trend in the commercial trucking industry.'' Truck drivers are exploited by pressuring them to speed and drive over the legal HOS limits. CRASH stated that NHTSA and NTSB have documented that driver fatigue is a major factor in 15 to 40 percent of all big truck crashes.

PATT argued that truck drivers provide labor for which they are not adequately remunerated, that such labor is a major contributor to fatigue and that such labor practices have continued too long without resolution. It stated the basic rule in the industry should be: ''Shippers count, load, and seal—drivers drive—receivers count and unload.''

The CVSA stated that the proposal relied too heavily on relative exposure rather than on relative risk, which appeared to them to be the same across all types of operations.

The NSC claimed that the NHTSA data attributing 2 to 5 percent of accidents to driver fatigue is more reliable, and that the FMCSA's estimate of 755 fatalities is inflated. Until the agency completes fundamental accident analysis studies, NSC believes the agency must rely on FARS; therefore, it must stay with no more than 5 percent or 250 fatalities. It recommended an external panel of experts to establish a lower and upper bound of the fatigue problem, in which the NSC would be glad to participate. It also recommended a cost/benefit analysis similar to the one prepared by Booz, Allen & Hamilton, Inc. for the FHWA on May 28, 1981.

FMCSA Response

Although it appears that the agency underestimated costs in its economic analysis, it is also clear that industry overestimated costs in its comments. The ATA instruction to carriers responding to its survey was to compare drivers' logs in actual operation with what they think could be done under proposed rules. The comments from individual carriers indicated that some followed the ATA instructions, but many others merely assumed that every driver was presently using all available hours. Other comments make it clear that this was not the case. Stating that a reduction in allowable duty hours from 15 to 12 represents a 20 percent loss in productivity when drivers rarely work the 15 hours, is a clear overstatement.

The examples offered throughout the comments, moreover, generally presented worst case scenarios. In nearly every case when a carrier stated it could not complete a run under the proposed rules, it also stated it would have to add a truck and driver to continue that run. Otherwise, it would lose the business. Rarely was there any attempt to reconcile operations or schedules with the proposed rules, or to suggest minimal changes that could make them work. For example, an LTL carrier reported that its drivers double as dock workers. They normally drive up to five hours from a hub to a terminal, load or unload for two to five hours, and then drive back to the hub in up to five hours. The carrier believed it would have to hire twice as many drivers and make them stay overnight at the terminal, because it could not complete those runs under the proposed rules. No mention was made of relieving the driver of loading/unloading responsibilities; shortening the time the driver has to spend loading or unloading by providing some help at the terminal; or otherwise adjusting operations at the terminal so that the driver is not detained as long, rather than literally doubling the number of drivers.

The case for the truckload segment, particularly the small, irregular-route carriers, is more problematic, especially if the sleeper berth provision in the proposal were not adjusted. J.B. Hunt computed the basic productivity loss from the proposal to be two percent by comparing the average allowable workweek (seven days) under the existing rule (61.25 hours) with that proposed (60 hours), but it also found a much greater loss from the lack of flexibility. Although further examination of the impact of flexible alternatives on the operations of large truckload carriers would have to be done, much of this greater loss could apparently be mitigated.

NASTC, representing small carriers, based its analysis of lost productivity on a comparison of a daily range of operation. It stated that under the present rule a driver could drive up to 15 hours in any given 24-hour period, giving him a daily range of 750 miles. This could only be accomplished under full exploitation of an alternating 10-hours-driving, 8-hours-off schedule. Under the proposed rule, NASTC stated the same driver's daily range would be reduced to 600 miles. Projecting the NASTC driver's schedule over longer periods of time, the average difference

in the daily range would undoubtedly come closer to Hunt's two percent. The NASTC driver, however, would have to work more days in the week. The NPRM may also cause lost opportunities. NASTC predicted the productivity loss could go as high as 25 to 33 percent because of the requirement in the proposal to log waiting time as on-duty time. This was not an absolute under the proposal. A driver could log up to two hours waiting time as break time, provided it qualified as off-duty time. If it did not, it must be logged as duty time even under the existing rules.

The NPTC offered no explanation for its position that anything less than a 15-hour workday for private carriers could not survive a cost-benefit analysis. It did not appear to relate to the lack of flexibility in the proposal, but rather to an assumption of inflexibility in private carrier operations. Drivers for private carriers could not sustain a 15-hour day schedule for very long under the present rules without coming afoul of the seven- or eight-day limitations. This issue would require additional attention to learn the particulars of their position.

Although the NERA study made some valid points about errors in the agency's analysis, its own analysis of the costs of the proposal was not based on any independent findings regarding industry practices. Rather, its conclusions appeared to be based on assumptions provided by its industry sponsor. It also cited the results of the ATA survey as the basis for its estimate of the degree to which the FMCSA had understated the costs for additional drivers and equipment. Similarly, the review performed by the RSP, which appeared to misunderstand part of the proposal, did not rely on independent examination of industry practices. Neither the ATA nor any of the other associations proposing alternative rules made any attempt to quantify their related costs or benefits.

On the benefit side, industry severely criticized the agency's reliance on ''fatigue relevant crashes'' to increase the pool of fatalities from which it could draw an estimated benefit (fatalities avoided) from the proposed rules. The NTSB uses the phrase ''fatigue-related'' in its reports and recommendations involving human fatigue. The IIHS and the safety advocates, although not supporting the agency's methodology, stated the FMCSA arrived at an accurate number of deaths caused by fatigue related crashes, and would have done so had it used the methodology discussed earlier in this document, namely ''population percent attributable risk calculations'' taking the increased risk of crashes from driving longer hours and placing it into a formula together with the rate of drivers driving longer hours. Industry, however, also noted that the agency should have at least reduced the number of those fatalities by applying a percentage equal to the ratio of collisions determined to be the fault of the truck driver, about 30 percent. The agency notes there is a big difference between the ''at fault'' crashes the industry uses and the ''contributed to,'' ''fatigue relevant,'' and ''fatigue-related'' crashes the agency, safety advocates, and NTSB use.

Industry was also critical of the agency's overreach in stating benefits from the use of EOBRs by reducing the level of non-compliance, an estimated level that industry stated was far too high. The public interest commenters observed that the evidence of non-compliance was very strong, and even drivers and owner-operators agreed that daily logs are routinely abused.

In conducting the RIA for this final rule, the FMCSA used a more conservative approach to estimating fatigue-related crashes and how benefits would be reduced if the number of fatigue-related crashes were smaller. See the RIA's Section 8.2 for a discussion of the estimates of the number of crashes involving trucks, by severity of crash. In addition, it discusses methods for estimating the percentage of crashes attributable to fatigue, and the results of applying those methods.

In determining the effects of the HOS rules on the mode split between truck and rail (which was not done for the NPRM), we used the Logistics Cost Model (LCM) developed by Paul Roberts. The LCM is a computer model that determines the total logistics cost of transporting a product from a vendor to a receiver. It is an updated variant of models developed by Mr. Roberts for the Association of American Railroads (AAR) and the FHWA. The model determines the lowest cost for ordering, loading, transporting, storing, and holding a product. The model assumes the shipper selects the alternative that minimizes total logistics costs. Total logistics cost in this case may include the costs occasioned by service frequency, transit time, reliability, loss and damage, spoilage and other service-related factors occurring during ordering, transport or storage. By converting all of these factors into their quantitative impacts on total logistics cost, the analysis can address the tradeoffs among service quality, inventory carrying and transportation charges.

The mode shift analysis was limited to movements of 250 miles or more. The RIA did this because the probability of switching traffic from truck to rail is effectively zero for moves under 250 miles. Most authorities would assert, in fact, that this probability is quite low for shipments under 500 miles. Two hundred fifty miles was chosen for the RIA as a minimum, however, to ensure a thorough analysis.

The RIA exercised the mode shift model over a range of changes in trucking rates from a 2.0 percent decrease to a 2.0 percent increase. From this analysis, the RIA was able to estimate a price elasticity of (1.4). This means that, for a 1.0 percent change in trucking rates, there is 1.4 percent change in truck shipments, truck shipments increasing with a rate decrease and diminishing with a rate increase. This measure of elasticity was used, in turn, to estimate impacts on truck and rail traffic for each of the HOS rule alternatives. Details of the computational method and data used are presented in the RIA's Appendix D.

In addition to calculating the social costs, benefits, and net benefits of the alternatives, the RIA also considered the impacts on the carriers, and on the economy as a whole. The changes in labor productivity, costs for labor and other inputs, and changes in the mode split between truck and rail were disaggregated to six regions and fed into the REMI Policy Insight regional economic model (developed by Regional Economic Models Incorporated). The model's outputs give an approximate picture of the relative effects of the alternatives on economic growth and employment across the country.

The RIA found that the PATT alternative would be more expensive to comply with than current rules, especially for short-haul operations, while the ATA alternative would be less expensive. The FMCSA staff alternative would be more expensive for short-haul operations, though it would be less expensive overall due to its savings for long-haul operations.

The basis of the benefits analysis is the estimation of the total number of crashes involving vehicles subject to the rule, the damages imposed by those crashes, and the assessment of the percentage of those crashes and damages attributable to fatigue. The FMCSA found an estimated 8.15 percent of the total crashes and damages result from fatigue. Thus, the total damages from fatigue-related crashes have a value of about 8 percent of $32 billion, or about $2.5 billion per year. Excluding a fraction of crashes that occur in operations that would be little affected by the changes in the HOS rules, the fatigue-related crashes subject to the

alternatives are estimated to impose costs of about $2.3 billion per year.

The analysis of the effects of the rules and alternatives on crash risks showed that these damages could be reduced substantially. The percentage of fatigue-related crashes is substantially higher in long-haul than in short-haul operations. Similarly, the changes in fatigue-related crashes attributable to the alternatives are greater in long-haul than in short-haul. These differences result from the more arduous schedules that long-haul drivers currently have, and from the effects of the rules and alternatives on those schedules.

The ATA alternative provides net benefits in both long-haul and short-haul operations, though its net benefits are much greater in long-haul. Similarly, the PATT alternative has much smaller net costs in long-haul than in short-haul operations, and the FMCSA staff alternative has net benefits in long-haul that are partially offset by its net short-haul costs.

The observation that the alternatives are less cost-effective in short-haul operations was part of the motivation for providing more flexibility in the FMCSA staff alternative for short-haul drivers, allowing one 16-hour shift per week. The RIA assessed the effects of this flexibility by examining the costs and benefits of the staff alternative without allowing any 16-hour shifts.

Our analysis showed that, for short-haul operations, this change would more than triple the annual costs of the FMCSA staff alternative relative to the current rules with full compliance. Costs would increase from $168 million to $641 million, or by almost $500 million per year. These additional costs would translate almost directly into a reduction in net benefits, because the effects of the reduced flexibility on crashes would be very small. The FMCSA estimates that, because the increase in the need for new short-haul drivers would more than offset the slight reduction in fatigue, prohibiting any 16-hour shifts would actually worsen the crash-reduction benefits slightly: total benefits would fall by about $10 million per year, and fatalities would rise by one or two per year.

With this change to the FMCSA staff alternative, its net benefits compared to current rules with full compliance would drop to about half a billion dollars per year.

The analysis of the economy-wide changes revealed that, as expected for a set of rules that has moderate effects on an industry that itself is only one component of the economy, the alternatives would cause changes well within one tenth of one percent of total employment, gross domestic product, prices, and disposable income. The impacts on carriers were more noticeable, with the PATT alternative imposing net costs and the ATA and FMCSA staff alternatives having small positive effects on net income and profitability.

Electronic On-Board Recorders (EOBRs)

The FMCSA based the proposal to require EOBRs for Type 1 and Type 2 operations on two facts:

(1) Data indicated that fatigue-related crashes are much more likely to involve long-haul drivers than local or short-haul drivers; and

(2) Data indicated there is substantial non-compliance with the hours of service regulations, particularly among some segments of long-haul drivers.

The agency assumed that:

(1) EOBR-equipped vehicles used in long-haul movements would significantly improve compliance, which the agency demonstrated in a pilot project;

(2) Improved compliance by long-haul drivers with HOS regulations would help reduce fatigue-related crashes; and

(3) Conforming devices would be available in a sufficient supply at reasonable cost.

On-board recording devices have been in use at least since 1985, when the agency granted a waiver to Frito-Lay, Inc. (50 FR 15269, April 17, 1985) to allow their use as a substitute for handwritten records of duty status. The agency is also aware of substantial investments since the late 1990's made by motor carriers in on-board technology for tracking cargo and equipment performance. Global positioning systems are increasingly in use, and the agency is piloting the application of such a system to monitor drivers' compliance with the HOS rules in cooperation with a large truckload carrier. The agency also believed that once it issued a mandate, market forces would assure that EOBRs would become increasingly available. To allow time for this to happen, the NPRM proposed a phase-in period within which to comply.

The FMCSA also believed that the presence of EOBRs on the vehicles would facilitate enforcement both by reducing the time required to inspect records, and improving the quality of the evidence upon which compliance with the rules would be determined and, when appropriate, violations charged.

Industry Comments

The industry was not uniformly opposed to the EOBR provision. The ATA raised numerous objections. Several large carriers, however, and even an ATA State association, supported the initiative subject to certain conditions. The industry objections primarily revolved around four concerns:

(1) Many commenters believed that the NPRM failed to consider or understated per-unit costs and other related costs;

(2) Many commenters considered the ability of the available technology to track individual drivers to be suspect;

(3) Several commenters noted that the level of compliance they already achieved, or the rarity of occasions when their drivers would be subject to the requirement, rendered the EOBR requirement irrelevant or redundant in their situations; and

(4) Many comments expressed concern about the use by law enforcement and others of the information incidentally obtained through the EOBRs unrelated to HOS compliance.

The ATA's primary position was that the agency underestimated the costs of the technology and overestimated the benefits. The ATA faulted the agency for proposing the use of devices, while ignoring the promising applications of fatigue monitoring devices to prevent crashes and ''black-box'' technology to evaluate crash causation. The ATA noted that the agency neglected to include costs of both the ''smart card'' adaptations, which may be the least expensive means of maintaining driver identity in a mobile industry, and the back-office integration into the carriers' computer systems.

The ATA claimed that the FMCSA reversed its position on EOBR requirements because it first issued a final rule allowing on-board recorders as an alternative to records of duty status on May 19, 1988, 53 FR 18058, and then denied a petition from the Insurance Institute for Highway Safety to mandate use of on-board recording devices. The ATA faulted the FMCSA for failing to gather any data during compliance reviews from the thousands of EOBRs that are presently in use, which might have supported the agency's claim that EOBR use would improve compliance. The ATA noted that the information EOBRs would be required to gather under the NPRM does not even include an identification of the driver.

The ATA contested the claim that EOBRs would facilitate enforcement at roadside. According to ATA, the

experience reported by enforcement personnel is that EOBR records are more difficult to review. The ATA argued that the FMCSA overlooked the biggest shortcoming of EOBRs—they do not track what a driver is doing when the vehicle is stopped and the engine is shut off. The ATA was critical of present methods that do not discover intentional lawbreakers, who know how to avoid detection. The ATA noted that the agency even failed to address the issue of off-duty driving of the truck, so that a trip to the diner or to a movie theater could very well be recorded as driving time and possibly result in a violation.

The ATA noted that the phase-in schedule belied the agency's contention that safety benefits will flow from improved compliance. The proposed schedule gave small carriers, the least compliant segment of the industry, according to an ATA study of FMCSA's Motor Carrier Management Information System (MCMIS) data, more time than the large carriers, the most compliant.

The ATA criticized the FMCSA for failing to evaluate potential risks of requiring drivers to manually enter location codes when crossing state lines in spite of NHTSA's concerns about driver distractions.

The ATA expressed its disappointment with the lack of discussion of privacy concerns or limitations on the use of data for purposes unrelated to regulatory compliance. It also suggested that the proposal could be subject to legal challenge based on U.S. Supreme Court decisions defining the parameters of lawful, warrantless searches in closely regulated industries.

The ATA accused the FMCSA of violating advice from ITS America, an advisory committee to the DOT, and particularly Principles 1, 5, 6, and 7 of the *Fair Information Principles for ITS/CVO.*

Other Industry Comments

The State trucking associations were not unanimous in their opposition to the EOBR provision in the proposal. Many did not comment on this issue, perhaps relying on the ATA, their national representative, to express their views.

The Arkansas Trucking Association unanimously supported the required use of EOBRs. It was particularly persuaded by the opportunity to replace a very expensive and inefficient paperwork system. It recommended to its members that EOBRs be installed and maintained in all CMVs over 26,000 pounds. The members reportedly were tired of competing with cheaters, and believed that EOBRs would provide a level playing field.

CTA supported the use of time recording devices (not necessarily an EOBR) for all drivers and trucking operations only under the following six conditions:

(1) The implementation of EOBR devices must be the same for all carriers;

(2) The time recording device must be readable at roadside inspections by law enforcement officials;

(3) The data obtained from a recording device must be used by law enforcement officials for HOS enforcement purposes only and not for reconstruction of other events or operations;

(4) The recording device must identify individual drivers and include the option of personal technology devices, as well as EOBR's installed in the vehicle;

(5) There must be an investment tax credit for purchase and installation costs associated with the recording devices, retroactive to existing devices; and

(6) The mandatory record retention period for recorded data must not exceed six months.

CTA opposed the use of additional information that may be recorded to enforce other statutes not relative to a driver's HOS. CTA believes that due process and driver privacy require this consideration.

The PMTA, on the other hand, reported that many of its carriers believed EOBRs would be redundant for their type of operation, under which drivers' HOS are already closely controlled or monitored. The PMTA recommended assembling a multi-disciplinary committee to hammer out HOS reform regulations.

The large truckload carriers were somewhat divided over the provision, but several supported it.

J.B. Hunt believed that EOBRs would ensure compliance with HOS regulations, but attached certain conditions to its support:

(1) They must be required of all carriers at the same time;

(2) Their use must be limited to immediate enforcement of compliance; and

(3) They must have legally enforceable prohibitions on the use of EOBR data for other purposes.

J.B. Hunt also suggested that EOBRs should be phased in based on a motor carrier's safety performance, using Safestat as a reference, so that the worst performing carriers would be required to comply earlier, *e.g.,* ''A'' list first, then ''B'' list, etc. It also urged the FMCSA to set performance standards that allow for innovative technology.

M.S. Carriers (M.S.) found the EOBR proposal to be basically sound, but believed the FMCSA should require standard equipment in all CMVs so it could be used interchangeably. M.S. also recommended a condition that information from these devices could not be used in court.

Schneider National, while not in outright support of the provision, felt that if EOBRs were to be required, implementation should be the same for all commercial fleets, regardless of size.

U.S. Xpress Enterprises believed it would be prudent to separate out the EOBRs from the rest of the proposed rules because ''black boxes'' perform a variety of functions. They suggested it would be better to combine all functions in a single device and test them so everyone could get the ultimate benefits. They noted, for example, that the NTSB is very interested in getting black boxes installed for crash investigation purposes.

Landstar believed the implementation schedule for EOBRs would be unfair to owner-operators leased to larger carriers because they would have to meet a more expedited schedule by reason of the size of the carrier to which they lease. Landstar also supported requiring EOBRs on a performance basis, *e.g.,* carriers with above average accident rates should be first to implement.

Great Coastal Express pointed out that EOBRs are good for monitoring driving time, but not very good for tracking non-driving on-duty time.

Smaller truckload carriers and owner-operators were more uniform in their opposition to the mandatory EOBR provision. Perfetti Trucking, for instance, was totally opposed to EOBRs, believing they would cause older drivers to leave in large numbers. They believe younger drivers in the 30 to 45 age bracket, who may possess some degree of computer literacy, might be more comfortable. The older drivers, however, view EOBRs as an intrusion on their liberties, an insult to their intelligence, and a way of making them look inferior. Perfetti also believed the proposal would put many owner-operators and small trucking companies out of business.

The NASTC found the proposed use of EOBRs to be intrusive and would ''treat drivers on a par with convicted felons under house arrest.'' NASTC noted, however, that if EOBRs are to be required, the agency, in conjunction with CVSA and the industry, should design specifications that are uniform, cost-effective, tamper-proof, and can be incorporated as a mass-manufactured component.

Other small truckload carriers and owner-operators reported the devices would be too expensive; they could not afford them; and they would likely have to go out of business.

The OOIDA believed that dividing the day into a 10-hour rest period and a 14-hour duty period would make compliance and enforcement so simple that EOBRs would be redundant.

The less-than-truckload (LTL) sector was generally opposed to the mandatory use of EOBRs.

The MFCA claimed its carriers now achieve virtually 100 percent compliance with the HOS regulations. The only possible noncompliance is failing to keep up the record of duty status. Therefore, at least as concerns the MFCA, there is no benefit, only cost.

Yellow recommended that the EOBR provision simply be removed from rule until more information is available.

Watkins was concerned about unproductive costs. Watkins believes that EOBRs have no direct safety benefit; that there is no equipment currently available; and that the cost to convert to the requirement would be $2,650 per EOBR. After making a case for exempting LTL operations from the EOBR requirement, Watkins projected its total cost of converting to the proposed monitoring and record-keeping system at $15,053,465.

The OOIDA complained that ''[FMCSA leaps] from regulations that may or may not prevent driver fatigue to requiring black boxes to assure compliance with those regulations.'' OOIDA believes the regulations should be reasonable and should rely on voluntary compliance. OOIDA believes EOBRs would expose carriers to greater liability, as plaintiffs' attorneys would have more ammunition with which to impress juries, regardless of actual fault. OOIDA also objected to EOBRs based on Fourth Amendment privacy protections.

OOIDA participated in a DOT European safety scan in 1999. OOIDA stated the mandatory use of EOBR type devices in Europe had been delayed four times due to industry objections. OOIDA also found that drivers did not embrace the product at the time, they hated it. The system was too restrictive and limited their earning capacity. OOIDA claimed that drivers and employers worked out unofficial arrangements so drivers would not plug in their drivers' cards until they were a couple of hundred miles down the road to enable them to get the overtime the drivers needed to make a living. OOIDA believed VDO North America, a vendor that commented at the hearings and roundtables, ''took literary license in the interest of sales.'' OOIDA acknowledged that the United States system is not foolproof, and drivers would find ways of beating it. OOIDA believes a truly foolproof system would be too expensive.

The IBT commented that it has not opposed EOBRs in the past, provided limitations are placed on the use of the data, because record of duty status falsification has been a big problem. The IBT asserted, though, that the requirement for EOBRs would contribute nothing to safety without strong enforcement. The IBT also doubted whether the information collected by EOBRs would have much value for enforcement since they only directly track driving time.

The ABA cited a General Accounting Office report to Congress finding in relation to the agency's estimate of a 20 percent safety benefit from the use of EOBRs that the FMCSA ''did not have an analytic basis to support this estimate.'' The ABA concludes that mandating EOBRs for long-haul buses would result in a large expense with no safety benefit.

Commercial Vehicle Training Associations (CVTA) is a trade association representing the nation's private training programs for CMV operators. Regarding EOBR training, CVTA commented that if a uniform set of specifications were developed and required, the schools could, and probably would, include a module on EOBR use.

The U.S. Small Business Administration (SBA) noted the cost of the required EOBRs and believed that even four years lead time may not be sufficient to reduce costs significantly. It further believed the cost estimates were understated. The SBA provided no substantiation for its estimate, except its concept of ''average,'' which was to add the lowest estimate it had heard to the highest estimate and divide by two, resulting in a per-unit cost estimate of $17,000 to $19,000. It recommended examination of feasible alternatives to general EOBR use, including one that is performance-based. If the FMCSA imposed the requirement on those with the worst safety records, it would provide an added incentive to operate safely. The SBA strongly urged the FMCSA to consider all information from small businesses and include full discussion of costs and assumptions, as well as feasible alternatives and why they were not chosen.

Law Enforcement Comments

The CVSA opposed the requirement for EOBRs as premature and recommended more study to ensure standardization. It suggested using the DOT's Intelligent Vehicle Initiative (IVI) to conduct operational evaluation and possible pilot tests. In addition to suspecting the quality of the equipment presently available, CVSA has concerns about access, availability and use of the data. CVSA noted that most tachometer-type equipment is used by industry as asset management tools and not necessarily for driver management, and noted, ''The EOBR requirements as currently written in the proposal offer no benefit to industry or enforcement in having the ability to proactively manage fatigue.'' In this context, the CVSA was distinguishing the EOBR from other developing technologies that measure and project driver alertness (*e.g.,* Perclos™ and Actigraph™ devices).

The California Highway Patrol (CHP) was not opposed to the use of automated time record systems for Types 1 and 2. CHP noted such equipment has been in use in California since the mid-1980s. CHP has problems with Types 3, 4 and 5 drivers because they may be caught in positions where they suddenly need an EOBR on a limited basis, such as a required overnight stay. CHP suggested the development of an alternate means of compliance in those situations. CHP also believed that with no records required for Types 3, 4 and 5, roadside enforcement would be impossible. It recommended building into the rules a rebuttable presumption of regularity with toll receipts and other time-dated records regularly issued in the course of business.

Safety Advocacy Groups

Safe Drive America (SDA) described itself as an organization improving highway safety by observing and reporting unsafe practices and promoting improvements in training and working conditions for drivers. SDA supported the NPRM overall as a positive step in the right direction, in particular, the requirement for EOBRs. It recommended a six month phase-in period for all motor carriers. SDA claimed it is not unusual under the current rules for a driver, with three pickups in a given town, to spend all night making those pickups and then record 0.75 hours loading, and 11.25 hours in a sleeper berth. SDA claims the driver then shows on the record of duty status as emerging from the sleeper at 6 a.m. with an eligible 10 hours of driving and 15 hours on duty. SDA claims the driver could still do this under the proposal unless there is a device like the EOBR to keep the driver honest, and even then, enforcement would be required.

The AHAS supported mandating EOBRs for road drivers, claiming that current cost estimates run well below even the lowest estimate used by the agency. It strongly recommended the agency consider requiring EOBRs for Type 3 drivers as well because of added risks associated with split-shift driving and tendency of drivers to falsify records. It would even include Type 4 (local) drivers and was not persuaded by reliance on DOL timecards, as AHAS believes there are no independent means of corroboration. The AHAS found that requiring EOBRs would at least protect drivers from being compelled to exceed hour limitations.

The AHAS disagreed with industry's privacy concerns and favored addition of global positioning system (GPS) technology, which AHAS believes would not be very expensive, certainly not double the quoted $300 base cost. The AHAS noted that in this age of automation, in an industry that operates on razor-thin margins, any carrier that does not take advantage of technological advances would be left behind and would fail to survive.

CRASH supported requiring EOBRs, but suggested that more safety technologies already exist and should be brought into play. PATT also supported mandatory use of EOBRs, which it found long overdue. PATT believed the devices did not cost too much and that any changes in HOS regulation without them would be useless.

The NSC supported technology integration for safety purposes, but found the NPRM lacked data showing that the safety benefit would equal the cost of $1,500 per unit. The NSC recommended piloting required use on the poorest performers, *e.g.*, those with accident rates double the national average.

Vendors' Comments

VDO claimed to be the world's largest independent manufacturer of automotive instrumentation. VDO claimed to have an EOBR meeting the performance standards listed. VDO claimed the device, also known as an electronic tachograph, has become widely used in the European Union with strong support from fleet owners, drivers, unions, and enforcement. VDO claimed its version of the European B1™ Tachograph answers all of the negative comments and concerns of the motor carrier industry.

VDO had talked to several U.S. companies and was told by Qualcomm and Cadec that they believed they could not meet the requirements for EOBRs as proposed.

VDO contended the opportunities its digital tachograph affords users go far beyond merely the time saved on doing paper logs. The device automatically recorded everything fed into it, and the user could decide what to do with the information. VDO has done studies that it believes reflect the beneficial results of what it refers to as a ''driver feedback loop.'' VDO claimed that no matter what device is used, management and society need feedback to correct the poor driver behavior detected, *e.g.*, speeding, tailgating, harsh braking, excessive hours, etc. The benefits did not come from the EOBR, but from the attitude of the carrier that chooses to use it for safety purposes.

Diversified Auto Technology (Diversified) claimed it was on the verge of completing a 13-year project researching and developing on-board recording devices. The company claimed it had been involved primarily in the EU market and that initial cost of Diversified's complete system built to comply with proposal would be estimated to be $2,500.

QUALCOMM Incorporated commented that it offered two primary products to the transportation industry, a geo-stationary satellite-based, mobile communications system and a terrestrial mobile communications system that uses a digital, wireless network. QUALCOMM claimed it was developing an onboard computer solution that would fulfill the requirements of the EOBR requirement. It believed the regulations on electronic recordkeeping should be crafted to promote both safety and productivity in order that carriers can have a return on investment with onboard technology. They projected their device could cost as much as $1,600 per vehicle with an additional charge of $15,000 to $25,000 for host software, plus additional costs for firmware and GPS upgrades, installation, downtime on vehicles and training. These costs would be in addition to the cost of hardware for those fleets not already equipped with mobile communications equipment.

Marconi InfoChain reported that its company and others, including Bristow and E-Truck, were offering an inexpensive alternative to VDO's European solution—a personal digital assistant.

FMCSA Response

The FMCSA has decided not to adopt regulations on EOBRs at this time. However, there are several technologies that offer significant promise for HOS recordkeeping and enforcement. The agency plans to continue research on EOBRs and other technologies, seeking to stimulate innovation in this promising area. There are several reasons for this decision and the planned research.

First, neither the costs nor the benefits of EOBR systems are adequately known. Cost estimates vary enormously, mainly because there is no significant market for such devices at the moment and thus no hard prices available from competing vendors. There appear to be only a limited number of vendors that could offer a suitable system in the near future, and no guarantee that they could satisfy all of initial demand, should EOBRs be required. Meanwhile, other technologies offer potential for HOS record keeping and compliance and should be evaluated alongside of EOBRs.

The benefits of EOBRs are easier to assume than to estimate. Full voluntary compliance with the HOS rules is unlikely, but the amount of cheating that could be deterred by EOBRs is unknown and the amount that could be detected depends on the tamper-resistance of the design and the ability of roadside enforcement quickly and easily to access the information recorded by the system. FMCSA did not test the (very few) EOBRs currently available, so both issues remain unresolved.

Second, the agency's EOBR proposal was drafted as a performance standard, but enforcement officials generally argued that a design standard was necessary to ensure that they did not have to waste time and effort mastering incompatible read-out procedures created by different EOBR vendors. In retrospect, it might have been better to propose a partial design standard governing driver-identification and information read-out procedures, while setting a performance standard for all other features of the device. FMCSA can neither adopt such far-reaching requirements without prior notice nor ignore the concerns of the enforcement community. The solution, at least for now, is to adopt a rule that does not require EOBRs.

Third, FMCSA proposed that long-haul motor carriers with more than 50 power units be required to adopt EOBRs within 2 years, while those with less than 20 power units would have up to 4 years to comply with the rule. Many commenters argued that this phase-in schedule was irrational because the smallest motor carriers generally have higher accident rates than large ones. Furthermore, the first carriers subject to a regulatory mandate would probably pay more, and perhaps substantially more, for EOBRs than carriers allowed to defer compliance to a later date.

Carriers that discussed the phase-in period generally insisted that, if a mandate were adopted, all carriers should be required to begin using EOBRs at the same time. The Small Business Administration (SBA), though critical of the financial burden of on-board recorders for small entities, suggested that the agency consider requiring them only for carriers with the worst safety records. In short, there was no consensus on the phase-in issue.

Fourth, although the agency proposed EOBRs only to capture HOS information, most commenters viewed these devices in a wider context. Many drivers regard electronic monitoring as a direct assault on their dignity and privacy. Motor carriers, on the other hand, are deeply concerned that HOS functions handled by the on-board electronic systems of modern tractors would expose all other information recorded by those systems (*e.g.*, speed, frequency of brake application, etc.) to demands for production in lawsuits resulting from accidents. Many carriers and trucking organizations expressed adamant hostility to any EOBR requirement that did not protect data generated by recording devices from any use except HOS enforcement. Although the commenters may have exaggerated the impact of EOBRs, they did raise issues the agency did not consider in the NPRM and is not prepared to address in this final rule.

For all of these reasons, FMCSA has concluded that it has neither the economic and safety data needed to justify an EOBR requirement at this time, nor the support of the transportation community at large. The agency, however, does plan to continue research on EOBRs and other technologies, including evaluating alternatives for encouraging or providing incentives for their use. Key research factors will include:

(1) Ability to identify the individual driver;

(2) Tamper resistance;

(3) Ability to produce records for audit;

(4) Ability of roadside enforcement to quickly and easily access the HOS information;

(5) Level of protection afforded other personal, operational or proprietary information;

(6) Cost; and

(7) Driver acceptability.

Proposed Compliance and Enforcement

The ATA and a substantial number of other industry commenters expressed concern that enforcement would suffer if the proposed rules were adopted. Motor carriers, associations, unions, and shippers all found the proposed rules too complex, particularly the provision for five types of operations. They stated that roadside inspections would take much longer as enforcement officers sorted out what category each driver fit into so they would know what rules to apply. Longer times per inspection would translate into fewer inspections and a less effective enforcement effort.

Industry Comments

The ATA found that the proposed shifting among 5 types of operations would cloud compliance and enforcement. Although the proposal allowed ''good faith'' compliance with the perceived type of operation, too many variables made the proposal unworkable. Customer demands, weather, loading and unloading delays, and other unforeseen circumstances would impact schedules. Inflexible categories and the subjective interpretation by law enforcement personnel would make confusion unavoidable.

The ATA stated that regulations have to be clear and concise. The ATA stated that it has been a consistent supporter of effective enforcement, but that reliance on EOBRs is not the answer. The ATA comments also recommended removing the link to the DOL requirements and reverting to the current record keeping requirements in 49 CFR part 395.

The DLTLCA made no mention of record keeping in its petition or in its comments, noting agreement with ATA's view on this matter.

Werner Enterprises recommended an alternative regulatory scheme. It stated that a better objective would be to achieve uniform enforcement of existing rules before attempting any industry-wide change. Consideration should be given to retaining the present HOS rules, but to implement the proposed on-board recorder requirement. The agency could then determine whether that initiative with adequate training would achieve desired level of regulatory compliance and safety improvement.

J.B. Hunt counseled that rules should not be difficult for drivers and enforcement personnel to understand. It believes effective enforcement and meaningful sanctions change behavior. It supported requiring immediate enforcement against violators at the time and place of occurrence to reinforce compliance. Placing the driver out-of-service until he is in compliance is not enough. Uniform fines should also be imposed. J.B. Hunt believes that reliance on carriers to discipline drivers is impractical because of the gap between the time of the violation and the time the carrier learns of it, as well as the mobility of drivers. Finally, J.B. Hunt urged the government to mandate speed control devices on all CMVs limiting truck speeds to a standard national rate (60 to 65 mph) for everyone.

Landstar believes that the proposed provision for different types of operations would make enforcement difficult. It also stated that reliance on DOL records is misplaced: historically, carriers have considered themselves subject to DOT rules and interpretations of them. Without any meaningful explanation, the FMCSA ''would throw out decades of industry practice.'' The complexity of the proposed rules would have an adverse impact on enforcement. Landstar believes that both compliance reviews and roadside inspections would take longer because the investigator would have to determine what type of operation carriers and drivers are engaged in before they know what rules to apply.

Overnite was convinced that stricter enforcement is the key to improved compliance with HOS regulations and to safety. Overnite strongly endorses the use of EOBRs to bolster enforcement. On the whole, Overnite found the proposal too complex. It offered comments from a driver, Thomas Hawks, a 10-year driver based in Memphis, TN with an exemplary safety record. Mr. Hawks stated the NPRM provisions would confuse drivers and enforcement people, but more importantly, it would prevent drivers from doing their jobs in a professional way. Although he does not load or unload, he believes enforcement action should be taken about time wasted at the docks of shippers and receivers.

The Minnesota Trucking Association found that the five categories of drivers would be very confusing for both companies and law enforcement to follow.

The California Trucking Association agreed that ''typing'' drivers serves no useful purpose and only confuses industry and enforcement. The CTA would support use of time-recording devices for enforcement, provided certain other conditions apply. Although a vigorous supporter of efforts to make highways safer, CTA would stress better drug/alcohol testing and reporting procedures and more funds for roadside enforcement.

The NTTC deferred to CVSA comments regarding enforcement, but agreed that five types of operations are unnecessarily confusing and would hamper uniformity.

The NITL and the NAM also found the proposed rules overly complex,

using the five categories of operations as an example. The complexity would adversely affect enforcement.

Wal-Mart recommended improving enforcement activities while waiting for a new rule.

The IBT said the complexity of the proposed rule, particularly regarding the five categories of operations, would be a challenge for the enforcement community and a problem for the regulated community as well.

Law Enforcement Groups

CVSA and the Connecticut Department of Motor Vehicles argued that the complexity of the NPRM would create problems with training and application at the roadside. They state that FMCSA's estimate of four hours needed to train investigators in the proposed rules is very much understated and is likely to be two to four times as long. One CVSA member estimated that the time required to complete a Level 1 inspection at the roadside would be increased by one-third. Finally, CVSA opposed the requirement for EOBRs as premature, and recommended more study to ensure standardization.

The New York State Police noted that the proposal, as written, was very difficult to understand for enforcement purposes, which is likely to diminish enforcement actions taken on the roadside and therefore would minimize the likelihood of widespread carrier compliance.

The Wisconsin Department of Transportation (WisDOT) believed the five categories would create confusion: the distinction between types 1 and 2 is not precise enough, and roadside enforcement for types 3, 4 and 5 would be virtually impossible. Substantial training for both drivers and enforcement personnel would be necessary. Enforcement personnel would need to know how to deal with both paper and EOBR systems. WisDOT also believes the removal of the Tolerance Guidelines is premature without accurate and extensive crash data.

The Minnesota Department of Transportation and the Minnesota Department of Public Safety filed joint comments. They performed a section-by-section critique, noting that significant modifications and clarifications that would be needed so that enforcement could be effective and consistent.

The Maine Department of Transportation concluded that requiring EOBRs would set back enforcement because of lack of standardization of the devices.

PennDOT recommended regulations that are easily understood by all, enforceable at the roadside, provide for safer operations, and meet the needs of the public, particularly the uninterrupted continuity of utility services.

Safety Advocacy Groups

AHAS contended that difficulty in enforcing the provisions of the NPRM would provide opportunities for drivers to violate the ''already inadequate'' weekend rest period the proposal would mandate. The AHAS agreed with most commenters that enforcement must be improved, and strongly supported the proposed requirement of EOBRs for Type 1 and 2 operations. It strongly recommended the agency consider requiring them for Types 3 and 4 drivers as well.

CRASH believes that making a distinction among the five different categories of drivers would present enormous problems for police. CRASH also believes relaxing the record carrying requirements by using the DOL records and supporting documents in all categories further complicates enforcement.

PATT, on the other hand, supported the use of DOL time records, but recognized need for vigorous enforcement, and recommended retention of records for 24 months. The NSC, however, believes that the use of the DOL timecard may not be practical for roadside enforcement.

FMCSA Response

The rule being made final today is significantly simpler than the NPRM and should be much easier to understand and enforce. The agency is modifying the existing rules and exemptions to update them with the appropriate off-duty, on-duty, and driving times, as well as adding a restart provision for truck drivers. The agency is retaining the paper-based record of duty status system, including retention of supporting documents and allowing, but not requiring, continued use of § 395.15-compliant automatic on-board recording devices.

The motor carrier's responsibility for compliance with the HOS regulations remains clear. The motor carrier is responsible for and must police the actions of its employees. This obligation under the FMCSRs was affirmed by the Associate Administrator for what was then the Office of Motor Carriers (of the FHWA) *In the Matter of Horizon Transportation, Inc.,* 55 FR 43292 (October 26, 1990) (Final Order February 12, 1990). A motor carriers' responsibility for the actions of independent contractors and owner operators they use was outlined *In re R.W. Bozel Transfers, Inc.,* 58 FR 16918 (March 31, 1993) (Final Order August 6, 1992); and more recently *In the Matter of Commodity Carriers, Inc.*, (Order Appointing Administrative Law Judge March 25, 1997). Likewise, each motor carrier must have a system in place that allows it to effectively monitor compliance with the FMCSRs, especially those aimed at the issue of this final rule—driver fatigue (See In re National Retail Transportation, Inc., (Final Order: Decision on Review September 12, 1996.)) The United States Court of Appeals for the Sixth Circuit affirmed in *A.D. Transport Express Inc.* v. *Federal Motor Carrier Safety Administration,* 290 F. 3d 761 (6th Cir. 2002) that supporting documents must be maintained in a common sense manner so that FMCSA investigators can ''verify dates, times, and locations of drivers recorded on the RODS.'' More recently, the D.C. Circuit agreed that the term ''supporting documents'' in the current rule encompasses any document that *could be used* to support the RODS. That decision also found an FMCSA requirement that supporting documents must be maintained in a fashion that permits the matching of those records to the original drivers' RODS as a reasonable interpretation of 49 CFR 395.8(k)(1). In fact, the Court concluded that all the FMCSA is asking is that carriers refrain from destroying the agency's ability to match records with their associated drivers (*Darrell Andrews Trucking* v. *Federal Motor Carrier Safety Administration,* 296 F. 3d 1120 (D.C. Cir. 2002).

Regulatory Impact Analysis

The NSC, ABA, ATA, and DLTLCA petitioned FMCSA to retain an independent consulting firm to study the safety and economic impacts of any final rule. The FMCSA selected a large, well-respected contractor with extensive experience in transportation and the regulatory process.

After reading and analyzing the 53,750 written comments, the FMCSA identified three potentially effective and reasonably feasible regulatory models within the scope of the NPRM for further consideration. The analysis of these alternatives is entitled *Regulatory Impact Analysis and Small Business Analysis for HOS Options*, December 2002 (RIA) and is in the docket.

The benefits and costs of each alternative must be measured against a baseline, as AHAS pointed out in its comments. The Office of Management and Budget's (OMB) guidance to federal agencies has been that the baseline

should be the existing regulation. This baseline can then be compared against reasonable alternatives.

Thus, the first alternative was to take no action, keeping the current rules. The other three alternatives are referred to as the PATT alternative, the ATA alternative, and the FMCSA staff alternative. The RIA, however, compares the costs and benefits of the alternatives relative to two distinct baselines.

Much of the RIA shows the effects of the PATT, ATA, and FMCSA-staff alternatives relative to the current rules *under the assumption of 100 percent compliance with the current regulations and each alternative.* This approach ensures that the full effects of the alternatives' provisions on costs and benefits are captured. On the other hand, because there have been studies that have shown that drivers do not always comply with the existing rules, OMB requested that FMCSA also assess the differences that would appear if motor carriers and drivers improved current compliance levels and achieved 100 percent compliance. Thus, the alternatives are also shown relative to a baseline in which the current rules are in effect, but there is a certain degree of non-compliance. The University of Michigan Trucking Industry Program (UMTIP) provided the FMCSA with customized statistical outputs for particular subsets of an UMTIP driver survey that the FMCSA analyzed to estimate the percent of non-compliance with the existing regulations. These subsets were designed to match, as closely as possible and where appropriate, the industry segments reflecting the most relevant profiles in the RIA. The FMCSA found that approximately 8 percent of long-haul driver hours exceed the current daily and weekly limits of § 395.3.

The FMCSA did not analyze alternatives for passenger carrier transportation. As stated above, the FMCSA was persuaded by the comments that it does not have enough data to indicate a problem in the motorcoach industry segment. This RIA only analyzes carriers using CMVs to transport (1) goods or (2) crews and equipment to places where they are needed to provide services of one kind or another. This would include service trucks belonging to telephone and electric utility companies; trucks of a variety of types of service contractors—plumbers, electricians, roofers, landscapers, etc.; trucks taking crews and equipment to construction sites, including mobile cranes; dump trucks; trash trucks; beverage, bakery, and snack food distributors' trucks and other like vehicles.

The FMCSA distinguishes two distinct baselines by referring to the current rules with 100 percent compliance as ''Current-100 percent,'' and the current rules with existing estimated compliance levels as the ''Status Quo'' scenario.

The NPRM analyzed five alternatives, in many commenters' view incompletely, that could have required comprehensive changes to the motor carrier industry, with possibly significant implications for the national economy. The agency considered all of the alternatives suggested by commenters. Some had to be eliminated to provide a manageable number for evaluation under Executive Order 12866. The agency chose three alternatives that were both feasible and could potentially be effective at reducing fatigue-related incidents and increase driver alertness.

The Baseline

The baseline, current rule provides that no driver may drive:

(1) More than 10 hours following 8 consecutive hours off duty;

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty; and

(3) For any period after—

(a) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(b) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

This current rule allows drivers to have work/rest cycles as short as 18-hours, if the drivers maximize driving time and rest the minimum 8 consecutive hours. The 18-hour cycle provides a potential 6-hour backward rotation that inverts drivers' schedules on cross county trips. Such schedules allow a driver to begin driving during the day on the first day, but on subsequent days allow the driver to drive at night, and then during the day, and then at night again. This alternating day-and-night driving has been proven to be detrimental to a driver's sleep thereby increasing the risk that the driver will cause a crash.

PATT Alternative

The first alternative selected by the FMCSA for detailed safety and economic analysis was that suggested by PATT. The PATT alternative provides that no driver may drive:

(1) More than 10 cumulative hours following 12 consecutive hours off duty;

(2) For any period after having been on duty 12 consecutive hours after first beginning on-duty status following 12 consecutive hours off duty;

(3) More than 50 cumulative hours over the last 6 consecutive 24-hour periods plus the current 24-hour period; and

(4) For any period after having been on duty 60 hours over the last 6 consecutive 24-hour periods plus the current 24-hour period.

The PATT alternative allows drivers to have regularly recurring work/rest cycles of 24 hours. The 12-hour on duty, 12-hour off duty cycle would provide drivers with two more off-duty hours than the FMCSA staff alternative for meals, personal errands, and to contact family and friends. Many long-haul drivers commented that they do not need these additional hours during a trip because commuting, doing personal errands and socializing are mainly home-based activities. This type of rule, like the NPRM, would require drivers to waste off-duty time (in their view) in a location where there is little for them to do.

This alternative had the possibility for sharply reducing fatigue-related incidents, but it was also likely to reduce motor carrier productivity and increase transportation costs by increasing the need for more drivers.

ATA Alternative

The second alternative selected by the FMCSA for detailed analysis was the ATA proposal. It was not clear whether this alternative would reduce fatigue-related incidents, as ATA claimed, but it would almost certainly increase productivity and provide cheaper transportation.

The ATA alternative provides that no driver may be on-duty:

(1) More than 14 cumulative hours with up to 16 cumulative hours twice per 7-day period following 10 consecutive hours off duty;

(2) More than 70 hours over the last 7 24-hour periods (ending with the last completed 24-hour period); and

(3) More than 140 hours over the last 14 24-hour periods, with no more than 84 hours allowed in one of the 7 24-hour periods, if followed by a 34-hour off-duty period, and no more than 56 hours in the remaining 7 24-hour periods.

The ATA alternative allows drivers to have regularly recurring work/rest cycles of at least 24 hours. The 14-hour on duty cycle provides drivers with the opportunity to drive the entire 14 hours. It also allows the driver to drive after

the 14th hour after the driver's shift began. If the driver takes rest breaks during the 14 hour period, those breaks would extend the work day, as the current rule does. The DLTLCA argued that drivers would not drive the entire 14 hour period ''because as a practical matter, no driver is going to be beyond 12 * * * we are never going to be beyond 12 * * * because we have 3 to 4 hours loading time. We have pre-trip inspections. We have all these other activities built in.'' However, it would be possible for a cross-country driver who did no loading enroute and had pre-trip inspections performed by others to drive (potentially) 14 hours straight.

This rule could cause safety problems, including reduced driver alertness and increased fatigue-related incidents, but it could provide productivity increases and could reduce the need for drivers and the ''shortage'' experienced by the industry today.

FMCSA Staff Alternative

The agency's staff developed the third alternative. This alternative would create incremental changes to the current on-duty, off-duty, and driving requirements; provide an exception for ''short-haul'' drivers; and adopt a restart provision for weekly on-duty time limits. Exceptions for daily off-duty, on-duty, and driving time would be modified, along with the restart provision after direct assistance for an emergency relief effort. The alternative would retain all exceptions for weekly restarts provided by the NHS Act as well as those for oilfield operations. It would retain all other rules, including the current methods of notifying drivers to report for work.

The local/short-haul study has persuaded the FMCSA that fatigue may be less problematic for local/short haul drivers, though the agency does not believe all regulation should be removed because these drivers would continue to be at risk of having fatigue-related crashes. The staff alternative could reduce regulatory oversight for local/short haul drivers that could also reduce fatigue-related incidents and fatalities.

The agency considered the experiences of the governments of Australia, Alberta, Ontario, and Quebec with fatigue management alternatives to traditional HOS regulations. The FMCSA is assessing the feasibility of conducting a pilot project that would substitute fatigue management for driver HOS requirements. Although a possibility in the future, it was not included in the staff-developed alternative for this final rule.

The agency is also considering the use of education and training programs for reducing fatigue and increasing driver alertness, as well as medical alternatives and countermeasures, including the feasibility of screening for sleep apnea and other sleep disorders. These possibilities are not included in the staff-developed alternative for this final rule.

Many commenters argued that the agency did not do enough research into the safety consequences of shifting considerable nighttime truck traffic to the daytime. The FMCSA agrees and therefore decided to consider alternatives that concentrate on approaches that do not promote shifting traffic from the nighttime to daytime. The FMCSA specifically excluded such options from its staff-developed alternative.

The agency staff wanted to formulate an alternative that would be intermediate between the PATT and ATA proposals. The staff believed that the combined effect of the changes it suggested would reduce fatigue-related incidents and increase driver alertness without creating serious safety or economic costs to society. The FMCSA-developed alternative provides that no driver may drive:

(1) More than 11 hours following 10 consecutive hours off-duty;

(2) For any period after 14 consecutive hours from the start of a duty tour following 10 consecutive hours off-duty;

(3) For any period after 16 consecutive hours from the start of a duty tour following 10 consecutive hours off-duty once each 7 or 8 consecutive day period, when the driver returns to the normal work reporting location and is released from work within 16 consecutive hours that duty tour; and

(4) For any period after having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week or any period after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week. Any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours for drivers operating vehicles transporting freight or other property.

There can be little doubt that fatigue directly attributable to the exertion required to operate the modern CMV is less of a factor now than it was when the 10 hour limit was adopted in 1939, and the FMCSA believes allowing one additional hour of driving activity can be safely accommodated within the context of a somewhat reduced overall tour of duty. The FMCSA also has learned a lot about the science of sleep since 1938 and understands that the more relevant issue is how long the driver can be awake and ''at work,'' and still be allowed to drive, before safety is significantly compromised.

After the comments, regulatory analysis, and upon further review of the research studies by Vespa *et al.* (1998), O'Neill *et al.* (1998), Folkard (1997), Arnold *et al.* (1996) *Fatigue in the Western Australian Transport Industry, Part Two: The Drivers' Perspective,* and Arnold *et al.* (1996) *Part Three: The Company Perspective,* discussed in Freund (1999), the FMCSA is convinced that 14 hours after the beginning of a duty tour is long enough, given the significantly increasing degradation of performance which occurs in the later stages of a work shift. The FMCSA believes this limit is materially better from a safety standpoint than the current rule, under which a driver could conceivably still be allowed to return to the wheel several hours after the 15 hour limit has passed (because ''off duty'' breaks can extend the workday). The limits, however, are not so restrictive as to impose an unreasonable burden on productivity.

Safety Impacts

The FMCSA estimated the benefits of the HOS alternatives using a multi-step process to relate changes in HOS rules to changes in crashes. Conceptually, the FMCSA took the following steps for each alternative:

(1) Constructed a set of sample working and driving schedules of different intensities and degrees of regularity;

(2) Used the results of the modeling performed for the cost analysis to determine the percentages of drivers following each sample schedule and to determine the shifts in these percentages caused by different HOS alternatives;

(3) Translated the amount of on-duty time in each schedule into expected amounts of sleep, using a function based on *Effects of Sleep Schedules on Commercial Motor Vehicle Driver Performance,* 2000, by Balkin *et al.* (Walter Reed Army Institute of Research) in the docket;

(4) Used a version of the Walter Reed Sleep Performance Model (WRSPM) to estimate the effects of different sleep and driving schedules on a measure of alertness;

(5) Translated changes in alertness into relative changes in crash risks on

the basis of a laboratory study of performance on a driving simulator;

(6) Calibrated the results of the modeling of simulated crash risks to the real world using independent estimates of the total numbers and percentages of crashes attributable to fatigue; and

(7) Translated the estimated changes in fatigue-related crashes into dollar values for avoided crashes using existing estimates of the damages from fatal, injury, and property-damage only crashes.

Safety Benefits

The quantified and monetized benefits of the options derive from their effects on truck crashes. Changes in work and sleep schedules induced by the HOS alternatives can be translated into relative changes in modeled fatigue-related crashes, can be calibrated to correspond to independent estimates of numbers of fatigue-related crashes, and the damages from fatigue-related crashes can be projected for each of the alternatives. First, the FMCSA shows changes for crash damages for long-haul and short-haul operations. Two other sources of benefits (or reductions in benefits) are then described: changes in damages resulting from the employment of different numbers of new drivers, and changes in damages in long-haul operations resulting from shifts between truck and rail.

Changes in Crash Damages Due to Schedule Changes

The FMCSA found the benefits of the alternatives, in terms of the annual values of the crash reductions shown in Table 1 (RIA Exhibit 9–6), by subtracting the damages under each alternative from the damages for the current rules with 100 percent compliance.

TABLE 1.—VALUE OF CRASHES AVOIDED DUE TO OPERATIONAL CHANGES RELATIVE TO CURRENT RULES WITH FULL COMPLIANCE

[(Millions of dollars per year) (Number in parentheses equal cost of additional crashes)]

	PATT	ATA	FMCSA
Benefits of Avoided Long-haul Crashes	364	(267)	224
Benefits of Avoided Short-haul Crashes	36	(8)	10
Total Benefits	400	(275)	234

Source: RIA Exhibit 9–6.

Overall, the FMCSA predicts fatigue-related crashes to be significantly more of a problem in long-haul than short-haul operations. This fact can be attributed in part to the somewhat heavier work schedules of long-haul drivers, but also to the fact that long-haul operations appear more likely to subject drivers to irregular and rotating schedules. The FMCSA projected two of the alternatives, PATT and FMCSA, to reduce accidents substantially relative to the current rules with full compliance. Much of their effectiveness stems from the greater likelihood of moving towards a 24-hour work-rest cycle with decreased schedule rotation; they also allowed for increased sleep during the workweek. Reductions in short-haul crashes were much smaller than the reductions in long-haul crashes, both in relative and absolute terms.

Changes in Fatigue-related Fatalities Due to Schedule Changes

Beyond valuing the benefits of the alternatives, it is useful to present the changes in fatalities that they cause. Estimating fatigue-related fatalities and changes in them under each alternative can be done most easily by referring to the total annual number of fatalities in truck crashes, presented in RIA Exhibit 8–1, splitting that number between long-haul and short-haul operations using the data presented in RIA Exhibit 8–3, and then multiplying by the fatigue-related percentages by alternative shown in RIA Exhibit 8–14. Changes in fatalities can then be calculated by comparing the fatigue-related fatalities for the different alternatives.

RIA Exhibit 8–1 gives the total annual fatalities in truck crashes as 5,346; this is slightly larger than the number of fatal crashes because some crashes cause multiple fatalities. Of these, 61.8 percent or 3,304 are estimated to occur in long-haul operations, with the other 2,042 in short-haul operations. Among the long-haul fatalities, the FMCSA concentrated on the 85.4 percent or 2,821 that it estimated to occur in those portions of the long-haul sector that would be most affected by the rules (*i.e.*, excluding team-driver and LTL operations).

Multiplying the 2,821 long-haul fatalities and 2,042 short-haul fatalities by the fatigue-related percentages shown in RIA Exhibit 8–15 yields fatigue-related fatalities. For the Status Quo, these calculations yielded estimates of 316 for long-haul and 80 for short-haul, for a total of 396. For the alternatives, the estimates are shown below in Table 2 (RIA Exhibit 9–7). The table also shows the changes in fatalities relative to the current rules with full compliance.

TABLE 2.—ANNUAL FATIGUE-RELATED FATALITIES BY ALTERNATIVE

[Numbers in parentheses are negative]

	Current/ 100%	PATT	ATA	FMCSA
Long-haul:				
Fatalities in Crashes Attributable to Fatigue	240	176	287	201
Differences by Alternative Relative to Current/100%	NA	(64)	47	(39)
Short-haul:				
Fatalities in Crashes Attributable to Fatigue	77	71	78	75
Differences Relative to Current/100%	NA	(5)	1	(2)

TABLE 2.—ANNUAL FATIGUE-RELATED FATALITIES BY ALTERNATIVE—Continued

[Numbers in parentheses are negative]

	Current/ 100%	PATT	ATA	FMCSA
Total:				
Fatalities in Crashes Attributable to Fatigue	317	247	365	276
Differences by Alternative Relative to Current/100%	NA	(70)	48	(41)

Source: RIA Exhibits 8–1 and 9–6. Totals do not add due to rounding.

Adjustments to Benefits Due to Secondary Effects

The crash reduction benefits shown in Table 1 (RIA Exhibit 9–6) include only effects of schedule changes on driver fatigue. While these are the primary effects of HOS rules, two secondary effects need to be considered. First, the changes in drivers resulting from the schedule changes and mode shifts, presented in Tables 5 and 9 (RIA Exhibits 9–1 and 9–5), will result in changes in the number of relatively inexperienced drivers in the industry. As described in RIA Section 8.7, these drivers tend to have somewhat higher accident rates than the average driver, even over the fairly long time horizon considered in this analysis. Second, the changes in long-haul Vehicle Miles Traveled (VMT) resulting from the mode shift can be expected to result in proportionate changes in long-haul accidents. Both of these secondary effects are presented in Table 3 (RIA Exhibit 9–8), which shows the effects in terms of their impacts on benefits: increased crashes are shown as negative impacts on benefits in the exhibit, while reduced crashes are shown as positive values. The table also shows the total benefits of each alternative after the adjustments for these secondary effects.

TABLE 3.—ADJUSTMENTS TO BENEFITS DUE TO SECONDARY EFFECTS OF ALTERNATIVES: NEW DRIVERS AND MODE SHIFT

[(Millions of dollars per year) (Values in parentheses are negative)]

	PATT	ATA	FMCSA
Change in Benefits due to New Long-haul Drivers	(51)	67	49
Change in Benefits due to New Short-haul Drivers	(70)	4	(6)
Change in Benefits due to New Long-haul and Short-haul Drivers	(121)	71	42
Changes in Benefits due to Increases in Long-haul VMT Due to Mode Shift	61	(69)	(48)
Change in Benefits due to Both Secondary Effects	(60)	2	(5)
Total Unadjusted Benefits (from Table 1 above)	400	(275)	234
Total Adjusted Benefits	341	(272)	228

Source: RIA Exhibit 9–6. Totals may not add due to rounding.

Along with these adjustments to benefits, there would be small adjustments to the changes in fatalities. These adjustments are shown in Table 4 (RIA Exhibit 9–9) below.

TABLE 4.—ADJUSTMENTS TO CHANGES IN FATALITIES DUE TO SECONDARY EFFECTS OF ALTERNATIVES, RELATIVE TO THE CURRENT RULES WITH FULL COMPLIANCE

[Values in parentheses are negative]

	PATT	ATA	FMCSA
Increase in Long-haul Fatalities due to New Drivers	9	(12)	(9)
Increase in Short-haul Fatalities due to New Drivers	11	(1)	1
Increase in Total Fatalities due to New Drivers	20	(13)	(8)
Increase in Long-haul Fatalities due to Changes in Long-haul VMT	(11)	12	8
Net Increase in Fatalities due to Secondary Effects	9	0	1
Total Unadjusted Change in Fatalities	(70)	48	(41)
Total Adjusted Change in Fatalities	(61)	48	(40)

Source: RIA Exhibit 9–7. Totals do not add due to rounding.

Costs of the Alternatives

This section presents the results of the cost analysis. First, the FMCSA summarizes the required changes in drivers for long-haul and short-haul operations. Initially, the changes are shown under assumptions of constant demand for trucking services; the adjustment for mode shifts is presented later. The agency later presents the implications to costs of these changes in numbers of drivers.

Given the primary changes in drivers and costs, FMCSA considered two secondary effects: changes in drivers' wages, and mode shifts between long-haul truck and rail. Feedback from these secondary changes would, in theory, cause further ramifications, but these are not analyzed due to their small magnitude.

Table 5 (RIA Exhibit 9–1) presents the percentage changes in drivers required that were calculated in the analysis of changes in operations, and then shows their implications for total numbers of drivers on the basis of the FMCSA's

estimates of total long-haul and short-haul drivers subject to this final rule.

TABLE 5.—CHANGES IN DRIVERS NEEDED IN RESPONSE TO HOS LIMITS RELATIVE TO CURRENT RULES WITH FULL COMPLIANCE

[Values in parentheses are negative]

	PATT	ATA	FMCSA
Percentage Change:			
Long-haul	4.0%	(5.3)%	(3.9)%
Short-haul	7.7%	(0.4)%	0.7%
Numbers:			
Long-haul	60,000	(79,500)	(58,500)
Short-haul	115,500	(6,000)	10,500
Total	175,500	(85,500)	(48,000)

Source: RIA Exhibit 9–1.

Table 6 (RIA Exhibit 9–2) shows, for the long-haul sector, the cost implications of the changes in drivers shown in Table 5 (RIA Exhibit 9–1). The cost changes are divided into directly driver-related cost changes, and the costs of non-driver related changes that are necessary as a result of the changes in numbers of drivers. For each alternative, there are costs related to new driver wages and benefits, which counteract the changes in wages and benefits for current drivers whose hours of work have changed. The net cost (or cost savings) for the drivers comes about because the per-hour cost of work that has been shifted between existing drivers and newly hired drivers is not the same for the two groups: average employment costs for newly hired drivers tend to be higher than the per-hour cost of extra hours for existing drivers, in part because of fixed payroll costs (*e.g.*, benefits) per driver. Other costs include costs for purchasing, maintaining, insuring, and parking additional tractors and trailers for the new drivers, and hiring a larger staff of non-driving personnel to handle larger numbers of drivers.

TABLE 6.—DIRECT COST CHANGES—LONG-HAUL

[(Millions of dollars per year) (Values in parentheses are negative)]

Cost category	PATT	ATA	FMCSA
Driver Labor Cost	287	(792)	(636)
Avoided Labor Wages	(1,953)	2,258	1,546
Avoided Labor Benefits	(117)	136	92
New Labor Wages	1,799	(2,433)	(1,736)
New Labor Benefits	558	(754)	(538)
Other Costs	478	(563)	(437)
Non-driver Labor	11	(32)	(25)
Trucks	228	(216)	(179)
Parking	54	(72)	(53)
Insurance	40	(52)	(39)
Maintenance	70	(93)	(68)
Recruitment	75	(99)	(73)
Total Costs	764	(1,356)	(1,073)

Table 7 (RIA Exhibit 9–3) shows similar calculations for short-haul operations, and Table 8 (RIA Exhibit 9–4) reports total direct cost changes.

TABLE 7.—DIRECT COST CHANGES—SHORT-HAUL

[(Millions of dollars per year) (Values in parentheses are negative)]

Cost category	PATT	ATA	FMCSA
Driver Labor Cost	1,557	(38)	90
Avoided Labor Wages	(3,655)	165	(298)
Avoided Labor Benefits	(219)	10	(17)
New Labor Wages	3,798	(150)	309
New Labor Benefits	1,633	(64)	96
Other Costs	1,038	(49)	78
Non-driver Labor	62	(2)	4
Trucks	517	(23)	33
Parking	105	(5)	10
Insurance	76	(4)	7
Maintenance	134	(7)	12

TABLE 7.—DIRECT COST CHANGES—SHORT-HAUL—Continued

[(Millions of dollars per year) (Values in parentheses are negative)]

Cost category	PATT	ATA	FMCSA
Recruitment	144	(7)	13
Total Costs	2,595	(87)	168

Source: RIA Exhibit 9–3. Totals do not add due to rounding.

TABLE 8.—TOTAL DIRECT COST CHANGES

(Millions of dollars per year) (Values in parentheses are negative)]

	PATT	ATA	FMCSA
Long-haul	764	(1,356)	(1,073)
Short-haul	2,595	(87)	168
Total	3,360	(1,442)	(905)

Source: RIA Exhibit 9–4. Totals do not add due to rounding.

The FMCSA analyzed two secondary effects of the need to change the number of drivers in response to the HOS rule alternatives: wage rate changes due to the need to draw new drivers into the industry, and mode shifts in response to changes in the costs of long-haul operations. The changes in drivers shown in Table 5 (RIA Exhibit 9–1) were first translated into changes in market wage rates for drivers using a driver supply elasticity of 5.0. The resulting percentage changes in wages are shown in the second line of Table 9 (RIA Exhibit 9–5). The effects of that increase on the total costs of the long-haul sector are presented in the next line, followed by the total increase in long-haul costs including both the costs for changes in labor and capital, and the costs due to the wage increases. This total cost increase is then compared to the total costs for all long-haul operations to yield a percentage increase in long-haul costs.

TABLE 9.—LONG-HAUL COST CHANGES INCLUDING WAGE INCREASES AND RESULTING MODE SHIFTS

[(Costs in millions of dollars per year) (values in parentheses are negative)]

	PATT	ATA	FMCSA
Direct HOS-Induced Costs, Long-haul Only	764	(1,356)	(1,073)
Percentage Change in Wages due to Driver Supply Elasticity	1.2%	(0.6)%	(0.3)%
Increase in Long-haul Wage Bill due to Wage Increases	752	(366)	(206)
Total Increase in Long-haul Costs	1,517%	(1,722)%	(1,279)%
Percentage Increase in Long-haul Costs	0.4%	(0.4)%	(0.3)%
Percentage Change in Long-haul VMT due to Mode Shift	(0.32)%	0.37%	0.25%
Change in Long-haul Drivers due to Mode Shift	(4,875)	5,535	3,820

Given this percentage increase in long-haul costs, the assumption that this cost increase is passed on to shippers, a measure of the sensitivity of mode choice to prices, and an estimate of the portion of the long-haul sector that is sensitive to competition from rail, the FMCSA estimated the percentage change in long-haul VMT that would result from changes in the mode split. Assuming a constant relationship between drivers and VMT allowed the agency to estimate the change in long-haul drivers resulting from the projected mode shift. The long-haul wage increases and changes in mode shifts are not included elsewhere in the RIA, because these represent transfers in welfare among groups and not net social costs to society.

Net Benefits

The net social benefits of the alternatives, relative to the current rules with full compliance, are found by subtracting the social costs from the benefits. The results are shown in Table 10 (modified RIA Exhibit 9–10), below.

TABLE 10.—NET BENEFITS RELATIVE TO CURRENT RULES WITH FULL COMPLIANCE

[(Millions of dollars per year) (values in parentheses are negative)]

	PATT	ATA	FMCSA
Total Benefits	341	(272)	228
Total Cost	3,360	(1,442)	(905)
Net Benefits	(3,019)	1,170	1,133

Source: RIA Exhibits 9–4 and 9–8.

Discussion of Net Benefit Results

The analyses presented above show that both the ATA and FMCSA alternatives have net benefits compared to the current rules with full compliance. Of these two alternatives, only the FMCSA alternative provides positive benefits compared to the current rules with full compliance; the ATA alternative has negative benefits that are outweighed by larger cost savings. The PATT alternative has somewhat higher benefits than the FMCSA alternative, but imposes costs that outweigh the additional benefits.

The relative costs and benefits of the alternatives differ considerably between the long-haul and short-haul segments. Most of the costs of the more protective alternatives, PATT and FMCSA, arise in the short-haul segment, but all of their benefits come from reducing long-haul crashes. Fatigue and fatigue-related crashes are considerably less common in short-haul operations, and the alternatives that limit hours of work appear to be unlikely to make substantial reductions in those crashes. On the other hand, the need to hire many more drivers in response to the restrictions would cause increases in crashes over the ten-year time horizon of this study, and those additional crashes would counterbalance the small predicted reductions in fatigue-related crashes.

In long-haul alternatives, though, the fraction of crashes attributable to fatigue is considerably larger, and the two protective alternatives are predicted to reduce those crashes considerably. Considering the long-haul segment only, the FMCSA alternative is superior on net benefit grounds to the ATA and PATT alternatives as well as the current rules with full compliance.

TABLE 11.—NET BENEFITS BY LENGTH OF HAUL RELATIVE TO CURRENT RULES WITH FULL COMPLIANCE

[(Millions of dollars per year) (values in parentheses are negative)]

	PATT	ATA	FMCSA
Long-haul:			
Total Benefits	374	(269)	225
Total Cost	764	(1,356)	(1,073)
Total Net Benefits	(390)	1,087	1,298
Short-haul:			
Total Benefits	(34)	(4)	4
Total Cost	2,595	(87)	168
Total Net Benefits	(2,629)	83	(164)

Source: RIA Exhibits 9–4, 9–4, and 9–8.

Limitations and Sensitivities

One important source of complete certainty is the magnitude of the effects of ''time on task'' on crash risks. As discussed in RIA Chapter 8.1.5, there is likely to be an increase in risk as continuous hours of driving increase that is independent of the effects of circadian rhythms and sleep deficits. The FMCSA was not able to model this independent effect, however, due to uncertainty about its magnitude for very long hours of driving. If that effect were actually large, the more protective alternatives would show relatively higher benefits. Uncertainty about the time-on-task effect is particularly great for very long hours of driving, in part because very long driving shifts are not permitted. They are therefore both rare and difficult to study. In particular, the 16-hour driving shifts that would be allowed at times under one of the alternatives (a provision that we did not model for this analysis) would be very rare and hard to study under real world conditions.

Another place where complete certainty may not be found is in the 8.15 percent estimate of crashes in the status quo that can be attributed to fatigue. The NPRM regulatory evaluation included an estimate that 15 percent of all crashes were fatigue-relevant. The estimate of 15 percent was supported in the docket and at public hearings by some safety groups, while the ATA and others argued that the correct value was closer to 4 to 5 percent. The NPRM's estimate was comprised of 2 separate components: 5 percent fatigue crashes, and 10 percent fatigue relevant crashes. The 5 percent figure came from FMCSA and NHTSA summary of data from NHTSA databases and other studies. Most of these databases and studies estimated fatigue by counting the number of citations for fatigue from police accident reports. The 10 percent fatigue relevant figure was based on FMCSA's best estimate at the time about the percent of inattention crashes that are at least indirectly related to fatigue. The agency had no studies to suggest that 10 percent was correct, but the data suggested that some percent of inattention crashes were related to driver fatigue.

Because of these criticisms, and because we did not have a specific reason to pick 10 percent, FMCSA revisited the NPRM's estimate in this regulatory evaluation. The agency only used data from police reports and national databases, with no qualitative adjustments. As explained in Chapter 8 of the RIA, we used FARS data from 1997 through 2000, and found that fatigue was cited in an average of 7.25 percent of crashes; 4.33 percent of crashes were cited for inattention. The FMCSA sponsored study by Hanowski, Wierwille, Garness, Dingus, *Impact of Local/Short Haul Operations on Driver Fatigue*, found that fatigue was a factor in 20.8 percent of inattention crashes. Therefore, FMCSA added 0.9 percent (20.8 times 4.33) to 7.25 to obtain our final estimate of 8.15 percent.

As noted in *Discussion of Net Benefit Results* above, reviewing the costs and benefits by length of haul reveals that the alternatives have very different cost/benefit profiles for long-haul compared to short-haul operations. The FMCSA alternative, for example, provides net benefits in long-haul operations, but has net costs for short-haul.

Although the estimated costs for imposing new HOS requirements on short haul motor carrier operations exceeds the potential benefits for that specific segment of the industry, the population of drivers employed by these carriers and the VMT by them each year suggests that it is necessary to include short haul operations in this final rule.

The population of short haul drivers is approximately equal to the population of long-haul drivers, about 1.5 million drivers in each of the two categories. However, the vehicle miles traveled (VMT) by short-haul drivers is

about one half that of the long-haul drivers, with short-haul operations accounting for 80 billion VMT versus 166 billion VMT for long-haul operations. When consideration is given for VMT, short-haul operations represent a significant risk of accident involvement that is comparable to, if not greater than, the risks presented by long-haul operations. While the economic analyses of the costs and benefits indicates that most of the costs of fatigue-related accidents, and the benefits of this final rule appear to be associated with long-haul operations, the obligation of the FMCSA to improve to the greatest extent practicable the safety of all CMV operations necessitates the inclusion of short-haul operations.

The research studies FMCSA reviewed as part of the rulemaking process indicates that the current HOS rules do not provide drivers with sufficient opportunities for restorative sleep. Under the current rules, a driver operating on a minimally compliant schedule would only be provided eight consecutive hours off duty. This eight-hour period includes the time for the driver to leave his/her work-reporting location, travel to a location for rest, rest, and return to the work-reporting location. Generally, this means that under the current regulations, the driver would have significantly less than eight hours to obtain meaningful rest. The consequences of this type of minimally compliant schedule are typically most severe during emergency driving maneuvers or other high-risk driving tasks such as driving in inclement weather or in heavy traffic, as the driving demands may exceed the capability of the driver suffering from a decreased level of alertness. The risks and potential consequences are present for both long-haul and short-haul operations such that excluding short-haul operations from the final rule would needlessly subject the motoring public to an unnecessarily high level of risk. The risk of an accident that could be attributable in whole or in part to a driver's minimally compliant work-rest cycle, could be significantly reduced if short-haul operations are covered by the final rule.

Since the overall benefits of the rulemaking exceed the overall costs for the freight transporters operating at full compliance, FMCSA believes the inclusion of short-haul operations in the final rule is appropriate despite the seemingly disproportionate costs of compliance with the rule. There is clearly a need to ensure better opportunities for restorative sleep for all CMV drivers working minimally compliant schedules. Moving forward with a final rule that excludes short-haul drivers would fragment this initiative in such a manner that it may prove extremely difficult to complete a separate rulemaking at a later date that would provide a better potential safety outcome at a lower cost than this final rule. Given the choice between (1) continuing to allow minimally compliant work-rest cycles to be used by approximately half the regulated drivers for the sake of improving estimated benefit-to-cost ratios, or (2) sacrificing a portion of the benefits of the rulemaking to ensure that all drivers transporting freight are required to adhere to work-rest cycles that are more consistent with sleep research, the FMCSA has chosen to ensure the highest practicable level of safety, based on the data currently available.

The observation that the alternatives are less cost-effective in short-haul operations was part of the FMCSA staff's motivation for providing more flexibility in the staff alternative for short-haul drivers, allowing one 16-hour shift per week. The FMCSA assessed the effects of this flexibility by examining the costs and benefits of the staff alternative without allowing any 16-hour shifts.

As stated above under the FMCSA Response to the Daily On-Duty Time section, the FMCSA found that restricting those drivers who return to the normal work reporting location at the end of every shift has the unintended consequence of requiring a significant increase in new drivers. These new drivers would increase both costs and crashes. The analyses showed that by allowing these short-haul drivers the flexibility to work up to 16 hours one day in a week would reduce the number of additional drivers needed for the staff alternative. This flexibility would result in cost savings of nearly $500 million and safety benefits of nearly $10 million.

With this change to the FMCSA staff alternative, its net benefits compared to current rules with full compliance would drop to about one half of one billion dollars per year. These results are shown in Table 12 (RIA Exhibit 9–12).

TABLE 12.—NET BENEFITS BY LENGTH OF HAUL RELATIVE TO CURRENT RULES WITH FULL COMPLIANCE

[(Millions of dollars per year) (Values in parentheses are negative)]

	PATT	ATA	FMCSA	FMCSA, without short-haul flexibility
Long-haul:				
Total Benefits	374	(269)	225	225
Total Cost	764	(1,356)	(1,073)	(1,073)
Total Net Benefits	(390)	1,087	1,298	1,298
Short-haul:				
Total Benefits	(34)	(4)	4	(5)
Total Cost	2,595	(87)	168	641
Total Net Benefits	(2,629)	83	(164)	(646)
Total:				
Total Net Benefits	(3,019)	1,170	1,133	652

Source: RIA Exhibit 9–11. Totals may not add due to rounding.

Costs and Benefits Relative to the Status Quo

This section reviews the costs and benefits presented in chapter 9 of the RIA relative to a baseline representing the status quo. Table 13 (RIA Exhibit 9–13) presents the changes in drivers needed relative to the Status Quo scenario; because the difference in drivers needed between the Status Quo and the Current Rules/100 percent is 8.1 percent for long-haul, that amount was added to the estimates that were presented in Table 5 (RIA Exhibit 9–1) for each of the alternatives. Similarly, the amount shown in the other rows of the ''Current/100 percent'' column in Table 13 (RIA Exhibit 9–13) was added to the estimates presented in Table 5 (RIA Exhibit 9–1) for each of the other alternatives. Because achieving full compliance with the current rule would require more drivers, all of the values in Table 13 are higher than those in Table 5.

TABLE 13.—CHANGES IN DRIVERS NEEDED IN RESPONSE TO HOS LIMITS, RELATIVE TO THE STATUS QUO

	Current/100 percent	PATT	ATA	FMCSA
Percentage Change:				
Long-haul	8.1	12.1	2.8	4.2
Short-haul	0.7	8.4	0.3	1.4
Numbers:				
Long-haul	121,500	181,500	42,000	63,000
Short-haul	10,800	126,300	4,800	21,300
Total	132,300	307,800	46,800	84,300

Source: RIA Exhibit 9–1.

The direct costs of the alternatives relative to the Status Quo are shown in Table 14 (RIA Exhibit 9–14). This exhibit shows the costs of the current rules with full compliance in the fourth column from the right. The other columns show selected cost data from Table 6 and 7 with the cost of compliance with the current rules added. Because there would be costs for compliance with the current rules, the costs of each of the alternatives are higher relative to the status quo than relative to the current rule with full compliance.

TABLE 14.—DIRECT COST CHANGES RELATIVE TO STATUS QUO

[Millions of dollars per year]

Cost category	Current/100 percent	PATT	ATA	FMCSA
Long-haul:				
Driver Labor Cost	1,185	1,472	393	550
Other Costs	769	1,247	206	332
Total Costs	1,954	2,719	599	882
Short-haul:				
Driver Labor Cost	143	1,700	105	233
Other Costs	90	1,128	41	168
Total Costs	232	2,827	146	400
Total Costs, Long-haul and Short-haul	2,187	5,546	744	1,282

Source: RIA Exhibits 9–2 and 9–3. Totals may not add due to rounding.

Tables 15 and 16 (RIA Exhibits 9–15 and 9–16) show the benefits and adjusted benefits of compliance with the current rule, as well as the alternatives, relative to the status quo. These tables are based on Tables 1 and 3, with the benefits of compliance with the current rules added to the values in those tables. Because there would be substantial benefits to achieving full compliance with the current rule, the benefits shown in these tables are higher than those shown in Tables 1 and 3.

TABLE 15.— VALUE OF CRASHES AVOIDED DUE TO OPERATIONAL CHANGES RELATIVE TO STATUS QUO

[Millions of dollars per year]

	Current/100 percent	PATT	ATA	FMCSA
Benefits of Avoided Long-haul Crashes	429	794	162	653
Benefits of Avoided Short-haul Crashes	22	58	14	32
Total Benefits of Operational Changes	451	852	176	685

Source: RIA Exhibit 9–6.

TABLE 16.—ADJUSTMENTS TO BENEFITS DUE TO SECONDARY EFFECTS OF OPTIONS RELATIVE TO THE STATUS QUO

[(Millions of dollars per year) (Values in parentheses are negative)]

	Current/100 percent	PATT	ATA	FMCSA
Change in Benefits due to New Long-haul Drivers	(103)	(154)	(36)	(54)
Change in Benefits due to New Short-haul Drivers	(7)	(77)	(3)	(13)
Change in Benefits due to New Long-haul and Short-haul Drivers	(110)	(230)	(38)	(67)
Change in Benefits due to Change in Long-haul VMT	101	162	32	54
Net Damages (*i.e.,* Reduction in Benefits due to Secondary Effects)	(9)	(68)	(6)	(14)
Total Unadjusted Benefits	452	851	176	685
Total Adjusted Benefits	443	783	170	671

Source: RIA Exhibit 9–8. Totals may not sum due to rounding.

Finally, Table 17 (RIA Exhibit 9–17) shows the net benefits of compliance with the current rule and of the alternatives, relative to the Status Quo. This table presents the total cost and total benefits lines from Tables 14 and 16, and subtracts costs from benefits to yield net benefits.

TABLE 17.—NET BENEFITS RELATIVE TO STATUS QUO

[(Millions of dollars per year) (Values in parentheses are negative)]

	Current/ 100%	PATT	ATA	FMCSA
Total Benefits	443	783	170	671
Total Costs	2,187	5,546	744	1,282
Net Benefits	(1,744)	(4,763)	(574)	(611)

Source: RIA Exhibits 9–12 and 9–14.

Table 18 shows the impact of different assumed baseline percentages of fatigue-related crashes. Specifically, it includes estimates of the benefits and number of fatalities assuming that 5 percent and 15 percent of all current crashes are fatigue-related (compared to a baseline figure of 8.15 percent). These values were chosen because the majority of the figures submitted to the docket or in public hearings fall within this range. The FMCSA's interpretation of the crash literature indicates that it is very unlikely that the true percent of fatigue-related crashes falls outside this range.

TABLE 18.—SENSITIVITY ANALYSIS OF NUMBER OF FATALITIES USING DIFFERENT BASELINE PERCENT FATIGUE-RELATED CRASHES

[Values in parentheses are negative]

	Status Quo	100% Compliance	FMCSA
5% Baseline Fatalities	243	196	171
Change from Status Quo	0	(47)	(71)
Change from 100%	NA	0	(24)
8.15% Baseline Fatalities	396	318	278
Change from Status Quo	0	(79)	(120)
Change from 100%	NA	0	(40)
15% Baseline Fatalities	729	584	510
Change from Status Quo	0	(144)	(219)
Change from 100%	NA	0	(75)

Numbers may not add because of rounding.

Based on Table 18, if motor carriers were adhering fully to the current HOS regulations, the FMCSA estimates that between 196 and 585 fatalities would occur each year on the Nation's roads because of drowsy, tired, or fatigued CMV drivers transporting property. The FMCSA estimates that this final rule, when motor carriers adhere to it fully, would save between 24 and 75 lives each year as compared to complying fully with the current rules.

The RIA shows that both the ATA and FMCSA alternatives have net benefits compared to the current rules with full compliance. Only the FMCSA alternative, however, provides positive safety benefits compared to the current rules with full compliance; the ATA alternative has large cost savings that outweigh negative safety benefits. The PATT alternative has somewhat higher safety benefits than the FMCSA alternative, but imposes costs that outweigh the additional benefits.

After careful consideration of the regulatory impacts of the alternatives analyzed, the FMCSA has decided to make final the alternative proposed by the agency staff. All of the changes are within the range of changes proposed in the NPRM. The FMCSA has also chosen to maintain most existing rules for passenger carriers, including carriers of migrant workers.

The FMCSA believes these requirements will increase driver alertness and reduce fatigue problems, if

drivers and motor carriers adhere to them. The FMCSA has no control over the manner in which a driver may spend his time off duty, although some of his spare time activities may tire him as much as any work would do. The FMCSA can only emphasize the driver's responsibility to assure himself of adequate rest and sleep, in the time available for this purpose, to insure safety of his driving, and, similarly, the motor carrier's responsibility to see that its drivers report for work in fit condition.

Drivers must manage their off-duty time intelligently if this final rule is to be effective. Some drivers may continue to drive more hours than this final rule allows in order to earn more money. Others may perform non-driving jobs during their off-duty time; commute long distances to and from home; or engage in other pursuits that interfere with their obligation to obtain proper sleep and be prepared to drive safely. Under this final rule, all time spent in any work must be counted as on-duty time, since all work can either induce fatigue or deprive the driver of sleep.

The FMCSA believes this economically significant and major final rule is a reasonable balance of factors because it provides the best combination of increased driver alertness and reduced numbers of fatigue-related incidents, while providing cost effective safety benefits to society.

Changes Compared to May 2, 2000 NPRM

Categories of Operations

The NPRM proposed five types of operation. As explained above, the FMCSA has chosen to drop categorization based on comments showing categories created confusion, problems for enforcement, and did not fully meet the objective of accommodating the diversity of the industry.

Passenger Carrier Operations

The NPRM proposed regulating passenger carriers the same as property carriers. As explained in the discussion of the comments, the FMCSA has decided to retain the existing rules for passenger carriers; those operators will continue to be subject to the rules in effect before this final rule was adopted.

NHS Act Exemptions

The NPRM proposed to maintain the HOS exemption for groundwater well drillers without change. It would have narrowed the exemptions for agricultural commodities and farmers by defining certain terms narrowly. Finally, the NPRM would have subjected the construction and utility-service-vehicle exemptions to the proposed off-duty time periods (56 to 32 hours) every seven consecutive days. As explained in the discussion of comments about NHS Act exemptions, the FMCSA has chosen to withdraw these proposals.

The agricultural exemption in effect before this final rule was published will remain in effect. The 24-hour restart provisions applicable to drivers of ground water well drilling rigs and utility service vehicles, and to drivers who transport construction materials and equipment, will also remain in effect. Eligible drivers, however, will now be subject to the new 11-hour driving limit, with no driving after the end of the 14th hour after coming on duty, and will be required to take 10 consecutive hours off duty. Such drivers will also be eligible to take the exemption in § 395.1(o) allowing up to a 16-hour work day, when they meet the conditions in that paragraph.

Sleeper Berth Provision

The NPRM proposed to eliminate the use of sleeper berths for solo drivers to comply with the HOS rules. It would have allowed team drivers to accumulate 10 hours off duty in two periods in a sleeper berth, one of which would have to be at least 5 hours long. As explained in the discussion of comments on this issue, the FMCSA will maintain the split off-duty period of the current sleeper berth provision. However, the agency is increasing the requirement for cumulative off-duty time to 10 hours for property carriers. Thus, property-carrying drivers who use sleeper berths may take their minimum 10 hours off-duty in two periods, the shorter period must be at least 2 hours. Passenger-carrying drivers who use sleeper berths may take their minimum 8 hours off-duty in two periods, the shorter period must be at least 2 hours.

Carrier Notification of Drivers During Their Off-Duty Hours

The NPRM proposed a kind of restart that would be triggered by employers or their agents violating the proposed prohibitions against interrupting drivers' off-duty periods. The proposal was designed to address complaints the agency has received over the years regarding unreasonable calls from dispatchers and other carrier employees that caused drivers to lose the opportunity to sleep. As proposed, such an interruption would start the full interrupted off-duty period over again from the time of the interruption. As explained above in the discussion of this provision, the FMCSA has decided to withdraw the proposal.

Daily Work-Rest Cycle

The NPRM proposed duty and off-duty periods that would have added up to a regularly recurring 24-hour work day. As explained in the discussion of the relevant comments above, the FMCSA will maintain the current rules for passenger carriers. The rules for property carriers are being modified to reduce the allowable amount of backward rotation of the ''daily'' schedule.

Daily Off-Duty Time

The NPRM proposed consecutive daily off-duty periods for obtaining sleep from 9 to 12 hours depending on the category of operation. As explained earlier in this document, the FMCSA has chosen to maintain the rule requiring 8 consecutive hours off-duty for passenger carriers and to increase the minimum daily off-duty period to 10 consecutive hours for property carriers.

Daily On-Duty Time

The NPRM proposed that drivers could accumulate no more than 12 hours of driving and non-driving duty time (15 hours for ''Type 5'' drivers) in any 24-hour period. The FMCSA has decided to retain the current HOS rule for passenger-carrying drivers. Property-carrying drivers will have an on-duty limit of 14 hours from the start of each tour of duty to do all work, naps, and meal breaks. Property-carrying drivers must not drive after 11 cumulative hours of driving after starting each tour of duty. Property-carrying drivers who have returned to their normal work reporting location each of the last five work days (short-haul), may be on duty, one day out of each 7-day period, for up to 16 consecutive hours after starting the tour of duty.

Distinctions in Duty Time

The expert panel assembled by the agency to review the options under consideration before publication of the NPRM recommended eliminating the distinction between on-duty time and driving time. The scientific basis for the recommendation was the conclusion that driving is no more tiring than many of the other tasks a truck driver would be called upon to perform.

In addition to striving for a productivity-neutral outcome, the agency's practical basis for proposing the elimination was to reduce the paperwork burden. Under the existing rules, drivers are required to account for both driving time and non-driving duty time. Eliminating the distinction,

moreover, would have achieved consistency with the terminology used by the DOL, allowing FMCSA to rely on DOL records in place of driver records of duty status.

The agency has decided to continue the distinction between driving time and on-duty time. Within the limits of a tour of duty usually lasting no more than 14 hours, the FMCSA believes there is little doubt that modern CMVs can be driven safely up to 11 hours, particularly because rest breaks can be expected to naturally occur during the course of that tour. The FMCSA believes that the last hour of a driver's duty tour would be expected to be driving time that comes near the end of a 13- or 14-hour workday and is persuaded that 11 hours is a more reasonable limit. FMCSA will continue to rely on the driver-prepared records of duty status and the documents that support those records.

Weekly or Longer Cycle

The scientific basis for proposing weekly restrictions is the finding from research studies that sleep debt from multiple periods of insufficient (poor quality or insufficient quantity) sleep is the major cause of cumulative fatigue. The recommended countermeasure is a recovery period during which restorative sleep may be obtained and the sleep debt repaid. The concept of a weekly recovery period was presented in the NPRM in the definition of workweek, *i.e.*, ''any fixed and regularly recurring period of seven consecutive workdays,'' and in the number of hours required to be off-duty before beginning the next workweek.

The FMCSA has concluded that the current 60-hour in 7-day and 70-hour in 8-day limitations continue to be generally acceptable for CMV drivers and will retain those limits.

Weekly Recovery Periods

The NPRM proposed to require between 32 and 56 consecutive hours off duty every seven consecutive days. As explained previously in this document, the FMCSA has decided to retain the current requirement for passenger-carrying drivers, *i.e.*, these drivers may not drive passenger-carrying vehicles after accumulating 60 hours on-duty in any 7 consecutive days or 70 hours in any 8 consecutive days. If the driver accumulated duty time at the maximum rate he/she would reach the limit in 4¼ days and would have to take three consecutive days off-duty before he/she could drive CMVs again.

The FMCSA is modifying the rule for property-carrying drivers to include a restart provision. A property-carrying driver may not drive CMVs after accumulating 60 hours on-duty in any 7 consecutive days or 70 hours in any 8 consecutive days. If the driver accumulated duty time at the maximum rate, he/she would reach the limit in approximately 5 days and would have to take at least 34 consecutive hours off-duty before he/she could drive CMVs again. However, the driver could start a new seven- or eight-day period anytime he/she took 34 consecutive hours off duty.

Short Rest Breaks During a Work Shift

The NPRM proposed that additional off-duty time for personal reasons such as mid-shift meals, naps, and rest break periods would be allowed, but would result in no extension of the workday. As explained in the discussion of the comments on this provision, the FMCSA has decided to continue allowing off-duty periods for passenger-carrying drivers that may result in extension of the workday. The FMCSA will allow property-carrying drivers to take off-duty mid-shift meal, nap, and other rest break periods, but those breaks will not extend the workday.

Electronic On-Board Recording Devices

The NPRM proposed to require EOBRs for Type 1 and 2, *i.e.*, long-haul and regional operations, that would have replaced driver-prepared paper records of duty status. The FMCSA has decided to maintain the current requirement for driver-prepared paper records of duty status, while allowing automatic recording devices to be used in lieu of the driver-prepared paper records of duty status at the motor carrier's option.

Use of Department of Labor Time Records

The NPRM proposed to use U.S. Department of Labor (DOL) time records for Types 3, 4, and 5 drivers (*i.e.*, local-split shift, local and primary work not driving) and to remove the distance-based limitation on use of such time records. As explained in the discussion of comments about the compliance and enforcement provisions of the NPRM, the FMCSA has chosen to maintain the current requirement for driver-prepared records of duty status and timecard records for 100 air-mile radius drivers.

Conclusion

This final rule incorporates the FMCSA staff alternative because it provides the best combination of increased driver alertness and reduced numbers of fatigue-related incidents, while providing cost effective safety benefits to society.

Section-by-Section Analysis

The FMCSA's jurisdiction over the HOS regulations for motor carriers and drivers is shown in Table 19. Motor carriers and drivers are also subject to applicable State motor vehicle and highway safety laws and regulations.

TABLE 19.—APPLICABILITY OF FMCSA HOURS OF SERVICE (HOS) OF DRIVERS RULEMAKING

If you operate a:	In interstate commerce	In intrastate commerce
CMV, *i.e.*, a motor vehicle(s) that has any of the following four characteristics: 1. A gross vehicle weight, gross vehicle weight rating or gross combination weight rating of at least 4,537 kilograms (10,001 pounds) whichever is greater; or 2. Is designed or used to transport more than 8 passengers, including the driver, for compensation; or 3. Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or	You must comply with all FMCSA HOS regulations.[2]	You are not subject to the FMCSA HOS regulations. You may currently be subject to similar State rules and may be subject to the final rule in this document, if your State or local government adopts final rules in order to participate in the Motor Carrier Safety Assistance Program, 49 CFR part 350.

TABLE 19.—APPLICABILITY OF FMCSA HOURS OF SERVICE (HOS) OF DRIVERS RULEMAKING—Continued

If you operate a:	In interstate commerce	In intrastate commerce
4. Is used to transport hazardous materials in quantities requiring the vehicle to be marked or placarded under the Hazardous Materials Regulations (49 CFR part 172, subparts D & F).		

[2] Most motor carriers engaged in interstate commerce are exempt from the overtime requirements of the FLSA. The FLSA exemption from the overtime pay requirement applies only to certain employees of interstate motor carrier employers subject to the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935), but not to those subject only to the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, October 30, 1984) (98 Stat. 2829). The only substantial group of interstate carrier employers subject to the 1984 Act that are not also subject to the 1935 MCA are private motor carriers of passengers (*e.g.*, *churches, musicians, civil and charitable organizations, scouts, companies transporting their own employees,* etc.). *See* 29 CFR 782.2(b)(1).

Appendix B to Part 385 Explanation of Safety Rating Process

Section VII of appendix B to part 385 lists acute and critical regulations, which play an important role in assigning a safety rating. The descriptions of some of the HOS regulations listed there are being updated to conform to the requirements of this final rule. For example, § 395.3(a)(1), a critical rule, is now summarized as ''requiring or permitting a driver to drive more than 10 hours.'' While § 395.3(a)(1) remains critical, the new summary will say: ''requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.'' Updating and adding appropriate citations allows the agency to accurately update the safety rating process on the compliance date of the rule. The citations being updated and added include §§ 395.1(h)(1)(i), 395.1(h)(1)(ii), 395.1(h)(1)(iii), 395.1(h)(1)(iv), 395.1(h)(2)(i), 395.1(h)(2)(ii), 395.1(h)(2)(iii), 395.1(h)(2)(iv), 395.1(o), 395.3(a)(1), 395.3(a)(2) 395.3(a)(2), 395.3(b)(1), 395.3(b)(2), 395.3(c)(1), 395.3(c)(2), 395.5(a)(1), 395.5(a)(1), 395.5(a)(2), 395.5(b)(1), and 395.5(b)(2).

Section 390.23 Relief From Regulations

Paragraphs (b) and (c) of § 390.23 address the restart provisions the agency provided in the emergency relief exemption of July 30, 1992 (57 FR 33638, at 33647). This rule amends the daily and weekly restart provisions for normal duty in interstate commerce and the agency believes it must conform the emergency relief exemption to the standard being adopted today. This amendment requires that drivers who provide direct assistance, as defined by § 390.5, to emergency relief efforts must, before returning to normal duty in interstate commerce, (1) take at least 10 consecutive hours off-duty, if they have driven more than 11 hours or have been on duty more than 14 hours, and (2) take at least 34 consecutive hours off duty, if they have been on duty more than 60 hours in 7 days or 70 hours in 8 days.

Section 395.0 Compliance Date for Certain Requirements for Hours of Service of Drivers.

The agency is adding § 395.0 to specify when motor carriers and drivers must comply with this final rule. The effective date cited in the **DATES:** heading at the top of this document is the date that this final rule's amendments affect the current Code of Federal Regulations published by the Government Printing Office. Motor carriers of property and drivers of property-carrying commercial motor vehicles may not begin to comply with this final rule on that date.

The compliance date is the date that motor carriers of property and drivers must begin to comply with this final rule. Motor carriers of property, drivers of property-carrying commercial motor vehicles, Federal, State, and local law enforcement officers, and the FMCSA must do many necessary things before the rules can be enforced. The FMCSA must update motor carrier information, compliance, and enforcement computer systems and manuals. The FMCSA has eight computer software packages where it must find the correct code, write new code, test the new software, and distribute it to its division offices and State and local partners.

The agency must develop training, distribute training materials, and ensure training materials are read, taught, and understood by approximately 8,000 Federal, State, and local law enforcement officers. The agency also plans to provide training and presentations to the public about the new rules.

Motor carriers must develop training or use FMCSA's training materials, distribute training materials, and ensure training materials are read, taught, and understood by the millions of drivers engaged in interstate commerce who transport freight and other types of property. The FMCSA must also ensure the CVSA updates its Out-Of-Service criteria. The FMCSA cannot do its part, and cannot expect motor carriers to do their part, within 60 days after today.

The agency believes a compliance date on a Sunday will be the least burdensome to all carriers and enforcement officials. Most affected carriers subject to this final rule operate on a Sunday to Saturday basis and most affected carriers would suffer less disruption to their operations if the rule took effect at the beginning of a new week. Therefore, the agency is providing a compliance date when all carriers, drivers, and enforcement officials will switch from the current rule to the new rule: Sunday, January 4, 2004.

Finally, this section is only necessary for a few months until all affected motor carriers learn about the new rule and begin complying with it. Therefore, the FMCSA has added language to the **DATES** section that will only make this section effective in the Code of Federal Regulations temporarily from June 27, 2003, through June 30, 2004. After June 30, 2004, the Government Printing Office will remove this section from the Code of Federal Regulations. Thus, the October, 1, 2004, edition and all subsequent editions of the Code of Federal Regulations will not contain § 395.0.

Section 395.1 Scope of Rules in This Part

Section 395.1 is amended by revising paragraphs (b), (e)(3), (e)(4), (g), (h), and (j) to use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles, while maintaining the current off-duty, on-duty, and driving limits for drivers of passenger-carrying vehicles.

Paragraph (b) is the adverse driving condition exception. It is being revised to update the daily limits. The adverse driving condition exception applies only to the driving time limitation of 11 hours for property-carrying vehicles or 10 hours for passenger-carrying vehicles. The adverse driving condition exception cannot be used if the driver

has accumulated driving time and on-duty (not driving) time, that would put the driver over on duty hour limit or over the 60 hour in 7 day or 70 hours in 8 consecutive day limits. In addition, the adverse driving condition exception cannot be used for loading and unloading delays. An absolute prerequisite for claiming the adverse driving condition exception is that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or *should have known* of adverse driving conditions are not eligible for the two hours additional driving time.

Paragraphs (e)(3) and (e)(4) are being revised to update the 100-air mile radius exception to the record of duty status requirement. When all five of the conditions in paragraph (e) are met, a carrier may maintain time records for the driver.

Paragraph (g) is being revised to update the off-duty, on-duty, and driving limits of the sleeper berth exception. The FMCSA is improving the regulatory text for the sleeper berth provision to ensure a clear understanding of the rule. The agency has borrowed, but modified, the Government of Canada's 1994 version of the sleeper berth rule (SOR/94–716, s. 5) because its language is clearer than the wording adopted by the ICC in 1938. This change will not affect the way the FMCSA now enforces the sleeper berth exception.

The provisions requiring the summation of the driving and on-duty hours immediately before and after each rest period are necessary to ensure that drivers on irregular schedules do not accumulate significant amounts of fatigue. These provisions, which reflect many decades of enforcement practice, are well understood in the motor carrier industry. Paragraphs (g)(1)(iv), (g)(2)(iv), and (g)(3)(iv), requiring at least 10 consecutive hours off duty or in a sleeper berth, or a combination of at least 10 consecutive hours of sleeper-berth and off-duty time before returning to regular driving, has also been part of the agency's traditional enforcement practice for sleeper berth operations.

For example, a driver can stretch out her driving and on-duty time by using sleeper berth equipment, although she will continue to be limited by the driving time and on-duty time limits. A driver does not have to take her sleeper berth time all at once. She can get her 10 hours off duty by splitting it into two periods. A sleeper berth period of less than 2 hours does not count towards the 10 hour total, but the driver must record a period of less than 2 hours as sleeper berth time. This is an example of how the rule works for drivers of property-carrying vehicles:

1. Drive for part of your 11 hours;
2. Rest in the sleeper berth for at least 2 hours;
3. Drive the remaining part of your 11 hours; and
4. Rest in the sleeper berth again to finish your 10 hours off duty before driving again.

After the second sleeper-berth period, the driver cannot drive 11 hours. The driver must count the time she was driving between the two sleeper berth periods, so she must subtract the previous driving time in between the two sleeper-berth periods from the allowed 11 hours to figure her hours left to drive.

Paragraph (h) and (j) are being revised to update the daily off-duty limit in the exceptions for drivers operating in the State of Alaska and for travel time.

Paragraph (k) is being revised to modify the reference to § 395.3 in the exception for drivers transporting agricultural commodities or farm supplies for agricultural purposes in certain States and during certain times of the year. The wording of the agricultural exemption in the NHS Act is not entirely clear. The FHWA initially interpreted the exemption as limited to § 395.3, a conclusion reflected in the interim final rule published on April 3, 1996 [61 FR 14677]. Subsequent consideration of the legislative history, however, made it clear that Congress intended farmers who qualified to be exempt from all of the HOS regulations. The agency therefore issued an interpretation to its field staff clarifying the reach of the regulation. This revision simply conforms the language of the exemption to the interpretation and the intent of the statute.

Paragraph (o) adds an exception/exemption for certain drivers of property-carrying vehicles. Drivers who meet all three of the conditions in this paragraph (o) are eligible for the exception/exemption. First, a property-carrying driver must have returned to the normal work reporting location and the carrier must have released the driver from duty at that location for the previous five days that the driver has worked. Second, the driver must return to the normal work reporting location and the carrier must release the driver from duty within 16 hours after coming on duty. Finally, the driver must not have used this paragraph's exception/exemption within the previous 7 consecutive days, unless the property-carrying driver has begun a new 7-or 8-consecutive day period. Such a driver will have had 34 or more consecutive hours off-duty thereby restarting the driver's week, which is allowed by new § 395.3(c). Thus, the driver could take the next 16-hour day on the first, second, or third day immediately following the 34 or more consecutive-hour off-duty period.

Section 395.3 Maximum Driving Time for Property-Carrying Vehicles

The section heading and text of § 395.3 are being revised to use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles.

A driver of a property-carrying vehicle that does not use a sleeper berth must not drive more than 11 cumulative hours following 10 consecutive hours off duty. Such a driver also must not drive after the end of the 14th hour after coming on duty following 10 consecutive hours off duty. This means that once the driver begins a tour of duty, the driver's driving duties must end within 14 consecutive hours. The current 15 hour rule allows drivers to extend the work day by taking off-duty time, including meal stops and other rest breaks, of less than 8 hours duration other than sleeper berth time. This rule requires that taking off-duty time, including meal stops and other rest breaks, of less than 10 hours duration, other than sleeper berth time, will not extend the work day.

The new rule, like the current rule, does not limit the length of time a person can be on duty. The current rule states that a driver cannot drive after being on duty for 15 hours, but the driver could remain on duty indefinitely. This final rule states that a driver cannot drive after being on duty after the end of the 14th hour after coming on duty, but the driver also can remain on duty indefinitely. That time, however, would apply towards the maximum 60 or 70 hours on duty over 7 or 8 consecutive days. Because there will be a requirement for 10 consecutive hours off duty, most drivers will usually go off duty after 14 hours (at worst) under the new rule, not after 15 hours, as often happens under the current rule. But drivers will be allowed to drive up to 11 hours, not the 10 hours of the current rule. Shorter on-duty time, generally, but longer driving time.

This rule retains the current 60 hours on duty in any period of 7 consecutive days and 70 hours on duty in any period of 8 consecutive day rules.

The new rule will allow any period of 7 or 8 consecutive days to end with the beginning of any off duty period of 34 or more consecutive hours.

Thus, the new rules in § 395.3 would allow a driver of a property-carrying vehicle, who is working under the 70-hour-in-8-day rule, to start an 8-day period at 7 a.m. on Monday and remain on duty for 14 hours each day (11 hours of which could be driving time). If the driver reached the 70-hour limit at 9 p.m. Friday (14 hours/day × 5 days = 70 hours), he would not be able to drive again until 7 a.m. on the following Tuesday (8 days after the start of the period) unless he immediately began an off-duty period of 34 consecutive hours, in which case he could begin driving again at 7 a.m. Sunday, which would be the start of a new 70-hour-in-8-day period.

Likewise, a short-haul driver of a property-carrying vehicle who is working under the 60-hour-in-7-day rule could start a 7-day period at 6 a.m. on Monday and remain on duty for 14 hours per day (11 hours of which could be driving time) Monday through Wednesday, for a total of 42 on-duty hours. If the driver invoked the 16-hour exception in § 395.1(o) on Thursday and returned to his work reporting location at 10 p.m., having been on duty for 15 of those 16 hours, he would have 3 on-duty hours left (42 hours + 15 hours = 57 hours). In addition, the driver could not return to duty for 10 consecutive hours, *i.e.*, until 8 a.m. Friday morning. The driver could then drive from 8 a.m. until 11 a.m. on Friday, but could not drive again until 6 a.m. the following Monday (7 days after the start of the period) unless he took 34 consecutive hours off duty starting at 11 a.m., in which case he could begin a new 60-hour-in-7-day period at 9 p.m. Saturday.

Section 395.5 Maximum Driving Time for Passenger-Carrying Vehicles

Section 395.5 moves the current rules in § 395.3 to this new section exclusively for drivers of, and carriers using, passenger-carrying vehicles. The current rules in § 395.3 have been moved here verbatim, though the agency has added the qualifying phrase of ''a driver of a passenger-carrying vehicle'' since only these drivers may use the current rules after this rule's effective date.

A driver of a passenger-carrying vehicle that does not use a sleeper berth must not drive more than 10 hours following 8 hours off duty. Such a driver also must not drive after having been on duty 15 hours following 8 hours off duty. This rule allows drivers to extend the work day by taking off-duty time, including meal stops and other rest breaks, of less than 8 hours duration other than sleeper berth time. This rule retains the current 60 hours in 7 consecutive day and 70 hours in any period of 8 consecutive day rules.

Section 395.13 Drivers Declared Out of Service

The agency is revising § 395.13 paragraphs (c)(1)(ii) and (d)(2) to use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles, while maintaining the current off-duty, on-duty, and driving limits for drivers of passenger-carrying vehicles.

Section 395.15 Automatic on-Board Recording Devices

The agency is revising § 395.15 paragraph (j)(2)(ii) to also use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles, while maintaining the current off-duty, on-duty, and driving limits for drivers of passenger-carrying vehicles.

Rulemaking Analysis and Notices

Executive Order 12866

(Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this document contains an economically significant regulatory action under Executive Order 12866 because the FMCSA estimates this action will have an annual effect on the economy of $100 million or more. The agency completed an RIA for this final rule that projects net benefits of $1.1 billion per year to society relative to the current rules with full compliance.

The FMCSA has also determined that this regulatory action is significant under the regulatory policies and procedures of the DOT because of the high level of interest concerning motor carrier safety issues expressed by Congress, motor carriers, their drivers and other employees, State governments, safety advocates, and members of the traveling public.

Finally, the FMCSA has determined that this regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801 *et seq.* The FMCSA discussed the RIA earlier in this document under the heading Regulatory Impact Analysis.

Regulatory Flexibility Act

The ICCTA requirement for an ANPRM also began a review in compliance with the Regulatory Flexibility Act's requirement under 5 U.S.C. 610 to determine whether the HOS rules should be continued without change, should be amended, or should be rescinded, consistent with the stated objectives of the applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has evaluated the effects of this proposed rule on small entities, including small businesses, small non-profit organizations, and small governmental entities with populations under 50,000. Many of these small entities operate as motor carriers of passengers or property in interstate or intrastate commerce.

Of the three alternatives evaluated in the RIA, only the PATT alternative would result in significant, adverse financial impacts (reduced profits) on most carriers. Although both the ATA alternative and the FMCSA alternative affect carrier finances, the resulting impacts generally would be favorable to carriers—that is, most carriers could experience reduced costs under either alternative. Also, all carriers would be impacted more favorably under the ATA alternative than under the FMCSA alternative. These findings are consistent with the cost results presented in Section 9 of the RIA. (*See* section 10.2 of the RIA for further discussion of the results by alternative.)

In general, smaller firms are hurt more (under the PATT alternative) or helped less (under either the ATA alternative or the FMCSA alternative) than are larger firms. Nevertheless, the RIA finds that the FMCSA alternative will result in favorable impacts on all carriers (including owner/operators with one tractor) *except for* firms in the 2–9 tractor size category. Firms in the 2–9 tractor size category are initially expected to lose approximately 8 percent of their net income, compared to the current rules with full compliance. For the median firm in this category, this results from a loss of approximately 0.5 of revenue per carrier, about $2,700. Revenue will fall from about $534,000 to about $531,000.

This reduction is based on industry-wide adjustments, as the wage rate and price of trucking are both expected to drop when compared to the current rules with full compliance. Wages will decline somewhat less than trucking rates. The analysis used several conservative assumptions in estimating the impact on these small carriers. Specifically, the agency assumed that shipping prices drop immediately (lowering revenue to carriers), while shipments grow more slowly (delaying carriers revenue growth). Realistically, both these adjustments are likely to take some time, so that the overall impact on these carriers is likely to be smaller than estimated in our analysis. As soon as carriers increase shipments to take

advantage of these extra hours, carrier revenue and net income will return to, or surpass, their current levels. (*See* RIA section 10.3 for further information addressing differential impacts on carriers in different size categories.)

The entities affected by the HOS rules include long-haul and short-haul operations. Chapter 10 of the RIA presents detailed analyses of the effects of the rules on long-haul operations, and shows that any adverse effects of the FMCSA option on small entities would be slight and of very limited duration. That chapter did not examine firms engaged in short-haul trucking due to the small magnitude of the rule's effects on short-haul operations. The FMCSA, however, offers a fuller explanation of the reasons for expecting minimal short-haul impacts here.

The FMCSA has divided this analysis into five sections, covering the affected entities; the definitions of ''small'' used for the analysis; the number of small entities; the thresholds used for the analysis; the costs of the HOS rules, on average and for the most affected firms; and the factual determination of the numbers of small entities significantly affected.

The basic findings of this analysis are that, although large numbers of small entities are affected by the HOS rules regarding short-haul operation, no significant impacts are projected for substantial numbers of these small entities. The FMCSA finds that among trucking companies, the most heavily affected 7.5 percent of small firms bear costs that average less than 0.8 percent of revenues. Among non-trucking companies that have short-haul operations incidental to their main business, the impacts are even smaller: the most affected small firms bear costs no higher than 0.03 percent of revenues.

Affected Entities

Short-haul operations include three basic types of firms:

1. For-hire LTL firms;
2. For-hire TL firms with short average hauls, including local hauls; and
3. Firms in industries other than trucking that operate fleets in short-haul operations for their own purposes (*i.e.*, private carriage).

The LTL firms engage both long-haul and short-haul operations. Their long-haul operations are generally scheduled terminal-to-terminal runs, which are unlikely to be affected by the HOS rules. Their short-haul operations involve runs from shippers to the terminals to collect freight for the long-haul runs, and then from the terminals to the ultimate destinations for the freight. LTL firms tend to be large, with 35 companies accounting for 85 percent of revenue. The rest of the for-hire firms include both firms that provide local pick-up and delivery services for LTL firms and firms that deliver cargos locally or within a short range. Firms involved in private carriage span a very wide range of industries, including construction; stone, clay, glass, and concrete; groceries and related products; eating and drinking places; and repair services. One common type of operation is the delivery of product along a route to numerous retail outlets.

Definition of Small Firms

To determine how many small affected firms there are, we first identified industries in which at least one percent of all employees are truck drivers, using data from the Current Population Survey for 2000. These industries are shown in Table 20, along with SBA's size thresholds distinguishing small and large firms.

TABLE 20.—SMALL BUSINESS ADMINISTRATION'S SIZE STANDARD FOR SMALL BUSINESSES BY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)

Industry	NAICS	Size standard in millions of dollars	Size standard in number of employees
Trucking or For-Hire	484110, 484210, 484220	$21.50	Not Applicable.
Private		Not Applicable.	
Ag, forest, fisheries	11	0.75–6.0	500.
Groceries and related products	4224	Not Applicable	500.
Stone, clay, glass, concrete	327	Not Applicable	500–1000.
Mining	21	6.0	500.
Eating and Drinking Places	445	6.0–23.0	Not Applicable.
Wholesale trade (excludes Groceries).	42	Not Applicable	500.
Petroleum + coal products	324	Not Applicable	500–1500.
Construction	23	12.0–28.5	Not Applicable.
Food and kindred products	311, 312	Not Applicable	500–1000.
Lumber, wood products, furniture	321, 337	Not Applicable	500.
Transportation, communications, utilities, except trucking.	22, 492, 51	6.0–25.0	500–1,500.
Retail trade (excludes Eating and Drinking Places).	44, 451, 452, 453, 454	6.0–24.5	Not Applicable.
Pulp, Paper, Printing	322, 323	Not Applicable	500–750.

These thresholds tend to be at least at the level of 500 employees, or (where the thresholds are not based on employment) in the range of $6 to $25 million in revenues.

Size Distributions and Numbers of Firms

Table 21 shows the breakdown of firms in these industries in terms of employment. An estimate of the numbers of small firms is shown in the column at the right, using the size distribution and the approximate size cutoffs developed by SBA. In all affected industries, the large majority of firms are small. In all, over two million affected firms fall into the category of small firms.

TABLE 21.—DISTRIBUTION OF FIRMS BY SIZE, IN YEAR 2000

Industry: [1]	Number of firms			
	Employment less than 20	Employment 20–500	Employment 500+	Approximate number of small firms [2]
Short-haul Trucking or For-Hire	54,281	4,943	227	56,752
Non-Trucking:				
Agriculture, forest, fisheries	23,814	1,539	97	25,353
Groceries and related products	27,074	5,515	451	32,589
Stone, clay, glass, concrete	7,784	3,319	352	11,103
Mining	15,880	2,541	335	18,421
Eating and Drinking Places	105,595	11,455	447	111,323
Wholesale trade (excludes Groceries)	301,595	49,258	3,300	350,853
Petroleum + coal products	633	363	140	996
Construction	639,129	61,812	1,006	670,035
Food and kindred products	17,876	5,842	672	23,718
Lumber, wood products, furniture	25,414	8,460	499	33,874
Transportation, communications, utilities, except trucking	79,844	13,302	1,351	93,146
Retail trade (excludes Eating & Drinking)	841,109	83,204	3,385	882,711
Pulp, Paper, Printing	31,899	8,363	574	40,262
Total	2,171,927	259,916	12,836	2,351,136

[1] Industries in which drivers represent less than 1% of the labor force are not presented in the table.
[2] Assumes small firms are those with 500 or fewer employees for industries with employment-based cutoffs. For other industries, the number of small firms was assumed to be all of those with employment below 20, and half of those with employment between 20 and 500.
Source: Statistics of U.S. Businesses (SUSB), developed by U.S. Census Bureau for SBA, retrieved from SBA Office of Advocacy Web site *http://www.sba.gov/advo/stats/us88__00.pdf.*

Thresholds Used for This Analysis

To construct a factual basis for certifying that the rules will not impose significant costs on substantial numbers of small entities, the FMCSA must select thresholds for significant costs and substantial numbers. Selecting these thresholds is complicated, but not rendered impossible, by the lack of an accepted definition for either significant or substantial. The FMCSA started by considering the standard practices in other federal agencies. In general, a test of costs to revenues is more common than a test of costs to profit or other measures. The FMCSA believes that, because profit levels are harder to measure, comparing costs to revenues is more appropriate for this analysis. In the HOS case, the FMCSA considers a profit test to be misleading because typical profit levels are not likely to be reflective of the profitability of the most affected entities. The FMCSA bases this observation on the specific way that the rules affect firms. Because the rules limit maximum working and driving hours, they will affect only operations in which drivers and equipment are intensely utilized—those in which drivers habitually work more than 13 hours per day. These operations will tend to bring in the most revenues per driver, will have the greatest ability to spread out their overhead, capital, and fringe benefit costs, and are likely to have the most stable and predictable operations (given the frequency of high-utilization days). Furthermore, they will tend to have the lowest wage costs per hour (as explained in Chapter 6 of the RIA). Thus, the FMCSA can expect that the most efficient and profitable firms are over-represented among the most heavily affected operations. Firms that are among the most affected by the HOS rules can still operate more efficiently (in terms of the intensity of work by their drivers) than large majorities of their competitors, and can therefore still be competitive. These observations minimized the need to compare large impacts to average profit rates as a way to judge whether the rules would have significant impacts.

In setting the threshold for ascertaining no significant impacts, the FMCSA selected a threshold of costs equal to one percent of revenues because a low threshold would minimize the chance of inappropriately certifying the rules. The FMCSA notes that this threshold is only one third as high as the 3 percent cut-off used by: the Environmental Protection Agency's (EPA) Office of Air and Radiation; EPA's Office of Prevention, Pesticides, and Toxic Substances; EPA's Office of Water; and EPA's Office of Solid Waste and Emergency Response. It is only one fifth of that used by Department of Commerce's National Marine Fisheries Service, at the low end of the range used by DOT's Federal Aviation Administration, and no higher than that used by the Department of Health and Human Service's Food and Drug Administration or Department of Labor's Occupational Safety and Health Administration (OSHA). Though the use of these thresholds by other agencies does not prove that a threshold of costs equal to 1 percent of revenues is not significant, it does show that it is not out of line with other estimates.

For setting the threshold for substantial numbers, we have selected 10 percent of the small entities. This value, which is an order of magnitude smaller than the population as a whole, is considerably below the 20 percent selected by several EPA offices. These thresholds are not intended to set precedents for other regulations, and are not intended to imply that any cost above 1 percent revenues is a significant impact, nor that more than 10 percent is a substantial number.

Estimation of Cost Impacts

The FMCSA's method for estimating the costs imposed by the FMCSA option on short-haul operations is described in detail in Chapters 5 and 6 of the RIA. Here, the agency provides a brief summary of that approach.

The two main parts of the method are, first, the estimation of the change in labor productivity resulting from the HOS rules, and second, the estimation of the costs of that change in productivity. To estimate the change in labor productivity on short-haul operations, the agency first determined that the daily limits on work are more important constraints to short-haul operations than the weekly limits. Second, the agency constructed a

distribution of desired hours of daily work for short-haul drivers. This was based on two sets of data: the Hanowski, Wierwille, Garness, and Dingus focus group study of short-haul work patterns for determining the distribution of average hours of work per day; and Balkin *et al.* (Walter Reed Army Institute of Research) Field Study, which provided an estimate of the day-to-day variability in hours worked. Using the distribution of desired hours of daily work, the agency was able to estimate the number of times when the FMCSA option would limit a driver's work. The agency found that, compared to the current rules, the FMCSA option would reduce the hours that short-haul drivers could work by an average of 0.7 percent.

For some drivers, the rules would limit their working hours more frequently. Six out of 81 short-haul drivers (or about 7.5 percent) reported working an average of 13 hours per day or more, and the estimated impact on their work amounted to a reduction of 4.3 percent.[3] The impact on a firm employing one of the most affected drivers would depend on whether the firm also has other drivers who are less severely affected by the rules. In the extreme, a firm whose drivers were all among the hardest-working 7.5 percent of the industry would have the productivity of its entire staff of drivers reduced by 4.3 percent.

These changes in productivity are translated into changes in costs using the method described in Chapter 6 of the RIA. The results of that analysis, and a brief summary of how it was conducted, is presented below.

Translation of Productivity Changes Into Cost Impacts

Under the FMCSA option for the short-haul segment discussed in the RIA, the agency showed an increase in labor demand by about 0.7 percent. That translated to a cost increase of about $168 million for the short-haul/local segment (*see* Exhibit 9–3 in the RIA). The FMCSA also estimated short-haul total revenue of $198 billion (*see* Exhibit 3–1 in RIA), implying a 0.08 percent increase in costs in terms of their revenue. Under the worst-case scenario analyzed as part of the impact on small businesses, a 4.3 percent increase in labor demand translates to a corresponding cost increase for short-haul of about $1.32 billion or a 0.67 percent increase as a share of short-haul revenue. Table 22 shows the breakdown of the cost increases for these two scenarios.

The labor cost changes are calculated based on the wage-hours worked relationship estimated for truck drivers from the Current Population Survey data. The details of the estimated wage equation are explained in Chapter 6, Sections 2 and 3 in the RIA. Under the worst-case scenario, a 4.3 percent increase in labor demand means that the short-haul segment would have to hire the equivalent of 64,500 new drivers (though smaller firms are assumed to be able to increase their use of part-time drivers rather than adding a whole employee) at 0.67 percent increase in their costs as a share of revenue. The percentage increase in costs is smaller than the drop in productivity by the existing drivers because the pay for the new drivers (or additional part-time labor) is offset by reductions in the pay for the existing drivers whose hours are limited. Under this scenario, firms incur $2.7 billion in driver labor costs for the new drivers or part-time drivers used to make up for the hours that existing drivers cannot work, but save $1.9 billion in avoided labor costs, giving a net labor cost of $786 million. Corresponding increases in the other cost categories are for new equipment and facilities for the 64,500 new drivers, as well as for hiring other types of workers related to the hiring of new drivers (''non-driver labor''—*see* explanation in RIA Chapter 6).

TABLE 22.—DIRECT COST CHANGES FOR THE SHORT-HAUL UNDER FMCSA OPTION

[(Million of Dollars) (Values in parentheses are negative)]

Scenario modeled	Proposed option	Worst-case
Change in Labor Demand (percent)	0.7	4.3
Change in Number of Drivers	10,500	64,500
Driver Labor Cost:	90	786
Avoided Labor Wages	(298)	(1,774)
Avoided Labor Benefits	(17)	(106)
New Labor Wages	309	2,034
New Labor Benefits	96	631
Other Costs:	78	536
Non-driver Labor	4	31
Trucks	33	249

TABLE 22.—DIRECT COST CHANGES FOR THE SHORT-HAUL UNDER FMCSA OPTION—Continued

[(Million of Dollars) (Values in parentheses are negative)]

Scenario modeled	Proposed option	Worst-case
Parking	10	58
Insurance	7	43
Maintenance	12	75
Recruitment	13	80
Total	168	1,322
Cost Increase as Share of Short-Haul Revenue [1]	0.08	0.67

[1] Assuming short-haul total revenue of $198 billion ($76 billion + $122 billion). *See* Exhibit 3–1 in the RIA.

Sensitivity Analysis for Higher Impacts on Smaller Firms

These estimated changes in costs apply to all firms, not to small entities in particular. Some types of regulation tend to hit small firms harder than large firms, generally because they impose costs that are the same for all firms, or require equipment that exhibits substantial economies of scale. Small firms tend to have higher per-unit costs of compliance with these kinds of regulations because they have fewer units of output over which to spread the regulatory costs. The FMCSA does not consider the HOS rules to fall into that category of regulations, however, because the costs they impose affect individual drivers, not firms. Thus, total cost impacts are likely to be roughly proportional to the number of drivers, and costs for small firms will not tend to be out of proportion with costs for large firms.

In recognition of the SBA's finding that small businesses shoulder costs 60 percent greater that large businesses, the FMCSA conducted a sensitivity analysis that assumed costs were higher for small firms. *See* page 24 of ''The Regulatory Flexibility Act: an Implementation Guide for Federal Agencies,'' The Office of Advocacy, U.S. Small Business Administration, November 2002, *http://www.sba.gov/advo/laws/rfaguide.pdf.* To calculate a more conservative cost impact for small firms using SBA's finding, the agency started with the distribution of employment by number of employees across all for-hire trucking firms. This distribution is shown in Table 23.

[3] These estimates could somewhat overstate the impacts of the HOS rules, because they considered only the effects of the daily rules: very intense daily schedules could cause drivers to be limited by the weekly HOS rules. Working 13 hours per day for 5 days, for example, results in 65 hours of work, which would exceed the 60 hours allowed per 7 days.

TABLE 23.—CALCULATION FOR SENSITIVITY ANALYSIS

Trucking or For-Hire	Employment less than 20	Employment 20–500	Employment 500+	Total
Number of Short-Haul Firms	54,281	4,943	227	59,451
Number of Employees	202,116	225,180	64,493	491,789
Distribution of Employees (percent)	41	46	13	100
Average Impact per Firm (percent)	.....	.....	.....	0.67
Magnitude of Impact by Firm Size	1.6 ×	1.3 ×	×	.....
Adjusted Average Impact per Firm (percent)	0.775	0.629	0.484	0.670

Source: Statistics of US Businesses (SUSB), developed by U.S. Census Bureau for SBA and FMCSA calculations.

Under the worst-case scenario, the agency estimates that, on average, a short-haul firm will bear a burden equal to a 0.67 percent increase in its costs as a share of revenue. An SBA study completed in 2001 shows that the economic impact on a firm with less than 20 employees may be up to 60 percent greater per employee than on firms with more than 500 employees, *see* ''The Regulatory Flexibility Act, Implementation Guide for Federal Agencies,'' November 2002, which cites W. Mark Crain and Thomas D. Hopkins, ''The Impact of Regulatory Costs on Small Firms'' (Springfield, Va.: National Technical Information Service, 2001). As a result, the FMCSA adjusts the ''worst-case'' impact estimate to account for the possible disparity of the regulatory impact across firms. The adjustment is based on firms' size and employees' distribution. As no information is available on the magnitude of economic impact on firms with 20 to 500 employees relative to the firms in other size categories, we assume that the impact on firms in this category is equal to the average of impacts on firms in the other two size categories (*i.e.*, that the impact is 30 percent greater for the mid-size firms as for the large firms, and an equivalent amount less than the impacts on the smallest firms). The adjusted average impact per firm was found by setting up the following equation for X, the average impact per firm with more than 500 employees:

41 percent * 1.6 * X + 46 percent * 1.3 * X + 13 percent * X = 0.67 percent

Rearranging terms and solving, the FMCSA finds that X= 0.484 percent. The agency second multiplies X by 1.6 to calculate the average economic impact on firms with less than 20 employees. The agency's results show that economic impact on firms with less than 20 employees is 0.775 percent of revenues, which is below the threshold of significance chosen for this analysis.

Estimation of Costs for Non-Trucking Companies

The cost impact for non-trucking companies is calculated on the basis of the cost increases per existing driver. Assuming there are 1.5 million existing short-haul/local drivers (*see* Exhibit 6.7 in RIA), a $1.32 billion cost increase means that firms face an increase of $881 per existing driver. Given the distribution of drivers from the Current Population Survey, the agency chose industries that employed a substantial number of drivers, and calculated the increase in their operating costs due to the FMCSA option. Table 24 shows these selected sectors and the estimated number of drivers they employed in 2000.

Among non-trucking industries that use drivers, construction (NAICS 23) bears the largest dollar impact, followed by the eating and drinking places (NAICS 445), under the retail industry. Another industry segment that has a relatively large impact is the groceries and related products sector (NAICS 4224). However, for all these and the others in Table 24, the increase in cost as share of their labor cost is very small (second from last column). In these terms, the highest impact is for the agriculture sector (0.35 percent), probably because labor costs are not so well-defined for mostly family-owned farms. For all the other sectors, impacts are significantly lower than 1 percent of labor costs, since driver labor is a relatively small fraction of their total labor costs.

The cost impacts are even lower when the agency calculates them in terms of their total revenue (last column in Table 24). Similar to the reasoning given above, since labor costs are only a small portion of most industries' total costs (or total revenue), the impact of the worst-case scenario is significantly smaller than one percent, with the highest impact shown for the stone, clay, glass, and concrete industry (NAICS 327) at 0.03 percent.

TABLE 24.—WORST-CASE SCENARIO IMPACT ON DIFFERENT INDUSTRY SEGMENTS

Private industry classification	Short-haul drivers in total labor (%)	Number of short-haul drivers in 2000	Cost increase due to worst-case option (millions of dollars)	Cost increase as share of labor costs (%)	Cost increase as share of revenue (%)
Agriculture, Forest, Fisheries	11.2	18,375	17	0.35	0.01
Groceries & Related Products	7.3	64,233	57	0.18	0.01
Stone, Clay, Glass, Concrete	6.6	34,793	31	0.16	0.03
Mining	4.6	20,965	18	0.08	0.01
Eating & Drinking Places	2.7	82,076	72	0.15	0.02
Petroleum & Coal Products	2.0	2,230	2	0.03	0.001
Construction	1.6	103,487	91	0.04	0.01
Food & Kindred Products	1.6	26,318	23	0.05	0.004
Lumber, Wood Products, Furniture	1.4	17,843	16	0.05	0.01
Transportation, communications, utilities, (excludes For-Hire Trucking)	1.4	68,694	61	0.02	0.01
Pulp, Paper, Printing	1.0	14,274	13	0.02	0.005
Wholesale Trade, (excludes Groceries & Related Prod)	2.5	134,265	118	0.05	0.003

TABLE 24.—WORST-CASE SCENARIO IMPACT ON DIFFERENT INDUSTRY SEGMENTS—Continued

Private industry classification	Short-haul drivers in total labor (%)	Number of short-haul drivers in 2000	Cost increase due to worst-case option (millions of dollars)	Cost increase as share of labor costs (%)	Cost increase as share of revenue (%)
Retail Trade, (excludes Eating & Drinking Places)	1.1	179,317	158	0.05	0.01

Given that the estimated impacts, expressed both in terms of labor cost shares and revenue shares, are well below 1 percent of their revenue, the FMCSA does not expect this rule to have any significant impact on small businesses in the short-haul private sector.

Therefore, the FMCSA, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has considered the economic impacts of these requirements on small entities and certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule resulting in a Federal mandate requiring expenditure by a State, local or tribal government or by the private sector of $100,000,000 or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. In light of the fact that revisions to the HOS regulations is a major rule that would cost motor carriers more than $100,000,000 in a given year, the FMCSA has prepared the following statement which addresses each of the elements required by the Unfunded Mandates Reform Act of 1995. Most of these required elements have already been covered in the regulatory impact analysis, and the sections of that evaluation containing the preexisting analyses are referenced in this statement. Any elements not included in the final regulatory evaluation have been addressed directly in this statement.

Qualitative and Quantitative Assessment of Costs and Benefits

The Unfunded Mandates Reform Act requires a qualitative and quantitative assessment of the anticipated costs and benefits of this Federal mandate. The options discussed in this final rule would cost between $744 million and $5.5 billion per year, relative to the Status Quo. The FMCSA option would cost an estimated $1.3 billion per year. Relative to the status quo with full compliance, the options will cost between positive $3.4 billion and negative $1.4 billion per year (meaning that they will result in cost savings). The FMCSA option would result in savings of about $900 million per year. Cost estimates are discussed in chapter 9 of the RIA. The cost applies only to motor carriers subject to the FMCSRs. The final rule does not impose any cost on State, local, or tribal governments.

The FMCSA estimates that the annual monetary value of the benefits ranges from $170 million to $780 million, relative to the status quo. The FMCSA staff alternative has a benefit of $670 million. Relative to the status quo with full compliance, the alternatives yield net benefits of $1.2 billion to negative $3 billion. The FMCSA staff alternative yields a net benefit of $1.1 billion relative to the current rules with full compliance. The development of these estimates is discussed in the RIA chapter 9.

Effect on Health, Safety, and the Natural Environment

The Unfunded Mandates Reform Act also states that the FMCSA must discuss the effect of the Federal mandate on health, safety, and the natural environment. The FMCSA prepared an environmental assessment, which has been placed in the docket, which shows that this proposal would not have a significant impact on the natural environment.

The effects of this rule on health and safety will be much more significant: the primary benefit of this proposal would be a reduction in accidents. The FMCSA estimates that this final rule, when motor carriers adhere to it fully, would save between 24 and 75 lives each year as compared to complying fully with the current rules. Injuries will experience a commensurate fall. The RIA explains these estimates in detail in Chapters 8 and 9.

Federal Financial Assistance

Section 202(a)(2)(A) of the Unfunded Mandates Reform Act requires that this qualitative and quantitative assessment of costs and benefits include an analysis of the extent to which costs to State, local, and tribal governments may be paid with Federal financial assistance or otherwise paid for by the Federal Government. Since this rule is applicable only to motor carriers subject to the Federal Motor Carrier Safety Regulations, there is no cost to State, local, and tribal governments. Therefore, no Federal funds for these entities will be necessary for motor carriers to comply with the proposed requirements.

Future Compliance Costs

To the extent feasible, section 202(a)(3) of the Unfunded Mandates Reform Act requires estimates of the future compliance costs of this Federal mandate and any disproportionate budgetary effects upon particular regions, or upon urban, rural, or other types of communities, or upon particular segments of the private sector. There are no disproportionate budgetary effects upon particular regions, or upon urban, rural, or other types of communities. The RIA included an analysis of the impact of the option on various regions, using the REMI Policy Insight ™ Model. The model showed no significant disparate impact on any region. These impacts are discussed in chapter 11 of the RIA.

Effect on the National Economy

Section 202(a)(4) of the Unfunded Mandates Reform Act requires estimates of the effect on the national economy, such as the effect on economic growth, full employment, creation of productive jobs, and international competitiveness. The REMI model mentioned above also yielded an estimate of the macroeconomic costs of the options. Relative to the status quo with 100 percent compliance, FMCSA estimates that the impact on gross regional product (GRP) will be minimal, less than 0.1 percent of GRP for all the alternatives. One alternative would reduce GRP by almost $12 billion per year, while all other alternatives would result in a small increase in GRP. Because the overall driving time for most CMV drivers would not change, the FMCSA does not believe the

alternatives would have a significant impact on full employment or the creation of productive jobs. The FMCSA also does not believe that the proposal would have any significant impact on international competitiveness.

Prior Consultations With Elected Representatives of Any Affected State, Local, or Tribal Governments

This rule does not require action by State, local, or tribal governments. Therefore, no prior consultations with elected representatives of these governments were initiated.

Decision To Impose an Unfunded Mandate

When Congress created FMCSA, it provided that, ''[i]n carrying out its duties the Administration shall consider the assignment and maintenance of safety as the highest priority * * *'' [49 U.S.C. 113(b)]. As indicated above, Sec. 408 of the ICCTA directed the agency—then part of the FHWA—to begin rulemaking dealing with a variety of fatigue-related safety issues, including ''8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness) * * *'' [109 Stat. 958]. The agency's statutory focus on safety and the specific mandate of Sec. 408 both demand that this rulemaking improve CMV safety.

The FMCSA analyzed three alternative regulatory proposals in depth. Compared to the *status quo,* which includes a degree of non-compliance with the current HOS rules, the option proposed by the ATA would have marginally reduced fatigue-related fatalities and somewhat increased the cost of regulatory compliance. This results in a negative cost/benefit ratio. The option suggested by PATT would have reduced fatalities far more than the ATA option, but would have generated significant increases in compliance and operational expenses. This results in a cost/benefit ratio far more negative than the ATA option.

The third alternative was proposed by the FMCSA staff. The analysis shows that this option would save many more lives than the ATA alternative, though not quite as many as the PATT option. While it would cost more than the ATA option, it would be much cheaper than the PATT alternative. The net result is a cost/benefit ratio slightly more negative than the ATA option but not nearly as negative as the PATT option.

The FMCSA has adopted the third alternative for this final rule. The rule represents a substantial improvement in addressing driver fatigue over the current regulation. Among other things, it increases required time off duty from 8 to 10 consecutive hours; prohibits driving after the end of the 14th hour after the driver began work; allows an increase in driving time from 10 to 11 hours; and allows drivers to restart the 60-or 70-hour clock after taking 34 hours off duty. Together, these provisions (and others discussed in detail below) are expected to reduce the effect of cumulative fatigue and prevent many of the accidents and fatalities to which fatigue is a contributing factor. Because the agency's statutory priority is safety, we have adopted a rule that is marginally more expensive than the ATA option but which will reduce fatigue-related accidents and fatalities more substantially than that option. The FMCSA believes that the rule represents the best combination of safety improvements and cost containment that can realistically be achieved, even though it imposes an unfunded mandate.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information (IC) they conduct, sponsor, or require through regulations. The FMCSA has determined that this final rule will affect a currently approved information clearance for OMB Control Number 2126–0001, titled ''Record of Duty Status (RODS).'' The OMB approved this information collection on March 4, 2002, at a revised total of 161,364,492 burden hours, with an expiration date of March 31, 2005.

Comments received on the information collection proposed in the NPRM are discussed above under the heading ''Electronic On-board Recorders (EOBRs).'' The NPRM proposed that the title of this information collection be changed to ''Hours of Service of Drivers Regulations.'' The FMCSA believes that this title is more appropriate. The FMCSA did not receive any comments on the change of title for this IC. Therefore, today the supporting statement sent to OMB will bear the revised title change.

The PRA requires agencies to provide a specific, objectively supported estimate of burden that will be imposed by the information collection. *See* 5 CFR 1320.8. The paperwork burden imposed by the FMCSA's RODS requirement is set forth at 49 CFR 395.8. Paragraph (a)(1) requires drivers to record their duty status. Paragraph (f)(8)(i) requires them to submit the RODS to their motor carrier. Paragraph (k) requires motor carriers to maintain the RODS and all supporting documents for each driver it employs for a period of six months from the date of receipt. The currently-approved information collection for RODS does not include time and cost burdens associated with the collection and retention of supporting documents because these costs were calculated into past paperwork burdens (*See* 47 FR 53383, 53389 (Nov. 26, 1982) and 63 FR 19464).

As noted in the preamble to this rule, under the above heading ''Compliance and Enforcement,'' the FMCSA collects this information to ensure motor carriers comply with the HOS regulations. The HOS regulations require motor carriers be responsible for and police the actions of its employees, including the actions of independent contractors and owner operators they use. Likewise, each motor carrier must have a system in place that allows it to effectively monitor compliance with the FMCSRs, especially those aimed at the issue of this final rule—HOS to increase driver alertness and reduce fatigue-related incidents.

This final rule does not amend the language of section 395.8. The new HOS rule, like the current rule, does not limit the length of time a person can be on duty. The current rule states that a driver cannot drive after being on duty for 15 hours, but the driver could remain on duty indefinitely. This aspect of the current rule will continue to be applicable to drivers of passenger-carrying CMVs. This final rule, however, will *not* enable a driver of a property-carrying CMV to drive after being on duty after the end of the 14th hour after coming on duty, but such a driver also can remain on duty indefinitely. Because there will be a requirement for 10 consecutive hours off duty, most property-carrying CMV drivers will usually go off duty after 14 hours (at worst) under this final rule, not after 15 hours, as often happened under the current rule and will continue to happen for drivers of passenger-carrying CMVs. But property-carrying CMV drivers will now be allowed to drive up to 11 hours, not the 10 hours of the current rule that will be applicable to passenger-carrying CMV drivers only. Thus, this final rule will allow property-carrying CMV drivers shorter on-duty time, generally, but longer driving time.

The agency believes that the industry will respond to this HOS requirement for property-carrying CMV drivers by employing, over a period of time, an estimated 48,000 fewer property-carrying CMV drivers, compared to the current rules with full compliance. Thus, this final rule will bring about a small decrease in the estimated 4.2 million drivers required to complete and maintain the RODS. This final rule and a supporting statement reflecting this small decrease in burden hours have been submitted to OMB.

You may submit comments on this adjustment in the *information collection burden* directly to OMB. The OMB must receive your comments by July 28, 2003. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The FMCSA analyzed the three alternatives in the RIA as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOT Order 5610.1C. The FMCSA evaluated impacts in terms of the percent change from the *status quo* (No Action Alternative). ''Minor'' is defined here as a 0 to 1 percent change from the *status quo* (0 plus/minus 1 percent), while ''Moderate'' is defined as a plus/minus 10 percent or greater change. Note that the FMCSA measured these impacts as change from the No Action Alternative (*i.e.* not from the Full Compliance Alternative). As shown in Table 25 (Environmental Assessment Table 22), none of the Alternatives would have a significant adverse impact on the human environment and all of the Alternatives would have beneficial impacts in some impact areas. None of the Alternatives stands out as environmentally preferable, when compared to the other Alternatives.

TABLE 25.—COMPARISON OF ALTERNATIVES

Impact area	No action	Full compliance	PATT alternative	ATA alternative	FMCSA alternative
Air Pollutant Emissions from Affected CMVs.	No Change	Minor Benefit (0.5 percent decrease).	Moderate Impact (2 percent increase).	Minor Benefit (1 percent decrease).	Minor Impact (0.6 percent increase).
Air Pollutant Emissions from Transportation.	No Change	Minor Benefit (0.02 percent decrease).	Moderate Impact (0.09 percent increase).	Minor Benefit (0.01 percent decrease).	Minor Impact (0.03 percent increase).
Land Use	No Change	Minor Induced Impact (2,350 acres).	Minor Induced Impact (3,408 acres).	No Impact	No Impact.
Sensitive Resources	No Change	Minor Potential Impact.	Minor Potential Impact.	No Impact	No Impact.
Noise	No Change	No Change	Minor Impact (unquantifiable).	Minor Benefit (unquantifiable).	Minor Impact (unquantifiable).
Safety	No Change	Major Benefit ($443 million per year).	Major Benefit ($783 million per year).	Major Benefit ($170 million per year).	Major Benefit ($671 million per year).
Socioeconomic Effects	No Change	Minor Impact (unquantifiable).	Minor Impact (unquantifiable).	Minor Impact (unquantifiable).	Minor Impact (unquantifiable).
Transportation Energy Consumption.	No Change	Minor Benefit (less than 0.1 percent decrease).	Minor Impact (0.1 percent increase).	Minor Benefit (0.1 percent decrease).	Minor Impact (0.1 percent increase).
Environmental Justice	No Impact	No Impact	No Impact	No Impact	No Impact.

Source: Environmental Assessment for Hours of Service (HOS) Rule, Table 22.

This final rule's environmental assessment and finding of no significant impact (FONSI) are in the docket.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. As a part of the environmental assessment, the FMCSA analyzed the three alternatives discussed earlier in this final rule.

The greatest reduction in energy consumption would occur under the ATA alternative and the greatest increase would occur under the PATT alternative. The FMCSA alternative would increase consumption, but to a lesser degree than the PATT alternative. Energy consumption would decrease under the Full Compliance alternative, but to a lesser degree than the ATA alternative. Table 26 shows that the energy consumption effects of the alternatives would range from a reduction of 1 percent to an increase of 2 percent in energy consumption for the affected CMV operations. Effects on energy consumption by all medium and heavy-duty trucks would range from a 0.3 percent reduction to a 1.2 percent increase. Effects of the alternatives on energy consumption from all transportation sources would range from a 0.1 percent reduction to a 0.2 percent increase. From a national energy consumption perspective, the PATT alternative has a net increase in energy consumption of about one tenth of one percent. All other alternatives have essentially a zero effect on national energy consumption. The FMCSA does not consider these effects to be significant.

TABLE 26.—NET CHANGE IN ENERGY CONSUMPTION BY CONSUMER BY ALTERNATIVE

Energy consumer	No action alternative	Full compliance baseline	PATT alternative	ATA alternative	FMCSA alternative
Affected CMV Operations	0	(0.05 percent)	2.0 percent	(1.0 percent)	0.6 percent.
Medium and Heavy Duty Trucks	0	(0.03 percent)	1.2 percent	(0.6 percent)	0.4 percent.
Total Transportation	0	(0.01 percent)	0.2 percent	(0.1 percent)	0.1 percent.

TABLE 26.—NET CHANGE IN ENERGY CONSUMPTION BY CONSUMER BY ALTERNATIVE—Continued

Energy consumer	No action alternative	Full compliance baseline	PATT alternative	ATA alternative	FMCSA alternative
Total U.S.	0	(0.00 percent)	0.10 percent	(0.00 percent)	0.00 percent.

Source: Environmental Assessment for Hours of Service (HOS) Rule, Table 21.

In accordance with Executive Order 13211, the agency prepared a Statement of Energy Effects for this final rule. A copy of this statement is in Appendix D to the environmental assessment.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations)

The FMCSA evaluated the environmental effects of the Proposed Action and alternatives in accordance with Executive Order 12898 and determined that there were no environmental justice issues associated with revising the hours of service regulations. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. The FMCSA determined through the analyses documented in the Environmental Assessment in the docket prepared for this final rule that there were no high and adverse impacts associated with any of the alternatives. In addition, FMCSA analyzed the demographic makeup of the trucking industry potentially affected by the alternatives and determined that there was no disproportionate impact on minority or low-income populations. This is based on the finding that low-income and minority populations are generally underrepresented in the trucking occupation. In addition, the most impacted trucking sectors do not have disproportionate representation of minority and low-income drivers relative to the trucking occupation as a whole. Appendix E of the Environmental Assessment provides a detailed analysis that was used to reach this conclusion.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing ''economically significant'' rules that also concern an environmental health or safety risk that an agency has reason to state may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a ''covered regulatory action'' an evaluation of its environmental health or safety effects on children.

The FMCSA evaluated the projected effects of the proposed action and alternatives and determined that they would not create disproportionate environmental health risks or safety risks to children. The only adverse environmental effect with potential human health consequences is the projected increase in emissions of air pollutants. The FMCSA has projected that the PATT alternative and the FMCSA alternative would result in a minor increase in emissions on a national scale. The FMCSA projects no adverse human health consequences to either children or adults because the magnitude of emission increases is small. The proposed action and alternatives, however, would reduce the safety risk posed by tired, drowsy, or fatigued drivers of CMVs. These safety risk improvements would accrue to children and adults equally.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FMCSA has determined this rule does not have a substantial direct effect on States, nor would it limit the policymaking discretion of the States. Nothing in this document preempts any State law or regulation.

A State that fails to adopt the new amendments in this final rule within three years of the effective date of June 27, 2003, will be deemed to have incompatible regulations and will not be eligible for Basic Program nor Incentive Funds in accordance with 49 CFR 350.335(b).

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number or 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the FMCSA is amending Title 49, CFR, chapter III, parts 385, 390, and 395 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES [AMENDED]

■ 1. The authority citation for part 385 continues to read as follows.

Authority: 49 U.S.C. 113, 504, 521(b), 5113, 31136, 31144, 31148, and 31502; and 49 CFR 1.73.

■ 2. Amend appendix B to part 385 as follows:

■ a. Revise section II.(c) as follows;

■ b. Amend section VII as follows:

(i) Revise the citations and text for §§ 395.1(h)(1)(i) through (h)(1)(iv) and 395.3(a)(1) through 395.3(b)(2) as follows; and

(ii) Add the citations and text for §§ 395.1(h)(2)(i) through (h)(2)(iv), 395.1(o), and 395.3(c)(1) through 395.5(b)(2) in numerical order as follows:

Appendix B to Part 385 Explanation of Safety Rating Process

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II. Converting CR Information Into a Safety Rating

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(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

* * * * *

VII. List of Acute and Critical Regulations.

* * * * *

§ 395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§ 395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§ 395.1(h)(1)(iii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§ 395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§ 395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§ 395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§ 395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§ 395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§ 395.1(o) Requiring or permitting a short-haul property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).

§ 395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours (critical).

§ 395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty (critical).

§ 395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§ 395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

§ 395.3(c)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours (critical).

§ 395.3(c)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours (critical).

§ 395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours (critical).

§ 395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours (critical).

§ 395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§ 395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 3. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 *note*); sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 3a. Revise paragraphs (b) and (c) of § 390.23 to read as follows:

§ 390.23 Relief from regulations.

* * * * *

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until:

(1) The driver has met the requirements of §§ 395.3(a) and 395.5(a) of this chapter; and

(2) The driver has had at least 34 consecutive hours off-duty when:

(i) The driver has been on duty for more than 60 hours in any 7 consecutive days at the time the driver is relieved of all duty if the employing motor carrier does not operate every day in the week, or

(ii) The driver has been on duty for more than 70 hours in any 8 consecutive days at the time the driver is relieved of all duty if the employing motor carrier operates every day in the week.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 4. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

■ 5. Add § 395.0 to read as follows:

§ 395.0 Compliance date for certain requirements for hours of service of drivers.

(a) Motor carriers and drivers must comply with the following requirements of this chapter through January 3, 2004, that were in effect before June 27, 2003, and are contained in 49 CFR Chapter III revised as of October 1, 2002:

(1) §§ 395.1(b), (e)(3), (e)(4), (g), (h), and (j) of this part;

(2) § 395.3 of this part;

(3) § 390.23(b) and (c) of this subchapter; and

(4) The citations and text for §§ 395.1(h)(1)(i) through 395.3(b)(2) in section *VII. List of Acute and Critical Regulations* in appendix B to part 385 of this subchapter.

(b) Motor carriers and drivers must comply beginning on January 4, 2004 with the amendments made to the following sections that took effect on June 27, 2003, and are contained in 49 CFR chapter III revised as of October 1, 2003:

(1) §§ 395.1(b), (e)(3), (e)(4), (g), (h), (j), and (o) of this part;

(2) § 395.3 of this part;

(3) § 395.5 of this part;

(4) §§ 390.23(b) and (c) of this subchapter; and

(5) The citations and text for §§ 395.1(h)(1)(i) through 395.5(b)(2) in section *VII. List of Acute and Critical Regulations* in appendix B to part 385 of this subchapter.

* * * * *

■ 6. Section 395.1 is amended by revising paragraphs (b)(1), (e)(3), (e)(4), (g), (h), (j), (k), and adding paragraph (o) to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(b) *Adverse driving conditions.* (1) Except as provided in paragraph (h)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time permitted by §§ 395.3(a) or 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 13 hours in the aggregate following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(ii) After he/she has been on duty after the end of the 14th hour after coming on duty following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(iii) For more than 12 hours in the aggregate following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles; or

(iv) After he/she has been on duty 15 hours following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles.

* * * * *

(e) * * *

(3)(i) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty;

(ii) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;

(4)(i) A property-carrying commercial motor vehicle driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; or

(ii) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and

* * * * *

(g) *Sleeper berths.* (1) *General property-carrying commercial motor vehicle.* A driver who is driving a property-carrying commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, may accumulate the equivalent of 10 consecutive hours of off-duty time by taking two periods of rest in the sleeper berth, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

(iii) The on-duty time in the period immediately before and after each rest period, when added together, does not include any driving time after the 14th hour; and

(iv) The driver may not return to driving subject to the normal limits under § 395.3 without taking at least 10 consecutive hours off duty, at least 10 consecutive hours in the sleeper berth, or a combination of at least 10 consecutive hours off duty and sleeper berth time.

(2) *Specially trained driver of a specially constructed oil well servicing commercial motor vehicle at a natural gas or oil well location.* A specially trained driver of a specially constructed oil well servicing commercial motor vehicle who is off duty at a natural gas or oil well location in a commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, or other sleeping accommodations, may accumulate the equivalent of 10 consecutive hours of off-duty time by taking two periods of rest in the sleeper berth or other sleeping accommodations, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

(iii) The on-duty time in the period immediately before and after each rest period, when added together, does not include any driving time after the 14th hour; and

(iv) The driver may not return to driving subject to the normal limits under § 395.3 without taking at least 10 consecutive hours off duty, at least 10 consecutive hours in the sleeper berth, or a combination of at least 10 consecutive hours off duty and sleeper berth time.

(3) *Passenger-carrying commercial motor vehicles.* A driver who is driving a passenger-carrying commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, may accumulate the equivalent of 8 consecutive hours of off-duty time by taking two periods of rest in the sleeper berth, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 10 hours;

(iii) The on-duty time in the period immediately before and after each rest period, when added together, does not include any driving time after the 15th hour; and

(iv) The driver may not return to driving subject to the normal limits under § 395.5 without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(h) *State of Alaska.* (1) *Property-carrying commercial motor vehicle.* The provisions of § 395.3(a) do not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a property-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 10 consecutive hours off duty; or

(ii) After being on duty for 20 hours or more following 10 consecutive hours off duty.

(iii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(2) *Passenger-carrying commercial motor vehicle.* The provisions of § 395.5 do not apply to any driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska. A driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After being on duty for 20 hours or more following 8 consecutive hours off duty;

(iii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive

days, if the motor carrier for which the driver drives operates every day in the week.

(3) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in § 395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run.

(i) After a property-carrying commercial motor vehicle driver completes the run, that driver must be off duty for at least 10 consecutive hours before he/she drives again; and

(ii) After a passenger-carrying commercial motor vehicle driver completes the run, that driver must be off duty for at least 8 consecutive hours before he/she drives again.

* * * * *

(j) *Travel time.* (1) When a property-carrying commercial motor vehicle driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time must be counted as on-duty time unless the driver is afforded at least 10 consecutive hours off duty when arriving at destination, in which case he/she must be considered off duty for the entire period.

(2) When a passenger-carrying commercial motor vehicle driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time must be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he/she must be considered off duty for the entire period.

(k) *Agricultural operations.* The provisions of this part shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

(1) Is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies, and

(2) Is conducted during the planting and harvesting seasons within such State, as determined by the State.

* * * * *

(o) *Property-carrying driver.* A property-carrying driver is exempt from the requirements of § 395.3(a)(2) if:

(1) The driver has returned to the driver's normal work reporting location and the carrier released the driver from duty at that location for the previous five duty tours the driver has worked;

(2) The driver has returned to the normal work reporting location and the carrier releases the driver from duty within 16 hours after coming on duty following 10 consecutive hours off duty; and

(3) The driver has not taken this exemption within the previous 7 consecutive days, except when the driver has begun a new 7- or 8-consecutive day period with the beginning of any off duty period of 34 or more consecutive hours as allowed by § 395.3(c).

■ 7. The section heading and text of § 395.3 is revised to read as follows.

§ 395.3 Maximum driving time for property-carrying vehicles.

Subject to the exceptions and exemptions in § 395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle:

(1) More than 11 cumulative hours following 10 consecutive hours off duty; or

(2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty, except when a property-carrying driver complies with the provisions of § 395.1(o).

(b) No motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

(c)(1) Any period of 7 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours; or

(2) Any period of 8 consecutive days may end with the beginning of any off duty period of 34 or more consecutive hours.

■ 8. Section 395.5 is added to read as follows.

§ 395.5 Maximum driving time for passenger-carrying vehicles.

Subject to the exceptions and exemptions in § 395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle:

(1) More than 10 hours following 8 consecutive hours off duty; or

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(b) No motor carrier shall permit or require a driver of a passenger-carrying commercial motor vehicle to drive, nor shall any driver drive a passenger-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

■ 9. Section 395.13 paragraphs (c)(1)(ii) and (d)(2) are revised to read as follows:

§ 395.13 Drivers declared out of service.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(ii) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section. The appropriate consecutive hours off-duty period may include sleeper berth time.

* * * * *

(d) * * *

(1) * * *

(2) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section.

* * * * *

■ 10. Section 395.15(j)(2)(ii) is revised to read as follows:

§ 395.15 Automatic on-board recording devices.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(ii) The motor carrier has required or permitted a driver to establish, or the driver has established, a pattern of

exceeding the hours of service limitations of this part;

* * * * *

Issued on: April 16, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–9971 Filed 4–24–03; 8:45 am]

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April 28, 2003

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 641

Senior Community Service Employment Program; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

RIN 1205–AB28

Senior Community Service Employment Program

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing a Notice of Proposed Rulemaking with request for comments to implement reforms to the Senior Community Service Employment Program (SCSEP) due to the enactment of the 2000 amendments to title V of the Older Americans Act of 1965 (OAA), Pub. L. 106–501 (2000). This proposed rule provides administrative and programmatic guidance, as well as requirements for the implementation of the SCSEP. Key components of this reform include coordination between SCSEP and the One-Stop Delivery System, increased responsibility of State grantees to collaborate with other SCSEP stakeholders, and increased accountability for performance.

DATES: All comments must be received by June 12, 2003.

ADDRESSES: All comments received during the comment period following the publication of this Notice of Proposed Rulemaking should be submitted in writing to Mr. Gale Gibson, Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5306, Washington, DC 20210.

All comments will be available for public inspection and copying during normal business hours at the Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5306, Washington, DC 20210. Copies of the proposed rule are available in alternate formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The proposed rule is also available on the Division of Older Worker Programs' Web site at *http://wdsc.doleta.gov/seniors.*

FOR FURTHER INFORMATION CONTACT: Mr. Gale Gibson, Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 693–3758 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The preamble is divided into four sections. Section I provides general background information. Section II discusses the implementing changes to the Older Americans Act. Section III discusses the proposed rule. Section IV discusses miscellaneous administrative requirements, such as Paperwork Reduction Act requirements. In drafting these regulations, the Department consulted with interested parties through a series of Town Hall Meetings and work groups, and received written suggestions in response to the **Federal Register** notices published at 66 FR 6678 (Jan. 22, 2001), 66 FR 10919 (Feb. 20, 2001), 66 FR 15596 (Mar. 19, 2001), 66 FR 16068 (Mar. 22, 2001), and 66 FR 20334 (Apr. 20, 2001).

I. Background

Since its inception in 1965, the purpose of the Senior Community Service Employment Program (SCSEP) has been to foster and promote useful part-time employment opportunities in community service activities for persons with low incomes who are 55 years old or older. The 2000 amendments to this legislation expand the program's purpose to include increasing participants' economic self-sufficiency and increasing the number of persons who may benefit from unsubsidized employment. The Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) administers the program by means of grant agreements with eligible organizations, such as governmental entities and public and private nonprofit agencies and organizations. The SCSEP regulations were last revised in 1995, at 20 CFR part 641; 60 FR 26574 (May 17, 1995).

The 2000 amendments are the first major legislative changes to the SCSEP in many years. This document issues a proposed rule to conform to the new changes in the Older Americans Act due to the enactment of the 2000 amendments. The Department developed these regulations in consultation with program stakeholders, including State agencies, national organizations, interested individuals, and public and private nonprofit organizations.

II. Implementing Changes

Congress amended SCSEP to combine requirements that were formerly in the SCSEP legislation as last amended in 1992 by Pub. L. 102–375, the accompanying regulations at 60 FR 26574 (May 17, 1995) (formerly codified at 20 CFR part 641), and SCSEP program administration materials provided to the grantee community as bulletins, or training and employment information notices. New provisions of the OAA include requirements for: greater coordination with the Workforce Investment Act (WIA); a greater proportion of funds for States for appropriations above current funding levels; the submission of State plans; grants for a period up to 3 years; new performance measures; and corrective action and sanctions for poor performance.

With the enactment of the Workforce Investment Act of 1998, title V became a required partner in the workforce investment system. As a result, Congress amended SCSEP to include greater coordination with the One-Stop Delivery System, including reciprocal use of Individual Employment Plans and other assessment mechanisms.

Under both WIA and the OAA, any grantee operating an SCSEP project in a local area must now negotiate a Memorandum of Understanding with the Local Workforce Investment Board, which details SCSEP's involvement in the One-Stop Delivery System. Further, because of SCSEP's closer coordination with the One-Stop Delivery System, the ''joint program'' language contained in section 510 of the 1992 amendments to the OAA, Pub. L. 102–375 (1992), and section 203 of the Job Training Partnership Act, Pub. L. 97–300 (1982) (29 U.S.C. 1603 *et seq.*) for ''automatically'' qualifying participants for training or intensive services has been replaced with language that permits Local Boards to deem SCSEP participants eligible for those services.

The 2000 Amendments to the OAA require a different distribution of funding between State and national SCSEP grantees if the SCSEP appropriation increases. The legislation requires the Department to reserve amounts for section 502(e) (authorizing second career training projects), the territories, and the Native American and Asian Pacific aging organizations before funds are distributed between the States and national SCSEP grantees. From the amounts remaining after the reservation, the legislation holds grantees harmless at the 2000 level of activity, which requires the Department to allocate 22 percent of funding to State grantees and 78 percent of funding to national grantees. Funding remaining after 2000 level of activity distribution must be divided as follows: up to $35 million will be divided to provide 75 percent to the States and 25 percent to the national grantees. Excess amounts over $35

million will be divided 50 percent to States and 50 percent to the national grantees.

The 2000 Amendments require Governors to submit an annual plan that discusses the number and distribution of eligible individuals in the State, the employment opportunities, the skills of the local eligible population, the locations and populations for which community service projects are most needed and plans for coordinating with WIA. As part of the planning process, the legislation requires the Governor to obtain the advice of title V stakeholders in developing a plan that addresses the equitable distribution of positions in each State. The legislation also allows the Governor to make recommendations on grant proposals to the Department related to the proposed distribution of positions within the State.

Another new provision of the legislation is the establishment of performance measures. The performance measures are designed to monitor the performance of each grantee and provide a mechanism to assist those grantees that need technical assistance to perform better. The performance measures are based on the required indicators listed in section 513(b) of the OAA. For grantees that do not meet the established performance measures, section 514 of the OAA provides for corrective action and sanctions. Section 514 of the OAA also codifies prior regulatory eligibility and responsibility criteria that grantees must meet before receiving SCSEP funds. Finally, section 514 authorizes the Department to fund grants for up to 3 years after the establishment of the regulations and performance measures.

III. Summary and Explanation of the Proposed Rule

This section discusses and explains the specific provisions of the proposed rule. As this legislation has many new provisions, the Department has drafted regulations that respond both to the SCSEP community's concerns and to the Department's interpretation of the statute. The Department obtained viewpoints of the public, including individuals and members of the grantee community, on the new provisions and any other SCSEP provision (regulatory or statutory) or policy. Five work groups were established that included representatives from the national grantee organizations and several States. The work groups addressed the following areas: Performance accountability; operational and policy issues; grant and administrative issues; the State Senior Employment Services Coordination Plan; and technical assistance and consultation. These work groups provided the Department with issue papers and recommendations. Further, the Department held a series of Town Hall Meetings and requested comments through **Federal Register** notices to ensure that the regulations reflect the ideas of interested individuals. The Department has received a number of suggestions through this process. Every effort has been made to incorporate these suggestions to the extent practicable and consistent with applicable statutory requirements.

Subpart A—Purpose and Definitions

This subpart provides a section-by-section overview of the regulations. This subpart also includes a number of definitions that are intended to familiarize the reader with basic elements of the One-Stop Delivery System established under WIA, such as ''core services,'' ''individual employment plan,'' ''local workforce investment area.'' Other definitions such as ''recipient,'' ''subrecipient,'' and ''vendor'' are provided to clarify the use of terminology in Subpart H of these regulations, which is based on uniform administrative requirements, audit requirements, and allowable cost requirements generally applicable to Federal financial assistance programs, including SCSEP. A number of definitions that are well known to those familiar with SCSEP are provided for the benefit of readers who may be less familiar with the program. These include such terms as ''authorized position level'' and ''host agency.''

The Department added a definition of ''national grantee'' for the first time by regulation, although it is supported by a long-standing Department practice. This definition clarifies the list of those entities eligible to receive SCSEP national grant funds. For this purpose, the regulation defines ''public agencies'' as meaning Federal agencies in order to maintain the statutory distinction between national grants and grants to States. Thus, under this definition, State and local public agencies are not permitted to serve as national grantees.

The definition of national grantee in § 641.140, also contains a requirement that the organization must be capable of administering multi-State programs. An organization does not have to operate in more than one State, but must be structured to have the capacity to administer multi-State programs. This requirement provides the Department with the flexibility to negotiate with grantees to ensure that all SCSEP participant slots are covered with no disruptions to the participants. It is the Department's experience that such organizations will be able to run a successful SCSEP program and also meet the statutory administrative cost limitations. Further, it aligns with the current practice of awarding SCSEP funds to organizations that are ''national'' in scope and further distinguishes these grants from grants to States.

Finally, the term ''State grantee'' has been defined for purposes of this regulation to include not only the 50 States, Puerto Rico, and the District of Columbia, but also to include the following territories: Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. ''State'' is defined in section 506(g)(6) of the OAA to specifically exclude the territories. The Department interprets this definition as applying only to section 506 of the OAA, which governs the distribution of funds. In section 506, where the OAA discusses ''State,'' it does so in terms of a State receiving its portion of SCSEP funds. Under section 506, the territories receive a reservation of funds and therefore, do not receive funds as part of the formula distribution among the States. The Department distinguishes this use of the word ''State'' in the funding context from its use in the regulations. Therefore, to ensure that the title V provisions are administered equitably, the Department has defined ''State grantee'' as including the territories. Thus, territories will be held to the same requirements regarding State plans, coordination with the Workforce Investment Act, services to participants, section 502(e), eligibility review, responsibility review, performance measures, sanctions, administrative costs, and appeal procedures as the States.

Subpart B—Coordination With the Workforce Investment Act

This subpart incorporates those provisions of the 2000 Amendments to the Older Americans Act that require coordination with the Workforce Investment Act of 1998 (WIA). This subpart does not cover every WIA provision relevant to SCSEP.

What Is the Relationship Between SCSEP and the Workforce Investment Act? (§ 641.200)

SCSEP is a required partner under the Workforce Investment Act. As such, SCSEP grantees and subgrantees must ensure that they are familiar with the WIA statutory and regulatory provisions. WIA is due to be reauthorized by September 30, 2003. Reauthorization may bring changes in

the law. SCSEP grantees and subgrantees must ensure that they keep current on any changes in the law.

What Services, in Addition to the Applicable Core Services, Must SCSEP Grantees Provide Through the One-Stop Delivery System? (§ 641.210)

The underlying notion of the One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders. The Department envisions that a variety of programs could use common intake, case management, and job development systems in order to take full advantage of the One-Stop Delivery System's potential for efficiency and effectiveness. A wide range of services from a variety of training and employment programs can, therefore, be available through the One-Stop. The proposed regulation requires SCSEP grantees to make arrangements to provide their participants, eligible individuals the grantees are unable to serve, as well as other SCSEP ineligible individuals with access to other services available in the One-Stop.

Does Title I of WIA Require SCSEP To Use OAA Funds for Individuals Who Are Not Eligible for SCSEP Services or for Services That Are Not Authorized Under the OAA? (§ 641.220)

This proposed provision clarifies that in the One-Stop environment, OAA funds may only be used to provide title V services to individuals eligible for SCSEP. Some eligible participants may not be able to receive all of the services he or she requires through SCSEP. Such individuals must be referred to programs under WIA that may assist the SCSEP eligible participant in obtaining a job. The Department encourages grantees to enroll or refer those individuals who do not meet the income eligibility criteria to programs under WIA. Grantees may want to negotiate how these individuals will be served in the Memorandum of Understanding.

Must the Individual Assessment Conducted by the SCSEP Grantee and the Assessment Performed by the One-Stop Delivery System Be Accepted for Use by Either Entity To Determine the Individual's Need for Services in SCSEP and Adult Programs Under Title IB of WIA? (§ 641.230)

There was much discussion during the Town Hall Meetings about whether the One-Stop Delivery System would accept and use SCSEP IEPs as part of the assessment process. This proposed regulation mirrors the statutory requirement at section 502(b)(4) of the OAA and clarifies that the SCSEP IEP and the WIA title I IEP have similar purposes—to determine what services individuals need to meet their employability objectives, which may include transition into appropriate unsubsidized employment. The information collected by each must be sufficient to assist in making an informed judgment between the staff and the individual about the specific service strategy for that individual. The specific activities that may be provided by each program differ. In the SCSEP program, beyond core services, intensive services (such as creation of a SCSEP IEP) and community service activity are the major program components. Some other training services may be provided. Placement in a full-time unsubsidized job is a goal for some participants; others would prefer to have part-time employment, while still others would prefer to continue in a community service activity. The WIA title I program, on the other hand, is aimed at job placement through core services, intensive services, and training. As a practical matter, the SCSEP IEP and WIA IEP must be sufficiently comprehensive to provide the information needed to place a participant who is eligible for both programs in the correct service mix. This may well require modifying existing SCSEP IEP and WIA IEP information collection practices, which should be negotiated during the development of the local MOU.

There was also much related discussion that demonstrated concern that the SCSEP IEP would not be accepted at the One-Stop, especially if WIA developed a more extensive IEP than the SCSEP IEP, when the participant was assessed through SCSEP and not at the One-Stop. This outcome is clearly not intended and the Department expects One-Stop operators to accept SCSEP IEPs and SCSEP grantees to accept One-Stop originated IEPs. Both SCSEP's IEP and WIA's IEP are meant to be ''living documents,'' updated on a continuing basis as part of an ongoing assessment process. The intent of the provision authorizing WIA and SCSEP grantees to use each other's IEPs is simply to avoid unnecessary duplication and to reduce the burden on participants.

Are SCSEP Participants Eligible for Intensive and Training Services Under Title I of WIA? (§ 641.240)

Under the OAA, although SCSEP participants are not automatically eligible to receive intensive and training services under WIA, Local Boards now have the authority to deem SCSEP participants eligible to receive intensive and training services under title I of WIA. WIA eligibility is not based on income except in the adult program where a local area determines that funds are insufficient; rather, WIA eligibility is based on the need for and utility of intensive and training services to obtain employment. SCSEP participants who seek unsubsidized employment may need training services, which may be provided by the SCSEP grantee, subgrantee, host agency, or by another provider, like the WIA adult program, as agreed to in the MOU. The SCSEP IEP itself is an intensive service.

The issue of eligibility for WIA title I adult services has been raised by some SCSEP partners, who are concerned that the WIA title I grantees would refuse to provide intensive or training services to SCSEP participants because their income, including their OAA title V payments, would be too high to meet the WIA title I local priority of service policies. The Department does not believe that title V payments should be considered income when determining an individual's eligibility for intensive or training services for two reasons. First, the individual's income level is already considered at the time of enrollment in SCSEP for initial eligibility purposes. Second, SCSEP provides work opportunities that are analogous to work experience activities under 20 CFR 663.200 of the WIA regulations, which are not counted against the individual's income. This type of income historically has not been included as wages for eligibility determination purposes. If work experience payments were to be considered as income, it could mean that the individual might be precluded from other program activities, which is clearly not intended.

Subpart C—The State Senior Employment Services Coordination Plan

This subpart of the regulations implements the new provisions in section 503 of the OAA, which direct the Governor of each State to submit a State Senior Employment Services Coordination Plan (State Plan) to the Department annually. State Plan development is a participatory process that includes Governors, State and area agencies on aging, State and Local

Boards, national grantees, and stakeholders in the aging network. It is intended to ensure a participatory planning process and to provide an opportunity for public comment on the State Plan for SCSEP services within the State. The State planning process requirements do, however, provide an exemption for national grantees serving older American Indians at section 503(8). Under this provision, national grantees serving older American Indians are not required to be a part of the State planning process, although the Department encourages them to participate. These national grantees are required to collaborate with the Department in developing a plan for projects and services to older American Indians. The Department will provide instructions on how and when this collaboration will occur.

The State Plan is separate and distinct from the SCSEP grant application and the plan required under WIA. The Department will provide instructions on how these three types of plans relate to each other in an administrative issuance.

Section 503 also allows the Governor to submit recommendations to the Department on any application for SCSEP funds that proposes a project in his or her State. This provision is limited to recommendations on the proposed distribution of positions and may impact the Department's decision to award or not award SCSEP funds to a particular applicant.

What Is the State Plan? (§ 641.300)

This proposed section defines the State Plan and emphasizes that it is intended to foster collaboration among SCSEP stakeholders.

Who Is Responsible for Developing and Submitting the State Plan? (§ 641.305)

Although developing the State Plan is a participatory process involving SCSEP grantees operating programs within the State, the OAA assigns the responsibility for developing the Plan to the Governor.

May the Governor Delegate Responsibility for Developing and Submitting the State Plan? (§ 641.310)

This section permits the Governor to delegate responsibility for the State Plan. The Department recognizes that the State Plan requires a sizable time commitment to make certain that stakeholders are consulted, to collect and publish comments, and submit a well-drafted State Plan for Department review. Therefore, the Department is allowing Governors to utilize their resources that are best suited for developing the State Plan, consistent with any applicable State laws or regulations. A Governor who chooses to delegate his or her State Plan responsibility will be required to submit a signed statement to the Department indicating such intent. The Department will issue the required format for this statement in an administrative bulletin. The Department will also accept the signature of the Governor's delegate for the State plan as long as there is a valid statement on file indicating the Governor's intent.

Who Participates in Developing the State Plan? (§ 641.315)

This provision lists the stakeholders and others that the Governor is required to consult for advice and recommendations related to the State Plan. It is important that all SCSEP grantees operating programs within the State, including national grantees serving older American Indians, the State and Local Boards, and the State and area agencies on aging have an opportunity to actively participate in developing the State Plan. The development of the State Plan is a participatory process that is designed to allow for comments from all interested organizations and individuals.

Must all National Grantees Operating Within a State Participate in the State Planning Process? (§ 641.320)

Section 503(a)(2) of the OAA requires the Governor to seek the advice and recommendations of a number of different parties for providing SCSEP services in the State, but does not require national grantees to participate in the State planning process. Proposed § 641.320 places a requirement on national grantees to collaborate with the Governors of each State where they operate a SCSEP program consistent with the intent of the statute. The Department strongly believes that it is in the best interest of all national grantees to work with the Governors in this process. Not only will national grantees be a part of the planning process for serving SCSEP participants, but the decisions made as a result of this consultation help national grantees meet the eligibility criteria at section 514(c)(5) of the OAA. Further, any national grantee that fails to collaborate for State Plan purposes may be deemed ineligible for SCSEP funds in the following Program Year under section 514(c)(5).

The proposed regulation exempts national grantees serving older American Indians, who may choose not to participate in the State planning process, consistent with the statute, although the Department encourages American Indian grantees to participate in the State planning process. These national grantees must collaborate with the Department to develop a plan for projects and services to older American Indians in the locations that they serve.

What Information Must Be Provided in the State Plan? (§ 641.325)

This section lists the minimum requirements of the State Plan consistent with section 503(a)(4) of the OAA. The Department will issue more detailed instructions about what must be included in the State Plan. Governors are encouraged to use the equitable distribution report that State grantees submit to the Department each year in preparing their State plans. The Department will also provide more detailed information about the collaboration efforts to grantees serving older American Indians.

How Should the State Plan Reflect Community Service Needs? (§ 641.330)

This proposed provision expands on section 503(a)(4)(E) of the OAA, which requires the State Plan to identify and address the localities and populations for which community service projects of the type authorized by this title are most needed.

How Should the Governor Address the Coordination of SCSEP Services With Activities Funded Under Title I of WIA? (§ 641.335)

Proposed § 641.335 expands on the State Plan requirement found in section 503(a)(4)(F) of the OAA, which requires coordination of SCSEP activities in the State with WIA activities carried out in the State.

Must the Governor Submit a State Plan Each Year? (§ 641.340)

The Department received suggestions through the Town Hall Meetings that the State Plans and the SCSEP grants cover the same time period, with an annual modification process to allow for any necessary revisions. The Department recognizes the merits of these suggestions. In addition, the Department recognizes that the data used in developing State Plans may not be updated annually and that a substantial amount of staff time is required to fully carry out the State planning requirements. Therefore, the Department is not requiring each State to develop and submit a completely new State Plan each year. However, the Department will require States to seek the advice and recommendations of the individuals and organizations identified in the statute at section 503(a)(2) about

what changes are needed, if any, and to publish the changes to the State Plan for public comment. States will then submit a modification to the Department based on any updated information, including any new comments received and a summary of those comments. This slightly abbreviated process allows States to comply with the legislative requirements, but reduces the burden of the requirement.

What Are the Requirements for Modifying the State Plan? (§ 641.345)

Section 641.345 discusses when modifications to the State Plan are required. In general, modifications are required when there is a major change affecting the underlying basis for the State Plan. This section mirrors the WIA regulations at 20 CFR 662.230.

How Should Public Comments Be Solicited and Collected? (§ 641.350)

Because State procedures vary, the Department recommends that Governors use established methods for soliciting and collecting public comments. In general, however, soliciting and collecting public comments should ensure that the title V planning process is coordinated with other related State planning processes, such as the WIA 5-year plan and the title III OAA plan. The process should be open and inclusive in order to provide a meaningful opportunity for the public to review the proposed plan and offer comments.

Who May Comment on the State Plan? (§ 641.355)

This section clarifies that any individual or organization may comment on the State Plan, which is consistent with section 503(a)(2) of the OAA.

How Does the State Plan Relate to the Equitable Distribution (ED) Report? (§ 641.360)

The equitable distribution report is a report that shows where positions are located throughout a State on a grantee-by-grantee basis and is required by section 508 of the OAA. State agencies are responsible for preparing it at the beginning of each fiscal year. SCSEP grantees use the equitable distribution report to improve on the distribution of SCSEP positions within the State.

The information contained in the ED report is used in preparing the State Plan; however, the State Plan requires additional information, such as plans for facilitating the coordination of activities of grantees in the State under WIA, and consultation with individuals and organizations in the State. The State Plan is submitted annually. The Department intends for these documents to work together to ensure that services are fairly distributed in the State.

How Must the Equitable Distribution Provisions Be Reconciled With the Provision That Disruptions to Current Participants Should Be Avoided? (§ 641.365)

The Department recognizes the difficulty of balancing these provisions in the daily operation of SCSEP projects. Section 508 of the OAA requires the State agency for each State receiving funds to prepare and submit a report to the Department each year on how the State is allocating its SCSEP funds in an equitable manner taking the priorities established in the State Plan into consideration. Section 503(a)(6) of the OAA provides that when developing the State Plan, disruptions to current participants must be avoided to the greatest extent possible. The Department proposes, in § 641.325(h) to require Governors to include a description of the steps that are being taken to comply with section 503(a)(6) on avoiding disruptions in the State Plan. When there is new census data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any other reason, the Department recommends a gradual shift that encourages current participants in subsidized community service positions to move into unsubsidized jobs to make positions available for eligible individuals in areas where there has been an increase in the eligible population. The Department encourages interested organizations and individuals to use the State Plan review and comment process to make recommendations for how their State can achieve an equitable distribution of SCSEP positions while avoiding disruptions to current participants. The Department does not define disruptions to mean that participants are entitled to permanently remain in their current subsidized community service employment positions. As discussed in §§ 641.570 and 641.575, grantees may, under certain circumstances, place time limits on an SCSEP community service assignment, thus permitting positions to be transferred over time.

Subpart D—Grant Application, Eligibility, and Award Requirements

This subpart covers the grant application, eligibility, and award requirements for all SCSEP grants under section 506 of the OAA. The procedures in this subpart support increased emphasis on the grantees' accountability for results in order to achieve enhanced program performance. Relevant sections describe organizations eligible to apply for SCSEP grants, application requirements, eligibility criteria, responsibility reviews, and how the Department will select grantees. The OAA contains a new requirement that the Department arrange for competition should grantees fail to meet performance measures, which are discussed in Subpart G. The OAA also reinforces the responsibility tests that were established in the former regulations. Should a grantee fail one or more of these tests, the Department is required to compete the funds of such grantee. This subpart provides procedures that the Department will use when awarding SCSEP funds under competitive and noncompetitive conditions.

What Entities Are Eligible To Apply to the Department for Funds To Administer SCSEP Community Service Projects? (§ 641.400)

The OAA, at section 502(b)(1), authorizes the Secretary to enter into agreements with State and national public and private nonprofit agencies and organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations.

This proposed rule clarifies the Department's policy on how these entities may apply for SCSEP funds. The proposed rule clarifies the list of eligible entities that may apply for SCSEP funds to preserve the balance of funds established in section 506 of the OAA, as well as the definitions of ''national grants'' and ''State'' in section 506(g)(5) and 506(g)(6). Entities that are eligible to apply for national grants are: nonprofit organizations, Federal public agencies, and tribal organizations. These entities must be capable of administering a multi-State grant. States, agencies of a State, political subdivisions of a State, and combinations of political subdivisions of a State are not eligible to apply for national grant funds. The Department has defined ''public agencies'' as Federal agencies in order to maintain the statutory distinction between national grants and grants to States and to give effect to the use of the separate terms ''national public and private nonprofit agencies and organizations'' and ''agencies of a State government or a political subdivision of a State * * * or a combination of such political subdivisions' in section 502(b)(1) of the OAA. The definition of national grantee is expanded in § 641.140 to mean an organization that

is capable of administering multi-State programs. An organization does not have to operate in more than one State, but must have the capacity to administer multi-State programs. This requirement allows the Department to negotiate with successful applicants to ensure that positions that did not receive a proposal continue to be served in an effort to minimize disruptions to participants. This requirement also aligns with the current practice of awarding SCSEP funds to organizations that are ''national'' in scope and further distinguishes these grants from grants to States. As such, State and local public agencies are not permitted to serve as national grantees.

Section 514(e)(3) of the OAA lists the eligible entities that can apply for national grant funds in a State, but as a result of poor performance. Under section 514(e)(3), States, nonprofit organizations, and public agencies are eligible for a transfer or competition of funds when a national grantee in a State fails to meet its performance measures. This list of eligible entities is discussed further at § 641.760 of Subpart G (performance measures).

In the case of grants to States, the Department is required to allocate SCSEP funds to each State under section 506(e) of the OAA. However, it is often an agency of the State, such as the State agency on aging, that operates SCSEP projects for the State. The Department will continue the practice of allocating funds to each State or the State's designee (such as the State agency on aging). Other entities, such as, political subdivisions, a combination of political subdivisions, or a national grantee operating in the State may operate SCSEP projects on the State's behalf if State policy permits; however, these entities may only apply independently for the State's funds as a result of a competition under section 514(f) of the OAA. The Department believes that this list of eligible applicants is a common sense approach to managing the State portion of the SCSEP funds. It also aligns with current State practice of selecting an agency, local government, or national grantee operating in the State as agents or subgrantees to administer its SCSEP projects. However, as discussed in § 641.881, the Department will not negotiate with or directly fund such entities. The State remains responsible for receiving the grant and for selecting an agent or subgrantee to operate the grant in accordance with its own procurement procedures.

How Does an Eligible Entity Apply? (§ 641.410)

Proposed § 641.410 directs interested applicants, including States, to follow instructions in administrative issuances to apply for a SCSEP grant. The Department decided not to include more specific information in this section because the parameters for applying for a SCSEP grant may change from Program Year to Program Year. Also, the instructions for State applications may vary from the application instructions for national grants.

Proposed paragraph (b) of this section reiterates the statutory requirement that applicants for national grants, with the exception of organizations applying to serve older American Indians, must submit a copy of their applications to the Governor of each State where a project is proposed prior to submission to the Department. This provision is intended to allow the Governor to make recommendations on position distributions in the State only and not on the quality of an application or whether the Department should fund a particular applicant. In the case of a full and open competition, Governors may elect to only review the applications of successful applicants to reduce the burden on the States and applicants.

Organizations proposing to serve older American Indians do not have to meet this requirement because they are exempt from State planning under section 503(a)(8) of the OAA. The Department encourages such entities to submit applications to the Governors in the State(s) they propose to serve so that the Governors may better plan the activities in their State.

Paragraph (c) of this section allows the States to apply for State grant funds as a part of its WIA State Unified Plan.

What Factors Will the Department Consider in Selecting Grantees? (§ 641.420)

This section describes the selection criteria to be used on a program-wide basis for the selection of all SCSEP grantees, whether selected competitively or on a noncompetitive basis. This proposed rule identifies the eligibility and responsibility requirements in section 514 of the OAA. The selection criteria must also be used to replace any grantee that fails to meet the performance measures listed in section 513 of the OAA and when new or additional grantees are funded.

What Are the Eligibility Criteria That Each Applicant Must Meet? (§ 641.430)

The eligibility criteria listed in this proposed section reflect the statutory language at section 514(c) of the OAA dealing with eligibility criteria, which must be reviewed each time an applicant applies for SCSEP funds. The OAA codified the provisions of the previous regulations. Proposed § 641.430(e) clarifies the statutory language to include the One-Stop center in the coordination requirement so that applicants understand that such coordination is mandated. The OAA, at section 514(c)(7), permit the Department to add additional criteria as appropriate to minimize disruptions to current participants. The Department has added proposed § 641.430(g)—a requirement to minimize disruptions. The Department must conduct an eligibility review each time an applicant applies for SCSEP funds.

What Are the Responsibility Conditions That an Applicant Must Meet? (§ 641.440)

This section contains the responsibility review provisions codified in section 514(d) of the OAA. These provisions were published in the previous regulations. The responsibility review provisions in this section address such matters as debt recovery deficiencies, significant fraud or criminal activity, serious administrative deficiencies such as failure to maintain a financial management system, maintaining excess cash or having deficient internal controls, willful obstruction of auditing or monitoring or failure to correct deficiencies, failure to provide services to applicants or to meet applicable performance measures, failure to return outstanding cash advances, failure to submit required reports, failure to ensure subgrantee compliance with applicable audit requirements, and final disallowed costs in excess of five percent of the grant or contract award.

The Department understands that Congress' intent was to make the SCSEP program more performance-oriented and to assure that the SCSEP was well managed. Consistent with that intent, the Department intends to enforce the responsibility tests more strictly than it has in the past.

The Department is interpreting the first criterion to mean that if an applicant fails to make payments on a debt owed to the Department, whether incurred on its own or through subgrantees or subcontractors, after the grantee has received three demand letters from the Department, it will no longer be eligible to receive SCSEP funds. This interpretation is consistent with the former SCSEP regulations, as well as the Department's requirements for finding any grantee or contractor

responsible as outlined in 29 CFR 95.14 and 97.12.

The Department will determine whether an applicant for SCSEP funds has met the responsibility requirements before awarding funds.

Are There Responsibility Conditions That Alone Will Disqualify an Applicant? (§ 641.450)

The OAA defines two criteria that will automatically disqualify an applicant. They are: (1) Efforts by the organization to recover debts, after three demand letters have been sent, that are established by final agency action and have been unsuccessful, or that there has been failure to comply with an approved repayment plan; and (2) established fraud or criminal activity of a significant nature within the organization.

As discussed in § 641.440, the Department is interpreting the first criterion to mean that if an applicant fails to make payments on a debt owed to the Department, whether incurred on its own or through subgrantees or subcontractors, after the grantee has received three demand letters from the Department, it will no longer be eligible to receive SCSEP funds. The Department interprets the second criterion strictly. A plain reading of the statute indicates that whenever there is fraud or criminal activity within an organization of a significant nature, the entity must be deemed non-responsible. Under this interpretation, the entity could be deemed non-responsible even if the act was done by an individual within the organization without the approval or knowledge of the organization. The remaining responsibility tests require a substantial or persistent (for 2 or more years) finding before the applicant is found ineligible.

How Will the Department Examine the Responsibility of Eligible Entities? (§ 641.460)

This proposed regulation addresses how the Department will examine applicants to determine if they are responsible as required by section 514 of the OAA. Section 514(d)(1) specifically requires the Department to review available records to assess an applicant's overall responsibility to administer Federal funds. Additionally, section 514(d)(2) allows the Department to consider any other information relevant to responsibility, including the applicant's history with managing other grant funds.

Under What Circumstances May the Department Reject an Application? (§ 641.465)

Once an application has been submitted, whether competitively or non-competitively, the Department may question any proposed project component if it believes that the component will not serve the purposes of SCSEP. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative. The Department may also reject an application, if in the Grant Officer's opinion, the application does not serve the program well, or if the applicant does not meet the eligibility or responsibility criteria. Where grants are competitively selected, the Department may reject an application that is determined to be less advantageous to the Department than another competitive application, even if the application is out of rank order.

What Happens if an Applicant's Application Is Rejected? (§ 641.470)

This section is reserved for the Department's policy on providing remedies for applicants that are not selected to receive a SCSEP grant and that are successful in appealing the Department's decision.

The Department is particularly interested in receiving comments on this section. The Department is particularly interested in comments on available remedies and the timing of those remedies.

Competitions for SCSEP projects will not necessarily be ''one-on-one'' competitions. Because applicants may seek to operate projects scattered all over the country, applications may not necessarily compete against each other on a one-on-one basis. An applicant might propose projects in 10 different States, and compete against one of more other applications for each of the 10 projects. An applicant that proposes to serve one area may compete against several applicants, each of which seeks only a portion of that area. In addition, the Department may negotiate a grant award that differs somewhat from the original application. The Department also has an obligation to minimize disruption to existing participants. Finally, the Department's experience is that there is a certain minimum size grant needed to give a grantee a good chance at success within the program's administrative cost limits (which is a grant size of approximately $6 million or approximately 840 positions), and to adhere to the required level of activities in section 506 of the OAA.

These factors can lead to some complications in fashioning a remedy that will meet the Department's obligations to minimize disruptions and that will ensure that programs are successful. How should a remedy be fashioned that will take these factors into account? For example, how should the remedy be fashioned if an appeal succeeds only in part and the resulting award would be below the minimum standards for a grant or if the result would leave an existing grantee below that standard? How should the remedy take into account the results of negotiations? If, as a result of negotiations, a grantee has acquired additional projects that neither it nor its competitor applied for, should the remedy take that into account? If an appeal is successful, to what extent should the Department be able to negotiate the grant agreement that will result? May the Department propose a different configuration of projects than was applied for in order to minimize disruptions or optimize results for the successful appellant and other existing grantees? If the Department can negotiate with the successful appellant, what happens if the negotiations are not successful? In cases where the applicant to jurisdiction relationship is not one-on-one, complexities of arranging a grant that will both minimize disruption and provide both the successful appellant and the grantee(s) that lose projects with grants that can be successfully operated, should the remedy be limited to recovering the cost of creating a proposal or something else? Are the remedies currently available under the Workforce Investment Act (WIA), Migrant and Seasonal Farmworker Program (*see* 20 CFR 633.205) appropriate for this program and why or why not? What remedy should be available for one-year grants?

Another important issue is the timing of the remedy. How long is an appropriate transition period? What factors associated with the complexity of the transition involved should affect the length of an appropriate transition period? Should a period of time for negotiations be built in? How should the Department remedy an applicant when the decision was rendered in close proximity to the next program year? Should there be a cut off point after which a grant will not be awarded as there is in the WIA Migrant and Seasonal Farmworker Program? What should that cut-off point be?

May the Governor Make Recommendations to the Department on Grant Applications? (§ 641.480)

Proposed § 641.480 clarifies the Governor's statutory authority under section 503(a)(5) of the OAA to make recommendations to the Department on grant applications before funds are awarded. The Governor's recommendations must relate to the distribution of positions in the State. Any comments received relating to the quality of a particular application will not be considered. Under non-competitive conditions, the Governor may make recommendations on all submitted applications. Under competitive conditions, the Governor has the option of either making recommendations on every proposal that will be submitted to the Department or providing recommendations on the applications of successful applicants. It is incumbent on each Governor to inform the Department whether he or she wishes to review all applications or only successful applications. As stated in § 641.410, organizations applying to serve older American Indian participants are exempt, but are encouraged to submit applications to the Governor in the State(s) they are proposing to serve.

When May SCSEP Grants Be Awarded Competitively? (§ 641.490)

Proposed § 641.490 outlines the circumstances under which the Department may compete SCSEP funds. Section 514 of the OAA requires a competition for national grantee, national grantee in a State, or State funds if the organization fails to meet its performance measures or fails to meet the eligibility or responsibility tests of section 514(c) and (d) of the OAA.

The Department may also compete national grant funds through a full and open competition. The details of such competition will be issued through a Solicitation for Grant Application and published in the **Federal Register**. The Department favors full and open competition because it provides the Department with an opportunity to ensure that the best applicants are awarded grants and the program is administered to its full potential. It also allows new and different entities, including faith-based and community-based organizations, to become a part of the grantee community.

Subpart E—Services to Participants

This subpart covers services to SCSEP participants. More specifically, it covers who is eligible to receive services, priorities in enrollment of participants, the types of services and benefits that participants may receive, termination from the program, and the grantee's responsibility to participants.

Who Is Eligible To Participate in the SCSEP? (§ 641.500)

Proposed § 641.500 establishes the statutorily defined eligibility criteria. According to section 516(2) of the OAA, only those individuals who are at least 55 years of age and a member of a family with an income 125 percent or less of the poverty guidelines are eligible to receive SCSEP services. Participant income eligibility criteria was the area that received the most attention in Town Hall Meetings and recommendations submitted in response to **Federal Register** notices. Individuals offered various suggestions, all directed at providing greater flexibility in the income eligibility criteria. More specifically, some individuals suggested a higher income threshold to serve those individuals who may be just above the 125 percent income threshold issued by the Department of Health and Human Services and approved by the Office of Management and Budget. The Department has decided not to increase the income eligibility threshold because SCSEP currently serves only a small percentage of individuals who are within the 125 percent income threshold. Individuals who are in need of the services provided under the SCSEP but who do not meet the income eligibility requirement, should be referred to or enrolled in WIA.

When Is Eligibility Determined? (§ 641.505)

This section discusses when the eligibility of a participant is determined. Clearly, the first time eligibility is determined is when an individual applies to participate in SCSEP. Once an individual becomes a SCSEP participant, however, grantees are responsible for verifying the individual's income eligibility at least once every 12 months. Grantees are encouraged to verify a participant's income more frequently, however, when circumstances dictate.

What Types of Income Are Included and Excluded for Participant Eligibility Determinations? (§ 641.507)

The Department is seeking comments on the types of income that grantees must consider when determining a participant's eligibility. Older Worker Bulletin 95–5 lists the current inclusions and exclusions for determining a participant's income. The Department is specifically seeking comments on whether certain provisions should be consolidated or eliminated, or if other new categories should apply. The Department is considering eliminating the exclusion of the first $500.00 of a participant's income for re-certification purposes because this provision is not consistent with the income eligibility requirements under the 2000 Amendments. *See* OW Bulletin 95–5, section 2(g) under the Exclusions. Further, in order to serve the populations that the program is intended to serve, (*i.e.,* those most in need), the Department is also considering placing limitations on the amount of assets a participant may have to be eligible for the program. *See* OW Bulletin 95–5, section 2(h) under the Exclusions. Similarly, the Department is considering placing limitations on the amount of one-time unearned income that may be excluded. *See* OW Bulletin 95–5, section 2(j) under the Exclusions. The Department intends to provide additional guidance on the calculations through an administrative issuance.

What Happens if a Grantee/Subgrantee Determines That a Participant Is No Longer Eligible for the SCSEP Due to an Increase in Family Income? (§ 641.510)

Grantees are required to terminate participants who are no longer income eligible for the program according to § 641.580. Participants who are no longer income eligible for SCSEP must receive a written notification of termination within 30 days of the termination date. Grantees must assist these individuals by referring them to the WIA One-Stop or to another appropriate partner program. (*See* § 641.255). Any participant who disagrees with a termination on the basis of income may grieve the decision according to the grantee's grievance procedures in accordance with Subpart I of this regulation.

How Must Grantees/Subgrantees Recruit and Select Eligible Individuals for Participation in the SCSEP? (§ 641.515)

Proposed § 641.515 outlines the general statutorily required means for recruiting and selecting eligible individuals for participation in SCSEP. Generally, grantees are required to develop a method for recruiting and selecting eligible individuals. To the extent possible, grantees must meet the statutory requirement at section 502(b)(1)(M) to develop methods of recruitment and selection that offer services to minorities, limited English-speaking, and Indian eligible individuals, and eligible individuals who have the greatest economic need, in proportion to their numbers in the State

and based on the rates of poverty and unemployment.

Grantees are also required by section 502(b)(1)(H) of the OAA, to list job vacancies with the State Workforce Agencies and utilize existing methods of recruitment and selection, including by participating in the One-Stop.

Beyond these requirements, grantees have a great deal of flexibility to determine how to recruit and select individuals and are encouraged to be as creative as possible.

Are There Any Priorities That Grantees/Subgrantees Must Use in Selecting Eligible Individuals for Participation in the SCSEP? (§ 641.520)

This section emphasizes the statutory requirement at section 516(2) of the OAA, which requires that priority of services be given to individuals who are at least 60 years old, as well as the veterans' priority requirement in the Jobs for Veterans Act, Pub. L. 107–288 (2002). The latter requirement provides a priority of services for veterans and for certain spouses: Spouses of a veteran who died of a service-connected disability; spouses of a member of the Armed Forces on active duty, who has been listed for a total of more than 90 days as missing in action, or who has been captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power; spouses of any veteran who has a total disability resulting from a service-connected disability; and spouses of any veteran who died while a disability so evaluated was in existence. To receive the priority, the veteran or qualified spouse must meet program eligibility requirements.

The Department interprets the Jobs for Veterans Act so as to harmonize the two priority provisions. Under this interpretation, both priorities would apply. That is, within the group of eligible individuals age 60 and over, the veteran or qualified spouse would receive SCSEP services before non-veterans within that age group. Within the group of individuals who are age 55 to 59, veterans and qualified spouses would again receive a priority over other eligible individuals.

Are There Any Other Groups of Individuals Who Should Be Given Special Consideration When Selecting SCSEP Participants? (§ 641.525)

In addition to the priorities outlined in § 641.520, the OAA also require grantees to give special consideration to individuals who have income below the poverty level, who have poor employment prospects, who have the greatest social and/or economic need, or who are minorities, limited English speaking, or who are Indians, to the extent feasible. The addition of the priority under the Jobs for Veterans Act does not alter this preference. These preferences operate within the context of the two priorities (age and status under the Jobs for Veterans Act); that is, grantees should apply the priority in selecting among individuals who are eligible, and then provide services within the priority to those who meet the preference first.

Must the Grantee/Subgrantee Always Select Priority or Preference Individuals? (§ 641.530)

The statutory priorities must always be applied first. However, the Department understands that there may be a limited number of individuals who fall outside of the prescribed statutory preference characteristics, but who may still be in need of SCSEP services. The Department is providing grantees/subgrantees with the flexibility to exercise their judgment when they determine that a non-preference eligible individual should receive services over a preference eligible individual described above. For example, grantees/subgrantees may choose to serve former SCSEP participants who left the program due to illness and now seek to return to the program, or they may choose to serve a former SCSEP participant who was placed in an unsubsidized job and who seeks to return to the program, over the preference individuals. The flexibility to serve these individuals reassures participants who leave the program under these circumstances and can be used as a motivator to encourage them to take unsubsidized jobs. Grantees should take care to document why a particular participant who is not entitled to a preference has received services. Grantees must balance the use of this discretion with the performance measures in subpart G that require grantees to service those of greatest economic need, greatest social need, or poor employment history or prospects and must not use this discretion to avoid applying the statutory priorities. The Department intends to monitor these requirements through the quarterly reports as well as when determining whether a grantee has met its performance measures.

What Services Must Grantees/Subgrantees Provide to Participants? (§ 641.535)

This section sets forth those services that grantees/subgrantees must provide to all SCSEP participants. It includes a listing of what each participant assessment must include and clarifies that the information gathered during the participant assessment must be used as the basis for preparing the SCSEP IEP. It is particularly important that grantees thoroughly assess each participant and ensure that all of the required information is included in the SCSEP IEP, since it is considered an intensive service under title I of WIA. Assessments must be updated on a quarterly basis so that the SCSEP IEP is a ''living document.'' The information gathered during the assessment and recorded in the IEP serves as the basis for determining the services that a participant needs, most appropriate host agency assignments/reassignments for participants and for ensuring that participants are getting the training necessary to achieve their unsubsidized placement goals.

The listing of services in proposed § 641.535 is not intended to be all-inclusive. Grantees should refer to operating procedures and guidelines issued by the Department, such as Older Worker Bulletins and technical assistance guides, for additional requirements. Participants may not be enrolled in SCSEP solely for the purpose of receiving job search assistance and job referral services. SCSEP staff working in a One-Stop Delivery System, however, may provide these services to individuals who are not being enrolled in the SCSEP, as long as the staff time is appropriately charged to the appropriate program under the WIA cost allocation principles or the SCSEP staff may refer such individuals to appropriate One-Stop partners.

What Types of Training May Grantees/Subgrantees Provide to SCSEP Participants? (§ 641.540)

Training may take many forms, including skills training, on-the-job training, work experience, community service training, job search and job referral services. Training may be provided through lectures, seminars, classroom instruction, individual instruction, or other arrangements, including, arrangements with other workforce development programs. The Department also encourages participants to continue to self-develop by engaging in training through other programs or sources when they are not working in a community service activity. The Department believes that self-development training is beneficial to participants because it facilitates their placement into unsubsidized employment.

Also, the Department expects grantees to review regulations outlining the limitations on the use of funds and the OMB cost principles when proposing to

use funds for travel or room and board associated with training.

Only a limited amount of SCSEP funds are available for training purposes. SCSEP grantees/subgrantees should look to other resources, such as those available under title I of WIA, for training of SCSEP participants.

What Supportive Services May Grantees/Subgrantees Provide to Participants? (§ 641.545)

Section 641.545 lists some of the supportive services that grantees/subgrantees may provide to participants. Supportive services may be provided while a participant is enrolled in the SCSEP and until a participant has been retained by an employer for 6 months. This list of supportive services is not intended to be all-inclusive. Grantees/subgrantees should seek to ensure that participants receive those supportive services necessary for them to participate in the program and to realize the goals set forth in their SCSEP IEPs. Grantees are especially encouraged to ensure that individuals who are placed in unsubsidized positions have the necessary supportive services to enable them to retain those positions. Since only a limited amount of SCSEP funds are available to provide supportive services, grantees/subgrantees should seek to obtain such services from other sources.

What Responsibility Do Grantees/Subgrantees Have To Place Participants in Unsubsidized Employment? (§ 641.550)

Because a major purpose of SCSEP is to increase the number of individuals who may participate in the program, grantees/subgrantees should make every reasonable effort to prepare participants who desire unsubsidized employment for such employment, in accordance with the employability goals listed in their SCSEP IEPs. In offering participants unsubsidized employment, grantees/subgrantees must take into account whether the job will allow participants to achieve economic self-sufficiency. Grantees must also strive to match the participant with the best job instead of just filling jobs with participants. The objective of the program is to place participants in positions that will maximize the use of their skills, based on their job readiness, skills, and preferences. Thus, grantees must contact private and public employers directly or through the One-Stop to develop or identify suitable unsubsidized employment opportunities. Also, grantees and subgrantees must encourage host agencies to assist participants in their transition to unsubsidized employment by hiring the participants who are placed there through the community service component of the SCSEP.

What Responsibility Do Grantees Have to Participants Who Have Been Placed in Unsubsidized Employment? (§ 641.555)

This proposed section outlines a grantee's responsibilities to participants after they have been placed in unsubsidized positions. This section requires grantees to contact placed participants within 6 months of the starting date to determine whether the employer has retained them. This provision is consistent with the statute, at section 513, which uses retention in unsubsidized positions after 6 months as a performance measure. (Refer also to subpart G on performance measures). Therefore, grantees must contact participants 6 months after placement to ensure that participants are still employed. Grantees/subgrantees are encouraged to conduct follow-up before 6 months when possible, to ensure that the placement is successful. Grantees/subgrantees may also want to check with the employer at this time to see if it has other positions that may be offered to SCSEP participants.

During this period of follow-up grantees are permitted to provide supportive services to participants to the extent possible. The Department encourages grantees to provide supportive services to participants during this time because it ensures that participants are able to remain in the unsubsidized position. The Department distinguishes supportive services from wages, and these services are therefore not considered a subsidy. Supportive services are discussed at § 641.545.

May Grantees Place Participants Directly Into Unsubsidized Employment? (§ 641.560)

This proposed rule emphasizes the importance that grantees serve the most difficult seniors to place. Grantees are encouraged to work with individuals who are in need of skills training, *etc.,* and develop those individuals through the assessment and IEP so that ultimately they may be placed in an unsubsidized position. Individuals who already have employable skills and who may be directly placed in an unsubsidized position without further development should be referred to the services provided under the One-Stop Delivery System.

What Policies Govern the Provision of Wages and Fringe Benefits to Participants? (§ 641.565)

This provision requires grantees to pay participants the highest applicable minimum wage for time spent in orientation, required training, and for work in community service assignments. The applicable minimum wage may be the highest of the Federal minimum wage, the State or local minimum wage, or the prevailing rate of pay for persons employed in similar public occupations by the same employer. The Department is aware that because funding calculations are statutorily based on the Federal minimum wage, when a particular grantee is required to pay at a higher minimum wage for its location, the result is that the program is under-funded for its activities.

A number of stakeholders asked that the Department address the situation of States that have a higher minimum wage than the Federal minimum wage. The two main suggestions were that either grantees in those States should receive additional funding to cover their additional expenses for wages, or that the Department should reduce the number of positions for which grantees in those States will be held accountable, particularly in light of the new emphasis on performance measures.

The Department agrees that grantees in States with a higher-than-Federal minimum wage, or similarly, grantees in areas where the prevailing rate of pay for persons employed in similar public occupations by the same employer is higher than the Federal minimum wage, will not be able to fully fill the authorized level of positions allotted to them. If the Department receives additional appropriations that are not required to create more positions, the funding gap will decrease. Also, it is not the Department's intent for this issue to negatively impact grantees when reviewing whether grantees have met their performance measures. The Department will address this issue and its impact on the number of positions that may be filled through the performance accountability process in subpart G.

Paragraph (b) of this section addresses fringe benefits. With some exceptions, discussed in the regulation, grantees must assure that participants receive the fringe benefits required by law. Fringe benefits must also be administered uniformly among participants of a grantee's projects, unless the Department waives this requirement because it is in the best interest of the participants. Physical examinations are

a fringe benefit that grantees/subgrantees must offer annually to each participant. Physicians commonly recommend annual physical examinations for people over the age of 50 as a means of early identification of any serious medical problems. The Department's policy is to actively promote this program benefit for each participant. Grantees/subgrantees should encourage participants to take advantage of this important benefit.

Grantees may not provide physical examinations to determine a participant's ''fitness to work.'' Physicals can be useful, however, in helping participants make informed judgments about their ability to perform certain work assignments. After an individual is enrolled (on the payroll) and the grantee/subgrantee is developing a suitable assignment, job-related medical inquiries are permissible to assist in matching the participant with an assignment. These inquiries, if made, should be made of every participant to ensure that each participant is receiving the same level of service.

The Department continues the policy of discouraging the use of title V funds for unemployment insurance and retirement fund contributions.

Is There a Time Limit on Participation in the Program? (§ 641.570)

There is no time limit on participation in the SCSEP because the Department recognizes that some participants may never transition to unsubsidized employment. It is expected, however, that most SCSEP participants will receive services for only a reasonable period of time, *i.e.*, not more than 24 to 36 months. Due to the increased emphasis in the OAA for unsubsidized employment placements, and the Government Performance and Results Act goals, grantees/subgrantees should work to place as many participants as feasible in unsubsidized jobs in order to create additional community service opportunities. Grantees/subgrantees may also require that participants rotate to different host agency assignments after specified periods of time.

The Department may authorize the establishment of a maximum duration of enrollment in the grantee's grant agreement, on the condition that the grantees provide a process for transitioning participants into unsubsidized employment or other assistance before the maximum duration period has expired.

May a Grantee Establish a Limit on the Amount of Time Its Participants May Spend at Each Host Agency? (§ 641.575)

Some grantees have found that they have been able to increase their unsubsidized placement rate by limiting the amount of time their participants can spend at each host agency. The regulations clarify that this is an allowable practice, provided that the time limit is established in the grant agreement and included in the participants' IEPs. Grantees that intend to establish a limit on the amount of time a participant may spend at a host agency must submit this plan in their application proposal. If the Department approves the grant application, this process will become part of the grant agreement.

Under What Circumstances May a Grantee Terminate a Participant? (§ 641.580)

Grantees/subgrantees may serve only those individuals who are eligible for the SCSEP. Should a grantee/subgrantee learn that an individual is no longer eligible for the program, the grantee/subgrantee must terminate the participant from the program.

Grantees/subgrantees may terminate participants for cause, including behavior that is inconsistent with their SCSEP IEP, or for refusing to accept a reasonable number of referrals to jobs or training. The Department expects grantees to inform participants of the conditions that could lead to a termination from the program in writing and review the requirements with each participant in person at the time of enrollment.

As provided in § 641.570, grantees may terminate participants based on an approved maximum duration of enrollment provision in the grant agreement approved by the Department as long as they provide appropriate services to help the participants transition to other available programs.

Grantees/subgrantees may not terminate a participant because of age, nor may they impose an upper age limit for participation in the SCSEP.

Are Participants Employees of the Federal Government? (§ 641.585)

This regulation clarifies that participants are not Federal employees. If, however, the grantee or host agency of a participant is a Federal agency, whether or not the participant qualifies as an employee depends on the laws defining an employer/employee relationship. (*See* § 641.590).

Are Participants Employees of the Grantee, the Local Project, and/or the Host Agency? (§ 641.590)

Proposed § 641.590 addresses the issue of whether a participant is an employee of the grantee, local project, or host agency. The Department is unable to concretely answer this question because whether a participant is an ''employee'' depends on the laws defining an employee/employer relationship. Thus, grantees and participants should consult with an attorney to determine if there are circumstances that qualify a participant as an employee.

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

This section describes private sector training projects authorized under section 502(e) of the OAA, including information on allowable activities, eligibility, co-enrollment, and administration. The Department received many suggestions for changing the section 502(e) program, particularly to allow for more flexibility in the use of the funds, and two suggestions to eliminate the program altogether due to the additional reporting and budgeting requirements. The section 502(e) program is required by the OAA, which authorizes the Department to reserve up to 1.5 percent of the total appropriation to place individuals into private sector job opportunities. The Department believes that the section 502(e) program will complement grantee efforts to promote training for older individuals and move participants into unsubsidized employment in the general SCSEP program. The Department recognizes the need for improved technical assistance, however, and will work to help section 502(e) grantees and subgrantees better implement and take advantage of the program.

One of the biggest changes to the administration of the section 502(e) program, is the Department's decision to sponsor a full and open competition for the funds so that all eligible entities may apply. The Department has made this change to be more in line with the statutory requirements, as well as Department policy on having full and open competition. The Department believes that competing this program will strengthen the unsubsidized placement goals of the program as a whole and will integrate private industry into the SCSEP community.

What Is the Purpose of the Private Sector Training Activities Authorized Under Section 502(e) of the OAA? (§ 641.600)

The purpose of section 502(e) is to facilitate the unsubsidized employment of program participants in the private sector, particularly in different work modes such as job sharing, flex-time, flex-place, and to encourage the development of arrangements related to reduced physical exertion, and innovative work modes with a focus on second career training and placement in growth industries in jobs requiring new technological skills.

The amendments to the OAA eliminated the reference to ''experimental'' activities under section 502(e). The Department interprets this action to mean that section 502(e) funds may be used to fund private sector training activities whether or not they are experimental in nature; however, the Department encourages section 502(e) grantees to be innovative.

How Are Section 502(e) Activities Administered? (§ 641.610)

This section discusses how the Department administers section 502(e) projects. It generally provides that the Department may enter into agreements with States, public agencies, private nonprofit organizations, and private businesses to fund proposed projects. It also emphasizes the types of activities that should occur, such as job sharing, flex-time, flex-place, etc. Finally, this section reiterates the importance of coordinating section 502(e) activities with programs carried out under WIA and with other SCSEP projects in the area.

How May an Organization Apply for Section 502(e) Funding? (§ 641.620)

This proposed section provides that eligible organizations may apply for section 502(e) funds through a full and open competitive process. If the Department competes these funds through a full and open competition it will issue a Solicitation for Grant Applications for these funds for each Program Year in which a competition is held.

What Private Sector Training Activities Are Allowable Under Section 502(e)? (§ 641.630)

Proposed § 641.630 lists the activities that are authorized for private sector training under section 502(e). This list in not intended to be exhaustive. Section 502(e) grantees should note that many of these activities align with activities under WIA. Section 502(e) grantees are statutorily required to coordinate section 502(e) projects with the WIA programs.

How Do the Private Sector Training Activities Authorized Under Section 502(e) Differ From Other SCSEP Activities? (§ 641.640)

Generally, the provisions in subpart E also apply to private sector training activities, including equitably distributing positions by region of the country. Because most participants work at a private sector worksite, however, section 502(e) activities are not required to have a community service component. One major difference between the general SCSEP program and the section 502(e) program is the list of applicants that are eligible to receive section 502(e) funds. For section 502(e) only, the Department is authorized to enter into agreements with private business concerns, in addition to nonprofit organizations, States, and public agencies. Also, where in the general SCSEP program participants may be placed with a nonprofit organization, State agency (when permissible), or Federal agency (when permissible), section 502(e) specifically requires participants to be placed in employment opportunities with private business concerns. Section 502(e) organizations that serve as training sites (on-the-job or other), or provide work experience that lead to unsubsidized employment do not have to be designated as section 501(c)(3) organizations as defined in the Internal Revenue Code. Finally, the Department may pay all of the costs of a 502(e) project, which is not authorized for the general SCSEP program.

Does the Requirement That Not Less Than 75 Percent of the Funds Be Used To Pay Participant Wages and Fringe Benefits Apply to Section 502(e) Activities? (§ 641.650)

This proposed rule clarifies that the requirement to use 75 percent of funds for wages and fringe benefits applies to all grants awarded under title V of the OAA. Section 502(c)(6)(B) of the OAA specifically requires that 75 percent of the grant funds be used to pay wages and benefits for older individuals who are employed under SCSEP projects. The Department has interpreted this section to mean that when a SCSEP grantee receives section 502(e) funds and funds for community service projects under a single grant, the 75 percent requirement will apply to the total amount of SCSEP funds that the grantee received. The Department is not authorized to waive this requirement.

Who Is Eligible To Participate in Section 502(e) Private Sector Training Activities? (§ 641.660)

This rule adopts the eligibility criteria used in subpart E to determine an eligible participant. According to subpart E, section 502(e) grantees are required to serve low-income individuals who are age 55 and over. Priority must also be given to those eligible individuals who are age 60 or over and to veterans and qualified spouses under the Jobs for Veterans Act. Section 502(e) grantees must also give special consideration to those individuals who have incomes below the poverty level, who have poor employment prospects and who have the greatest social and/or economic need or who are minorities, limited English speaking, or who are Indians. Preference may also be given to former SCSEP participants who reapply after having left the program because of illness or to take an unsubsidized job.

When Is Eligibility Determined? (§ 641.665)

This provision mirrors the requirements at § 641.505, however, it has been modified to address the nature of this program as a job placement program. As such, grantees are not required to verify a participant's income every 12 months since it is a single Program Year project, but grantees may verify income as often as circumstances require verification.

May an Eligible Individual Be Enrolled Simultaneously in Section 502(e) Private Sector Training Activities Operated by One Grantee and a Community Service SCSEP Project, Operated by a Different SCSEP Grantee? (§ 641.670)

This proposed rule clarifies that an eligible individual may be simultaneously enrolled in section 502(e) and a community service SCSEP project operated by two different SCSEP grantees. The Department encourages co-enrollment when participants can benefit from services provided by two different grantees. For example, participants may receive training from a section 502(e) activity while they continue to receive wages, benefits, and supportive services from a community service project. Under these circumstances, the Department expects grantees to work jointly to ensure that they are providing complementary and not duplicative services.

How Should Section 502(e) Grantees Report on Participants Who Are Co-Enrolled? (§ 641.680)

This provision establishes that the Department's reporting instructions, which are used for the general SCSEP program, should also be used to report on section 502(e) participants.

How Is the Performance of Section 502(e) Grantees Measured? (§ 641.690)

This provision establishes the performance measures that section 502(e) grantees will be responsible for meeting. These measures incorporate the common performance measures. The common performance measures that will apply to this program are: (1) Entered employment; (2) retention in employment; and (3) earnings increase. These measures are defined at proposed § 641.715.

Section 502(e) grantees must follow the definitions and rules that apply to the general SCSEP program in Subpart G of this regulation (with the exception of sanctions) and any Department administrative issuances relating to performance accountability as they specifically apply to these measures. In this case, if a section 502(e) program grantee fails to meet its performance measures, the Department may require corrective action and provide technical assistance, or it may decline to fund that grantee in the next Program Year.

Subpart G—Performance Accountability

This subpart covers the requirements for performance accountability established by the OAA, including performance indicators, the provision of technical assistance, and the imposition of sanctions. The Department is strongly committed to a system-wide continuous improvement approach, grounded upon proven quality principles and practices. The development and establishment of these performance accountability provisions reflect the commitment of the broad range of organizations and entities involved with the implementation of the OAA, as well as the continuous effort of SCSEP to align itself with the WIA performance measures to the extent possible. They are intended to apply to national grantees as well as State grantees unless otherwise distinguished. These areas are covered in general in the regulations, and will be supplemented by administrative issuances providing greater detail.

The OAA established a new performance accountability process for SCSEP. Sections 513(a)(1) and 513(c)(1) of the OAA call for a broad consultation process in establishing and defining performance measures. The Department relied upon Town Hall Meetings, **Federal Register** notices soliciting comments, and the recommendations of a workgroup of entities interested in SCSEP to address the consultation requirements. Intergovernmental organizations representing the general WIA community were also consulted and participated in workgroup activities.

Most notably different about the SCSEP performance system is the distinction that is made among the grantees. Section 514 of the OAA establishes a technical assistance and sanction scheme that addresses national grantees, national grantees in a State, and State grantees. The concept ''national grantee in a State'' addresses the individualized performance that a national grantee must meet within each State in which it operates. It is another means to ensure that national grantees are performing well on all levels.

In addition, SCSEP is part of the Administration's new common performance measures initiative for employment and job training programs. This initiative has identified new indicators that will be applied across Federal job training programs and have a common set of definitions and data sets. Adoption of these common measures across government will help implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through the local One-Stop Career Centers.

Adoption of these common measures across Government will help to integrate service delivery through the One-Stop Career Centers at the local level. The Department will seek to amend title V of the Older Americans Act when it is reauthorized to conform the SCSEP performance measures to the new common performance measures. The Department cannot fully adopt the common measures at this time because the definitions for the two performance measures that are part of both the common measures and the SCSEP statutory measures, entered employment and retention in employment differ. These regulations represent an interim step in which grantees will be required to collect performance measurement information based on the current OAA, as well as on the new common measures that will be proposed as part of the Older Americans Act reauthorization.

What Performance Measures Apply to SCSEP Grantees? (§ 641.700)

Section 513(b) lists the required indicators that form the basis for SCSEP performance measures. This list includes: (1) The number of persons served, with particular consideration given to individuals with greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60; (2) community services provided; (3) placement into and retention in unsubsidized public or private employment; (4) satisfaction of the participants, employers, and host agencies with the experiences and the services provided; and (5) any additional indicators of performance that the Department determines to be appropriate to evaluate services and performance. The Department has added the earnings increase common performance measures as an additional indicator of performance. This measure is discussed further at proposed § 641.710 and § 641.715. Grantees will report on the additional common performance measures as discussed at § 641.720.

How Are the Performance Indicators Defined? (§ 641.710)

The OAA, at section 513, lists four indicators of performance. Several of the indicators have multiple subparts. Thus, the Department has severed many of the indicators so that grantees are clearly accountable for each part of each indicator and so that the indicators are easier to implement. For example, the first indicator is ''the number of persons served, with particular attention given to individuals with the greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60.'' Conceivably this one indicator could be divided into multiple parts and result in several different measures. The Department decided to divide this measure into two parts. The first indicator measures the number of persons served, and the second indicator measures the characteristics of those who are served. For the number served portion of the indicator, the Department will continue the past practice of establishing a minimum performance level of 140 percent of a grantee's authorized positions. This is a measure that has been in place for some time as a goal. The regulations address the second portion of the indicator in part through the statutory definitions provided for greatest economic need and greatest social need; and in part through a common sense approach to defining poor employment history or prospects and individuals over the age of 60. The OAA, at section 101(27), defines ''greatest economic need'' as the need that results from an income level at or below the poverty line. Section

101(28) of the OAA defines ''greatest social need'' as the need caused by non-economic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks, or threatens the capacity of the individual to live independently. The definition also includes individuals with a poor employment history or prospects and individuals over age 60. Grantees may identify individuals with poor employment history or prospects from the information participants provide during the initial assessment process.

The second indicator in the OAA is ''community services provided.'' This indicator has not been previously used in SCSEP. However challenging it is to measure, it is important because it recognizes the dual purpose of the SCSEP program and provides a tracking measurement in furtherance of the community benefit goal. The Department considered several variations on how it should measure community services provided to participants. Some of these variations include: Reviewing the accomplishments (*i.e.*, ''SCSEP participants helped more than 750 children to read over the past year''); hours of community services provided (*i.e.*, ''SCSEP mentors provided more than 6,000 hours of tutoring''); value added to the community expressed as a dollar amount (*i.e.*, multiply the hours of service by an appropriate wage level); some way of looking at or comparing general services to the community with services to the elderly community or aging network; and adding questions on the American Customer Satisfaction Index (ACSI) survey that relate to community service. The Department decided that the number of hours of community services provided was a good measure for this indicator because it represents the most accurate way of capturing this information and also allows the Department to establish a level of performance. The OAA defines ''community services,'' at section 516(1), as social, health, welfare, and educational services (including literacy tutoring), legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; antipollution and environmental quality efforts; weatherization activities; economic development; and such other services essential and necessary to the community as the Department may prescribe. At this time, we have not prescribed any services in addition to those specified in the OAA.

The placement and retention measure is the third statutory indicator and is found at section 513(b)(3) of the OAA. The Department intends to divide this measure into two measures: one measure that captures placement into unsubsidized employment, and one measure that captures retention in unsubsidized employment. The placement indicator is defined in the OAA, at section 513(c)(2)(A), as full-or part-time paid employment in the public or private sector by a participant under this title for 30 days within a 90-day period without the use of funds under this title or any other Federal or State employment subsidy program, or the equivalent of such employment as measured by the earning of a participant through the use of wage records or other appropriate methods. Therefore, the placement indicator will stand alone and be measured based on the number of participants who move into unsubsidized employment during each year, compared to the total number of participants. Unsubsidized employment includes both full- and part-time jobs consistent with the definition found in section 513(c)(2)(A) of the OAA. Part-time is defined as at least 20 hours of workweek employment. (OAA sec. 515(a)).

Retention 6 months after placement is a new measure for SCSEP and is defined in the OAA, at section 513(c)(2)(B). It requires grantees to evaluate the retention of participants in an unsubsidized position 6 months after the starting date of placement into the unsubsidized employment in the public or private sector, without the use of Federal or State employment subsidy program funds, not to include supportive services.

The fourth indicator, ''customer satisfaction of participants, employers and host agencies,'' is a required measure under section 513(b)(4) of the OAA. The Department interprets this provision as requiring 3 separate and distinct measures of customer satisfaction: one measure for participant satisfaction; one measure for employer satisfaction; and one measure for host agency satisfaction. Since these three groups vary in size, focus, and expectations, measuring them separately will give equal weight to the needs of each group and ensure that program operators are attending to their diverse needs. Customer satisfaction for all three groups will be determined using the American Customer Satisfaction Index (ACSI). The ACSI is the most widely used indicator of general customer satisfaction. It captures common customer satisfaction information that can be aggregated and compared at different levels. The ACSI will allow the SCSEP program to not only look at its performance, but also to benchmark its performance against other entities within and outside of the employment and training system. It is the methodology used to measure customer satisfaction under WIA, and was recently adopted by the U.S. Employment Service. The ACSI also has a history of usefulness in tracking changes over time, making it an ideal way to gauge progress in continuously improving performance—one of the essential tenets of the 2000 Amendments of the OAA. Through the ACSI, the Department will collect national samples from each of the three populations. Each sample will be large enough to collect statistically valid results for each State grantee and each national grantee. Grantees will be responsible for distributing written survey instruments using the methodology established by the Department in administrative guidance. Completed surveys will be sent to a central collection point for collation and analysis. The Department will publish administrative guidance in the **Federal Register** that provides more information about the licensing of ACSI and the responsibility of grantees to this process, and about how information will be collected for this indicator. Customer satisfaction data collection and analysis are costly. Data will be collected for performance measures purposes for States, national grantees, and national grantees in a State, and the territories. According to the OAA, at section 513(b)(5), the Department may create any additional indicators of performance that it determines are appropriate to evaluate services and performance. The Department has decided to add the earnings increase common performance measures as an additional performance measure. This measure is defined as the percentage change in earnings pre-registration to post-program; and between the first quarter after exit and the third quarter. The methodology for determining this measure is calculated in two parts. The first part measures the change pre-registration to post-program. The second part measures the earning increase from the start of employment to 6 months after.

The Department will issue further administrative guidance, to be published in the **Federal Register**, implementing the performance indicators and explaining the timing and specific definitions of data elements to be collected, and the methods used to calculate each indicator.

What Are the Common Performance Measures? (§ 641.715)

Proposed § 641.715 outlines the indicators of the common performance measures. The first measure, entered employment, is defined as the percentage employed in the first quarter after program exit. This measure identifies those individuals who are not employed at registration, but who have entered employment by the end of the first quarter. Retention in employment is the second measure. It is defined as the percentage of those employed in the first quarter after exit that were still employed in the second and third quarter after program exit. This measure is similar to the retention measures under the OAA, however, it tracks a participant's retention with an employer for an additional three months. The third measure, earnings increase, has been added as a program performance measures in § 641.700 and defined in § 641.710. Grantees will be required to report on all three common performance measures as identified in § 641.879.

How Do the Common Performance Measures Affect Grantees and the OAA Performance Measures? (§ 641.720)

Proposed § 641.720 discusses the common performance measures and how they relate to grantees and the OAA performance and competition scheme. SCSEP is part of the Department's new common performance measures initiative for employment and job training programs. This initiative has identified new indicators that will apply across Federal job training programs and have a common set of definitions and data sets. Adoption of these common measures across government will help implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through the local One-Stop Career Centers. The Department will seek to amend title V of the Older Americans Act when it is reauthorized to conform the SCSEP performance measures to the new common performance measures. As this legislation will not be introduced until after completion of these regulations, these regulations represent an interim step in which grantees will be required to collect performance measurement information based on the current statute as well as on the new common measures that will be proposed as part of the Older Americans Act reauthorization. The Department will provide instructions on how the information will be collected through an administrative issuance. *See* § 641.879 on reporting requirements.

How Will the Department Set and Adjust Performance Levels? (§ 641.730)

The proposed rule establishes the method that the Department will use to set and adjust negotiated levels of performance. In setting negotiated performance levels, the Department is adopting a method similar to the WIA method of negotiating levels of performance. For SCSEP, levels of performance will be negotiated before the beginning of each Program Year. Under section 513(a)(2)(C) of the OAA, the ''placement into unsubsidized public or private employment'' measure has a statutory ''floor'' of 20 percent; however, the Department may negotiate with grantees to establish a higher level.

In negotiating levels with grantees, the Department will first establish baseline goals. The end result levels are the adjustments made to those goals for each grantee. Adjustments to the established negotiated levels of performance, including the ''placement into unsubsidized public or private employment'' measure, may be made only if they are based on those factors delineated in section 513(a)(2)(B). Those factors are: (1) High rates of unemployment, poverty, or welfare recipiency in the areas served by a grantee, relative to other areas of the State or Nation; (2) significant downturns in the areas served by the grantee or in the national economy; and (3) significant numbers or proportions of enrollees with one or more barriers to employment served by a grantee relative to grantees serving other areas of the State or Nation. As part of the process of negotiating with grantees to set baseline levels of negotiated performance, the Department will offer grantees the opportunity to propose adjustments to those levels based on the conditions specified in the OAA. Since many of the factors enumerated in the OAA can change dramatically during the program year, grantees will have the opportunity to request adjustments both at the beginning of the program year and during the program year. The Department will issue administrative guidance outlining the parameters for claiming one or more of the three permissible adjustments of performance levels.

How Will the Department Determine Whether a Grantee Meets, Exceeds, or Fails To Meet Negotiated Levels of Performance? (§ 641.740)

The OAA requires the Department to determine whether a grantee has met its performance measures overall (*i.e.*, in the aggregate). Under proposed § 641.740, overall performance is calculated by combining the ''percentage results'' achieved on each of the individual measures to obtain an average score. If this average score for the total of all measures is between 80 and 100 percent, the grantee has performed satisfactorily, or is meeting performance. Grantees with an average above 100 percent are exceeding on the performance measures. Grantees that fall below 80 percent, however, are considered to have failed to meet negotiated levels of performance and, thus, are subject to the sanctions outlined in section 514 of the OAA. This approach aligns the SCSEP program with WIA and ensures that very low performance on any single indicator has full weight when assessing overall performance. A national grantee serving in a State, however, is required by section 514(e)(3)(A) of the OAA to meet both 80 percent of the negotiated national measures and the levels established for the State in which it serves. The Department will evaluate each performance indicator to determine the level of success that a grantee has achieved and take the aggregate to determine if, on the whole, the grantee met its performance objectives. Grantees will also receive the results for each individual performance indicator. The advantage of grantees having this information is two-fold—grantees will know about any performance indicator on which they need to improve; and the Department can provide technical assistance to the grantee on a specific indicator to improve performance.

One indicator that is distinct among the performance measures is the ''placement into unsubsidized employment'' measure. This measure has a statutory ''floor'' of 20 percent before the allowable adjustments are made; however the Department may negotiate higher, but not lower, levels with individual grantees. Thus, if the negotiated performance indicator remains at the floor, performance levels between 80 and 100 percent will require grantees to place 20 percent to 25 percent of their participants into unsubsidized employment, unless one or more adjustment factor applies. A placement rate of more than 25 percent would mean that a grantee is exceeding

on this measure, and a placement rate of less than 20 percent would be a failure on that measure, unless one of more adjustment factor applies. All of the levels will be negotiated with the Department on a grantee-by-grantee basis, which will then become the basis for determining the range for each indicator as discussed in proposed § 641.740.

What Sanctions Will the Department Impose if a Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.750)

Grantees that fail to meet negotiated levels of performance will be subject to the sanctions established in section 514 of the OAA. These sanctions range from requiring the grantee to submit a corrective action plan and receive technical assistance, to competition of part of the funds, to a competition of all of the funds. Technical assistance may take many forms depending on the needs of the grantee and the availability of resources within the Department. In some cases, review of reports and discussions with a grantee may be sufficient. In other cases, recommending participation in formal training may be warranted, and in still other cases, direct on-site assistance provided by Department staff, peers, or contractors may be necessary. The degree of assistance available will largely be determined by the nature of the problem, the extent of the failure, and the resources available to address it.

The statutory scheme for applying sanctions is grantee specific (*i.e.,* national grantee, national grantee in a State, or State grantee). (*See* proposed §§ 641.760–641.790). The Department will determine if sanctions should be applied not later than 120 days after the end of each Program Year. (*See* OAA sec. 514). Therefore, grantees and the Department will not know if a grantee has failed its performance measures until the grantee has already begun the next Program Year. As a result, the Department strongly encourages all grantees to regularly monitor their performance and seek technical assistance when problems arise.

Additionally, if a grantee fails only the customer satisfaction performance measure, that failure will not in itself trigger the imposition of sanctions if the grantee has met its other performance measures and the failure to meet the customer satisfaction measure causes a grantee to fail to meet its performance measures in the aggregate. The Department is taking this position in recognition of the difficulty it understands grantees may face in obtaining this information and because of the potential difficulties in obtaining response rates high enough to assure survey accuracy at an acceptable level. The Department will provide additional instructions for how customer satisfaction will be measured.

What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance Under the Total SCSEP Grant? (§ 641.760)

Proposed § 641.760 outlines the sanctions required under section 514(e) of the OAA that apply when a national grantee fails to meet its performance measures for its entire SCSEP grant. In the first year of failure, the Department will provide technical assistance and the national grantee must submit a corrective action plan no later than 160 days after the end of the Program Year. If a grantee fails to meet the national performance measures for a second consecutive Program Year, the Department will have a national competition in the next Program Year for 25 percent of the funds that were awarded to the grantee, while also minimizing disruptions to current participants to the extent possible. Thus, the failing grantee will receive only 75 percent of its former grant award. The Department reserves the right to specify the locations of the positions that will be subject to competition. Further, the Department may explore a number of options to determine how this competition will be conducted. The Department will establish the parameters of a competition through a Solicitation for Grant Application or comparable instrument.

If a grantee fails to meet its performance measures for a third consecutive Program Year, the Department will conduct a national competition for the full amount of the reduced grant in the following Program Year. Any new national grantee selected through this process must serve the geographic areas served by the former grantee. Any entity eligible to apply for national grants may compete for such funds, including Federal public agencies and organizations, private nonprofit organizations, and tribal organizations. (*See* proposed § 641.400 on eligible entities).

What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance in Any State That It Serves? (§ 641.770)

Proposed § 641.770 outlines the sanctions that apply to a national grantee that fails to meet its performance measures in any State that it serves. This provision is required under section 514(e)(3) of the OAA and is intended to monitor those national grantees that may be meeting national performance goals but are failing their goals in a particular State. In any Program Year that a national grantee attains levels of 20 percent or more below the national performance measures and fails to meet the State's performance levels for a project carried out in the State, the Department will take corrective action. The Department interprets this requirement as applying when the Department determines that there is a failure, and there are no justifications that the national grantee can provide, such as the size of the project or the adjustment factors described in § 641.730. Thus, national grantees in a State must perform at 80 percent of the national performance measures and meet the State's level of performance to meet performance objectives, unless there is a justification for lower performance. The Department proposes to monitor national grantee State-by-State performance each Program Year or at the Governor's request. (*See* OAA §§ 514(e)(3)–514(e)(4) and proposed § 641.780). The Department interprets the phrase ''project carried out in a State'' to mean all of a grantee's projects in a State so that no single project in a State will provide a basis to initiate a review or sanctions.

The first Program Year in which a national grantee fails to meet its performance measures in a State, the Department will require a corrective action plan and may require the transfer of the responsibility for the project to other grantees, provide technical assistance, and take other appropriate actions. After a second consecutive year of failure to meet the performance criteria, the Department will either transfer all or part of the responsibility for a project to a State, public agency, or private nonprofit agency or organization, or compete all or a portion of the funds. After a third consecutive year of failure to meet the performance criteria, the Department will conduct a competition for the remaining funds. Any entity eligible to receive a SCSEP grant may apply for these funds, with the exception of the grantee that is subject to the sanction.

When Will the Department Assess the Performance of a National Grantee in a State? (§ 641.780)

Proposed § 641.780 provides the Department's interpretation of the requirements in section 514(e)(3)–(e)(4) of the OAA. These provisions require the Department to assess the

performance of a national grantee in every State in which it has projects. The Department will monitor national grantee performance in a State every Program Year. Grantees will submit such information as part of their national performance information. The Department will also conduct a review of any national grantee's project performance in a State upon request of the Governor, as required under section 514(e)(4) of the OAA.

What Sanctions Will the Department Impose if a State Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.790)

Proposed § 641.790 outlines the requirements for imposing sanctions on States that fail to meet negotiated levels of performance, as required by section 514(f) of the OAA. The Department will determine if a State has met its performance measures no later than 120 days after the end of a Program Year. In the first year of failure, the Department will provide technical assistance and require the State to submit a corrective action plan no later than 160 days after the end of the Program Year. After a second consecutive year of failure, the Department will require the State to conduct a competition to award 25 percent of the funds available to the State to another eligible organization. The Department reserves the right to specify the locations of the positions that will be subject to competition. After a third consecutive year of failure, the State must compete its entire SCSEP award. Any eligible entity, except the entity that caused the failure, may compete for such funds, including other agencies of the State, or public and private nonprofit organizations.

Will There Be Incentives for Exceeding Performance Measures? (§ 641.795)

Proposed § 641.795 addresses incentives for grantees that exceed their performance measures. It clarifies that the Department is committed to providing incentives to grantees that exceed performance when possible. These incentives may take the form of a non-financial incentive, which will be addressed in administrative guidance, or it may be in the form of an incentive grant. The Department is authorized under section 515(c)(1) of the OAA to award incentive grants from recaptured unexpended funds at the end of the Program Year, among other permissible uses of such funds. The Department may exercise this authority at its discretion.

Subpart H—Administrative Requirements

Subpart H covers the administrative requirements that apply to all SCSEP grantees. Throughout this subpart, the regulations refer to ''recipient'' and ''subrecipient'' rather than to the terms ''grantee'' and ''subgrantee,'' which are generally used elsewhere in this Part to refer to the same types of entities. The terms ''recipient'' and ''subrecipient'' are used in this subpart in order to be consistent with the style of the Government-wide requirements from which these provisions were derived. Grantees and recipients receive grant awards directly from the Department. Subgrantees and subrecipients receive financial assistance subawards from grantees and other recipients of direct awards from the Department, or higher tier subgrantees or subrecipients.

What Uniform Administrative Requirements Apply to the Use of SCSEP Funds? (§ 641.800)

Section 503(f)(2) of the OAA is a new provision requiring title V grantees to comply with the uniform allowable cost principles and administrative requirements applicable to most Federal financial assistance programs. The former regulations included similar requirements. This subpart includes requirements relating to lobbying as well as subjects covered by the Department's regulatory administrative requirements at 29 CFR 95.2(bb) and 29 CFR 97.25(b). Recipients also must ensure that their subrecipients follow these uniform requirements.

What Is Program Income? (§ 641.803)

This section describes program income as income earned or generated by the recipient or subrecipient during the grant period that is generated by an allowable activity under the grant. The term ''grant period'' as used here is consistent with the Department's regulations at 29 CFR parts 95 and 97. Grantees are accountable for program income earned or generated during the grant period, which may exceed the period of availability of the funds used to generate the income (*see* § 641.812). This regulation also identifies license fees and royalties as program income. This requirement is a permissible modification under 29 CFR 95.24(e) and 29 CFR 97.25(e). As provided in § 641.806, any organization that continues to receive SCSEP grant funds is required to use program income earned or generated after the Program Year for program purposes.

How Must SCSEP Program Income Be Used? (§ 641.806)

The program income provisions of the proposed rule clarify the application of the Department's uniform administrative requirements to SCSEP activities by indicating what types of income earned or generated by recipients and subrecipients are considered program income, how the costs of producing program income are to be treated, and by directing recipients to follow the addition method described in 29 CFR 95.24 and 29 CFR 97.25 and add program income to Federal and non-Federal resources provided for SCSEP activities. More specifically, paragraph (b) requires all recipients/grantees with a continuous relationship with the Department—that is organizations that continue to be funded with SCSEP funds for succeeding grant periods—to use such income for SCSEP purposes in the Program Year it is received. Paragraph (c) requires all recipients/grantees that do not continue to receive a SCSEP grant after the grant period to remit all program income earned or generated to the Department. These sections are permissible modifications under 29 CFR 95.24 and 29 CFR 97.25. The purpose of this requirement is to leverage Federal funds for the benefit of the program, which will enhance the services provided to SCSEP participants. This requirement would also apply to income earned or generated through copyrighted material or other intellectual property as provided in § 641.803.

What Non-Federal Share (Matching) Requirements Apply to the Use of SCSEP Funds? (§ 641.809)

The regulations underscore the 10 percent non-Federal share requirement in section 502(c) of the OAA, which applies even to other Federal agencies that may receive SCSEP funds, unless such entity has a statutory exemption from the requirement. Section 502(c)(1) allows the Department to pay all of the costs of only those projects that are emergency or disaster projects, or located in an economically depressed area. Additionally, the amendments to the OAA did not alter the Department's authority in section 502(e) of the OAA, to pay for all of the costs of private employment projects. Therefore, the Department expects to continue the present practice of using this authority for section 502(e) projects, when applicable. Also, proposed § 641.809(d) defines the non-Federal share as cash or in-kind. It further provides that if a recipient (grantee) plans to obtain its non-Federal share from a subgrantee or

host agency, it may not make providing the funds a condition of becoming a subgrantee or host agency.

What Is the Period of Availability of SCSEP Funds? (§ 641.812)

Proposed § 641.812 details the period of availability of SCSEP funds. According to section 515(b), SCSEP funds are available for obligation on a Program Year basis (July 1–June 30). Under no circumstances, however, is an SCSEP recipient permitted to obligate SCSEP funds before July 1. Also, the Department may extend the period of availability of SCSEP funds beyond June 30 as discussed in proposed § 641.815.

May the Period of Availability Be Extended? (§ 641.815)

Proposed § 641.815 permits SCSEP recipients to receive an extension beyond June 30 to expend funds. The Department will provide instructions each year on how and when SCSEP recipients must request an extension. In general, however, SCSEP recipients must justify the necessity of the extension either by submitting a letter to the Department with the request and the justification, or by submitting a proposed SF–424 to the Department. The Department will process the request and notify the SCSEP recipients in writing of the Department's approval or disapproval. Any approval of a grant extension will be accomplished through a modification to the grant. However, SCSEP recipients are strongly encouraged to spend funds throughout the Program Year to minimize the need for an extension.

The former authorization to extend funds for one year and two months (through August 31st) no longer applies. This provision was replaced by section 515(b), which authorizes the Secretary to extend the period of the grant as necessary to assure the effective obligation expenditure of the funds. Thus, grant extensions may be made for a longer period, if justified.

What Happens to Funds That Are Unexpended at the End of the Program Year? (§ 641.818)

Section 515(c) of the OAA gives the Department the authority to recapture unexpended funds from SCSEP recipients at the end of the Program Year and reobligate those funds within the 2 succeeding Program Years to be used for incentive grants, technical assistance, or grants or contracts for any other SCSEP program. The Department intends to issue administrative guidance to provide SCSEP recipients with additional details.

What Audit Requirements Apply to the Use of SCSEP Funds? (§ 641.821)

Proposed § 641.821 details the general audit requirements that apply to all recipients of Federal funds. This section provides that recipients and subrecipients, including entities receiving Federal awards of SCSEP funds under cost-reimbursement contracts, must follow the Department's uniform audit requirements. The Department is responsible for audits of commercial organizations that are recipients for SCSEP funds as well. Commercial organizations that are subrecipients must either have an organization-wide audit or a program specific financial and compliance audit that meets OMB Circular A–133 standards, if they expend $300,000 or more (as of July 1, 2001).

What Lobbying Requirements Apply to the Use of SCSEP Funds? (§ 641.824)

This proposed rule continues the Department's policy in the former regulations concerning lobbying. There are two provisions relating to lobbying. The proposed rule requires recipients to report on their lobbying activities, under the uniform administrative rule on lobbying codified at 29 CFR part 93. Proposed § 641.850(c) prohibits the use of grant funds for lobbying State or Federal legislators.

What General Nondiscrimination Requirements Apply to the Use of SCSEP Funds? (§ 641.827)

Recipients, subrecipients, and host agencies must comply with the Department's generally applicable nondiscrimination requirements for recipients at 29 CFR parts 31 and 32. The WIA nondiscrimination requirements at 29 CFR part 37 apply to SCSEP activities that are administered in conjunction with the One-Stop Delivery System.

What Nondiscrimination Protections Apply Specifically To Participants in SCSEP Programs? (§ 641.830)

The proposed rule establishes nondiscrimination protections to participants in SCSEP programs. Specifically, the proposed rule lists the Federal programs on nondiscrimination that apply to SCSEP, such as, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and title VI of the Civil Rights Act of 1964. The proposed rule also provides information to participants about how and where to file a complaint alleging discrimination or to whom they may address questions.

What Policies Govern Political Patronage? (§ 641.833)

The proposed rule provides the Department's policy on political patronage. This provision existed in the former regulations. Generally, recipients and subrecipients are prohibited from selecting, rejecting, promoting, or terminating an individual based on political services provided by the individual, or based on the individual's political affiliations or beliefs. Further, recipients and subrecipients are prohibited from providing funds to any entity based on political affiliation.

What Policies Govern Political Activities? (§ 641.836)

Proposed § 641.836 outlines the Department's policies governing political activities. In general, recipients are prohibited from using SCSEP funds for political activities. The proposed rule also requires SCSEP recipients to provide participants with a written explanation about allowable and unallowable political activities under the Hatch Act (5 U.S.C. 1501 *et seq.*), and to post this explanation in every workplace where SCSEP activities are conducted. Also, all such notices must be approved by the Department and must contain the address and telephone number of the Department of Labor Inspector General, as required by section 502(b)(1)(P) of the OAA. Further, it is prohibited for any participant or staff person to engage in political activities during hours paid with by SCSEP funds. The regulation also prohibits the placement of participants in certain offices and positions that might involve political activities. It prohibits placement of SCSEP participants in the offices of elected legislators. It also prohibits placements in the offices of other elected officials unless the grantee provides safeguards to assure that such position performs no political activities.

What Policies Govern Union Organizing Activities? (§ 641.839)

The proposed rule emphasizes the Department's policy that no Federal funds may be used to assist, promote, or deter union organizing. This provision existed in the former regulations and is aligned with the WIA regulations.

What Policies Govern Nepotism? (§ 641.841)

This proposed rule outlines the Department's policy on nepotism. Specifically, the Department's policy prohibits recipients from hiring and participants from working in an SCSEP position if the participant is a member of the decision-maker's immediate

family. The Department's goal is to decrease the opportunities for a recipient to show ''favoritism'' to a relative. ''Immediate family'' is defined as a wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild. The Department may waive this provision, however, for worksites on Indian reservations and in rural areas if it can be documented that no other persons are eligible and available for participation in the program. If a State or local nepotism rule is stricter, it must be followed.

What Maintenance of Effort Requirements Apply to the Use of SCSEP Funds? (§ 641.844)

The proposed rule outlines the responsibilities of recipients when they accept SCSEP funds. For instance, recipients that receive SCSEP funds have a duty to ensure that: Currently employed workers are not displaced, existing contracts are not impaired or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed, positions are not filled that were occupied by a person who is on layoff, and SCSEP funded positions are not substituted for existing federally assisted jobs, as required by sections 502(b)(1)(F) and 502(b)(1)(G) of the OAA. The purpose of this requirement is to ensure that there will be an increase in employment opportunities over those opportunities that would otherwise be available, as discussed in section 502(b)(1)(F) of the OAA.

What Uniform Allowable Cost Requirements Apply to the Use of SCSEP Funds? (§ 641.847)

As previously mentioned, section 503(f)(2) of the OAA requires grantees to comply with the applicable uniform allowable cost principles under the OMB Circulars, according to the type of organization that incurs SCSEP costs (*e.g.*, governmental units, nonprofit organizations). This section codifies the previous regulations on administrative cost principles. The allowable cost principles establish requirements for the treatment of costs generally, rules as to what types of costs are allowable, unallowable, or allowable under certain circumstances, and acceptable methodologies for allocating costs among Federal grant programs. An example of a general cost principle is the requirement to treat refunds and rebates as reductions in previously charged costs whenever possible, rather than treating them as program income or as revenue for which the recipient is not accountable under Federal financial management principles. An example of a cost allowable under certain circumstances is the cost of claims against the Federal government. Such costs are generally unallowable (*see*, for example, OMB Circular A–122, Attachment B, item 7.g.), but Federal agencies differ on whether they consider an appeal from a Grant Officer's determination to be a claim against the Government. Proposed § 641.850(b) indicates that costs incurred in connection with appeals to Administrative Law Judges are unallowable costs.

The Department received several suggestions relating to allowable cost issues in response to the March 19, 2001, **Federal Register** notice and Town Hall Meetings. The principal issue involved the distribution of costs among the participating programs in One-Stop centers. The uniform cost principles that apply to SCSEP activities require costs to be allocated to Federal programs in proportion to the benefits received from goods and services for which the costs were incurred. This requirement aligns with the WIA statutory and regulatory requirements for required partners to the One-Stop, which includes SCSEP. Thus, SCSEP recipients and subrecipients are responsible for their fair share of the costs of operating One-Stop centers.

Cost allocation, however, is only one of the issues involved in providing SCSEP financial support to a One-Stop center. Another issue is resource allocation. Several of the responses supported the idea of SCSEP recipients making in-kind contributions in payment of their fair share of One-Stop center costs. In-kind contributions are acceptable forms of payment if the other partners are agreeable. A local One-Stop MOU may include a resource allocation arrangement that permits some of the partners to make cash contributions toward center costs, permit others to donate paid office space, and allow still others to contribute volunteer services, and so on. The resource allocation arrangement should indicate what costs and non-cash charges need to be allocated, what resources are available to pay for or otherwise absorb the costs and charges, and describe each partner's fair share based on the benefits-received principle.

Are There Other Specific Allowable and Unallowable Cost Requirements for SCSEP? (§ 641.850)

The proposed rule supplements the generally applicable allowable cost provisions with requirements relating to costs of claims against the Government, lobbying, premises, and participants' fringe benefits to reflect provisions of applicable legislation and Departmental policies. The lobbying costs provision is based on a requirement included in Department of Labor Appropriation Acts for many years. The limitation on costs of purchasing or constructing buildings reflects the Department's policy of discouraging the use of grant funds for major capital expenditures in order to conserve scarce resources for other costs. If the limitations did not exist, each such expenditure would require prior approval by the Department.

How Are Costs Classified? (§ 641.853)

The proposed rule discusses whether costs are classified as administrative costs or program costs, and how grantees must categorize participant wages and fringe benefit costs within that framework. For instance, program costs may include participant wages and fringe benefits and other enrollee costs, such as training and supportive services. Administrative costs, such as salaries, equipment, *etc.*, expended for administrative functions continue to be attributed to administrative costs. (*See* §§ 641.856 and 641.864). When participants perform an administrative function for a grantee or subgrantee, the cost of the function is charged to the administrative cost category. The cost of the participant's wages and fringe benefits, however, are charged to the program cost category.

What Functions and Activities Constitute Costs of Administration? (§ 641.856)

The proposed rule discusses the functions and activities that constitute the costs of administration. It provides a detailed list of those costs that are administrative as permitted under section 502(c)(4) of the OAA. This section of the OAA aligns the WIA administrative cost provisions.

What Other Special Rules Govern the Classification of Costs as Administrative Costs or Program Costs? (§ 641.859)

The OAA imports the WIA cost classification scheme into the SCSEP program. This includes the division of costs into administrative costs and program costs, and the WIA definitions of administrative cost components. This has the effect of making it easier to operate title V activities within the One-Stop Delivery System established under WIA. In addition to the material on cost classification, the proposed rule contains additional requirements for allocating costs to the ''administrative

costs'' or ''program costs'' categories. The proposed rule is based on the same principles used in the WIA and Welfare-to-Work programs for determining how to allocate particular types of cost and how to classify costs incurred by particular types of organizations. However, when participants are assigned to functions normally classified as administrative costs, recipient charges to the ''administrative cost'' category are reduced from levels that would exist if such functions were performed by regular staff members since all participant wage and fringe benefit costs must be charged to the ''program costs'' cost category.

Must SCSEP Recipients Provide Funding for the Administrative Costs of Subrecipients? (§ 641.861)

Section 502(b)(1)(R) of the OAA requires that each project ensure that sufficient funding is provided for the administrative costs of entities below the recipient level. The Department has determined to implement this requirement by requiring each SCSEP recipient to indicate in its grant application how it will achieve compliance. The Department has chosen this course in order to avoid prescribing needlessly detailed requirements while enabling recipients and subrecipients to achieve the objectives of the law by establishing arrangements consistent with their own unique funding and organizational structures.

What Functions and Activities Constitute Program Costs? (§ 641.864)

The OAA also includes a description of programmatic functions and activities that may be performed with SCSEP funds and charged to the program cost category in section 502(c)(6)(A). Except for participant wages and fringe benefits provided in connection with community service assignments, the services comprising all of the described functions and activities are available through the One-Stop Delivery System for WIA participants. The Department believes that SCSEP participants will have easier access to these services through the One-Stop Delivery System than they had before its development.

What Are the Limitations on the Amount of SCSEP Administrative Costs? (§ 641.867)

The proposed rule outlines the administrative cost limitations found in section 502(c)(3) of the OAA. Under this provision, SCSEP administrative costs are limited to 13.5 percent. The Department is authorized to increase the limit, but only up to 15 percent.

Under What Circumstances Can the Administrative Cost Limitation Be Increased? (§ 641.870)

This section continues the Department's previous regulations concerning administrative cost limitations. The Department will continue to allow increases in administrative cost limits as permitted under section 502(c)(3) of the OAA, if the recipient demonstrates that such an increase is necessary to carry out the project and if the recipient demonstrates that major administrative cost increases are being incurred in necessary program components, such as liability insurance, workers' compensation, *etc.*; that the number of employment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available for paying the cost of the administration is not increased; or that the size of the project is so small that the amount of administrative expenses incurred to carry out the project exceeds 13.5 percent of the amount for such project. The burden of justification is on the recipient requesting an increase in administrative costs. A request for an increase in administrative costs may be submitted at any time.

What Minimum Expenditure Levels Are Required for Participant Wages and Fringe Benefits? (§ 641.873)

Section 502(c)(6)(B) of the OAA provides that participant wages and fringe benefit costs must comprise not less than 75 percent of the funds made available for community service projects under title V. The proposed regulation clarifies that the statute applies to community service projects conducted by a recipient in the aggregate and not to each such project or subproject. Funds used for programs and activities under section 502(e) are also covered by this requirement. (*See* proposed § 641.650). If a recipient receives a regular title V SCSEP grant as well as a section 502(e) grant, the 75 percent requirement applies to the total of both grants.

When Will Compliance With Cost Limitations and Minimum Expenditure Levels Be Determined? (§ 641.876)

This proposed rule establishes that a recipient's compliance with cost limitations and minimum expenditures levels will be determined under the standard used in other Department-funded financial assistance programs. Thus, the Department will assess a recipient's compliance with cost limitations on the earlier of the date when all funds are expended or the end of the availability period.

What Are the Fiscal and Performance Reporting Requirements for Recipients? (§ 641.879)

Section 503(f)(3) of the OAA establishes reporting requirements that were required by the previous regulation. The proposed regulation requires electronic submission to the Department via the Internet of a quarterly financial status report, a final financial status report, a non-financial progress report, and a final progress report. Final financial status reports and progress reports are due 90 days after the end of the Program Year. The Department will issue reporting instructions indicating whether progress reports must be submitted quarterly or semiannually. Quarterly financial status reports are due 30 days after the end of each quarter. Progress reports, other than the final progress report, will be due 30 days after the end of each reporting period. The proposed rule requires recipients to develop their financial status reports on an accrual basis. The proposed rule also requires submission of an annual equitable distribution report, a report on section 502(e) activities, reports for the common performance measures, and reports from Federal agencies operating SCSEP programs and activities. The Department will hold grantees accountable for accurate reporting. Any report that cannot be validated or verified as accurate may be considered a failure to submit reports, which is a factor to be considered in applying the responsibility test at section 514(d) of the OAA.

What Are the SCSEP Recipient's Responsibilities Relating to Awards to Subrecipients? (§ 641.881)

The proposed rule clarifies that the recipient is responsible for all SCSEP activities performed with SCSEP funds and for ensuring that subrecipients comply with SCSEP requirements. Any recipient that fails to recover debts to the Federal government, including all debts owed to the recipient by a subrecipient, will be in violation of the responsibility tests in section 514(d) of the OAA. Also, recipients must follow the organization or State procedures for allocating funds to other entities. At no time, however, will the Department grant funds to another entity on the recipient's behalf. Each entity must follow its own procedures for subgranting/subcontracting with other entities to administer its SCSEP projects. (*See also* 29 CFR 95.21 and 29 CFR 95.41).

What Are the Grant Closeout Procedures? (§ 641.884)

The proposed rule continues the requirement of the previous regulation concerning closeout procedures. The Department requires all recipients to follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71. The Department will also issue supplementary closeout instructions to all SCSEP recipients as necessary.

Subpart I—Grievance Procedures and Appeals Process

Subpart I describes the grievance procedure requirements and the Department's appeals process for grant applicants, SCSEP State grantees and national grantees. These provisions are similar to equivalent provisions in previous regulations.

What Appeal Process Is Available to an Applicant That Does Not Receive a Grant? (§ 641.900)

The Department is considering having an appeals process for applicants that believe the Department has inappropriately denied them a grant. The Department is seeking comments on whether there should be an administrative appeal process and how an appeals process should be structured given the complexities of fashioning a remedy for an applicant. The Department encourages comments that demonstrate how to successfully appeal the grant decisions.

The Department also seeks comments on procedures for operating an appeals process, should the Department decide to adopt one. Under one scenario, the Department could model the appeals process after the Indian and Native American Program under WIA (*see* 20 CFR 667.800). Under that process, there are time limits on when an entity could file an appeal and it allows an appeal of an Administrative Law Judge's opinion to an Administrative Review Board. The Department would like comments on whether this process would work, including your reasons why or why not. If you do not think this process would work, the Department would like comments on other suggestions for a process that it could use, including how the process would work for this program. The Department also seeks comments on whether it should make available an appeals process for one-year grant applicants, including applicants for section 502(e) projects and any supporting justifications for having an appeals process for these applicants. Specifically include comments on how the appeal rights should differ from one-year grants to multi-year grants, if applicable.

What Grievance Procedures Must Grantees Make Available to Applicants, Employees, and Participants? (§ 641.910)

Section 641.910(a) requires State and national grantees to establish grievance procedures for handling employee, participant, and applicant complaints, and requires that the procedures be described in the grant agreement. The Department will not review final decisions reached under the grantees' grievance procedures, except to assure that the grantee's procedures were followed. Under paragraph (c), individuals may file allegations that an SCSEP grantee has not complied with applicable Federal law (except for allegations of discrimination, which are handled under § 641.910(d)) with the Chief of the Division of Older Worker Programs. The Department will only accept such a filing when the individual has first sought resolution through the grantee's grievance procedures and has not reached resolution within 60 days. Allegations determined to be substantial and credible will be investigated. Section 641.910(d) specifies that allegations of discrimination will be handled under the WIA nondiscrimination regulations at 29 CFR 37.70–37.80. Questions, or complaints alleging discrimination, may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210.

What Actions of the Department May a Grantee Appeal and What Procedures Apply to Those Appeals? (§ 641.920)

Section 641.920 describes those actions that may be appealed to the Department and the rules of procedure and timing of decisions for Office of Administrative Law Judge (OALJ) hearings. These rules are similar to those that were in effect under the previous regulations. Appeals from a disallowance of costs as a result of an audit are discussed at 29 CFR 96.6, and appeals of suspensions or terminations of grants on the grounds of discrimination are discussed in 29 CFR parts 31 or 37, as appropriate. Other Grant Officer final determinations relating to costs, payment, suspension, or termination may be appealed to the OALJ under the procedures described in § 641.920(c). The decision of the ALJ is final, unless the grantee files a petition for review with the Administrative Review Board within 20 days under the requirements of § 641.920(d).

Is There an Alternative Dispute Resolution Process That May Be Used in Place of an OALJ Hearing? (§ 641.930)

This proposed rule allows grantees to use the alternative dispute resolution system in lieu of requesting a hearing with an ALJ. Any decision rendered through this process will be considered a final determination.

IV. Administrative Information

A. Paperwork Reduction Act

The proposed rule establishes new information collection requirements that did not previously exist. Currently, grantees are required to submit and a collection is approved for: Quarterly and Final Progress Reports; Quarterly and Final Financial Status Reports (SF 269); annual Equitable Distribution Reports; Budget Information (SF 424 and SF 424-A); demographic information; participant characteristic information; and the political activity poster notice under section 502(b)(1)(P). The proposed rule would extend this requirement to include additional collections as required by the 2000 Amendments to the Older Americans Act, and therefore, would increase the reporting burden. The additional collections are as follows: the State Senior Employment Services Coordination Plan (State Plan) described in section 503 of the Act and proposed subpart C (641.300–641.365) of this proposed rule; a section 502(e) activity report to accompany the activities described in subpart F (641.600–641.690) and listed in proposed section 641.879 for reporting requirements; and additional information under the Quarterly and Final Progress/Status Reports, including the new performance measures and common performance measures at subpart G (641.700–642.795). Other information collections subject to the Paperwork Reduction Act are: the Solicitation for Grant Applications or comparable instrument used to make funding determinations for National grants and under the section 502(e) program; and the orientation information that grantees are required to provide each participant, including, but not limited to, notices of termination, assessments, Hatch Act information, and complaint resolution procedures. In order to provide a coherent reporting package, these requirements, including those that have already been approved and those that are new and contained in this proposed rule, have been submitted to the Office of Management and Budget (OMB) as one reporting package for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The reporting

burden for these collections of information is estimated to average 450 hours per year, per respondent, including the time to review the instructions, search existing data sources, gather and maintain the data needed, and complete and review the information for submission to the Department.

Comments about these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent directly to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management Budget, Washington, DC 20503. The Department welcomes suggestions on all aspects of the burden associated with this NPRM.

B. Executive Order 13132 (Federalism)

The Employment and Training Administration (ETA) has reviewed this proposed rule in accordance with Executive Order 13132 on Federalism, and has determined that it does not have ''federalism implications.'' After the enactment of the 2000 amendments to the OAA, the Department consulted with public interest groups and intergovernmental groups on the development of regulations necessary to implement the amendments to the OAA. Included in the consultation process were the Intergovernmental Organizations; interested individuals; and representatives of the grantee community, including State representatives and representatives from the U.S. Forest Service; National Senior Citizens Education and Research Center; National Council on the Aging; AARP Foundation; Green Thumb, Inc.; National Urban League, Inc.; National Center and Caucus for the Black Aged, Inc.; Asociacion Nacional Por Personas Mayores; National Asian Pacific Center on Aging; and National Indian Council on Aging.

C. Regulatory Flexibility and Regulatory Impact Analysis, SBREFA; Family Well-Being

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. ''Small entities'' are defined as small businesses (those with fewer than 500 employees, except where otherwise provided) and small nonprofit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). This rule will affect primarily the 50 States, the District of Columbia, and certain Territories; however it also affects those national organizations and any subgrantees that have fewer than 500 employees. As described in this preamble, ETA has taken a variety of measures to consult with grant recipients of this program. The Department has assessed the potential impact of the proposed rule in order to identify any areas of concern. Based on that assessment, the Department certifies that these Rules, as promulgated, will not have a significant impact on a substantial number of small entities.

In addition, under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. chapter 8), the Department has determined that these are not ''major rules,'' as defined in 5 U.S.C. 804(s). The Department certifies that the proposed rule has been assessed in accordance with Pub. L. 105–277, 112 Stat. 2681, for its effect on family well-being. The purpose of SCSEP is to provide community service activities and employment opportunities to individuals age 55 and over who are low income and have poor employment prospects. This program is designed at the State and local level to fulfill this purpose with the effect of enhancing family well-being through increased skills and earnings and to promote self-sufficiency for older individuals.

D. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that these rules are consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects the Department's response to suggestions received in writing and through work groups.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. The Department consulted with the Department of Health and Human Services, as well as with State and local officials and their representative organizations, in addition to a broad range of stakeholder groups and others to obtain their views before the publication of this proposed rule. The Department also considered the numerous suggestions received in writing and through work groups. The Department has responded to some of the suggestions received in the ''Summary and Explanation'' section of the preamble.

To a considerable degree, these rules reflect the suggestions received. They also reflect the intent of the Act to improve the SCSEP by integrating SCSEP into the One-Stop Delivery System and improving the performance of the grantee community. The Department has determined that the proposed rule will not have an adverse effect in a material way on the nation's economy.

However, this rule is a significant regulatory action under section (3)(f)(1) of Executive Order 12866 because it includes many provisions that are new to SCSEP and, therefore, the proposed rule has been reviewed by OMB in accordance with that Order.

E. Executive Order 13211 (Energy Effects)

Executive Order 13211 requires all agencies to provide a Statement of Energy Effects for regulatory actions that effect energy supply, energy distribution, or energy use. The Department has analyzed this proposed rule and determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, this proposed rule does not require a Statement of Energy Effects under Executive Order 13211.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

The Department has determined that the proposed rule will not require the expenditure by State, local, or Tribal

governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, the Department has not prepared a budgetary impact statement specifically addressing the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely affected small government.

G. Executive Order 12988 (Civil Justice Reform)

The Department drafted and reviewed this rule according to Executive Order 12988, and determined that it will not unduly burden the Federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13175 (Tribal Summary Impact Statement)

Executive Order 13175 requires consultation and coordination with Indian Tribal Governments and also requires a tribal summary impact statement in the preamble of the regulation, which describes the extent of the agency's prior consultation with tribal officials, a summary of nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met. The Department has reviewed this regulation for tribal impact and has determined that no provision preempts tribal law or the ability of tribes to self-govern. The Department has encouraged input from members of tribal organizations as well as other individuals through a series of Town Hall meetings.

List of Subjects in 20 CFR Part 641

Aged, Employment, Government contracts, Grant programs—labor, Reporting and recordkeeping requirements.

For the reasons stated in the Preamble, 20 CFR Part 641 is proposed to be revised to read as follows:

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Subpart A—Purpose and Definitions

Sec.

641.100 What does this Part cover?
641.110 What is the SCSEP?
641.120 What are the purposes of the SCSEP?
641.130 What is the scope of this Part?
641.140 What definitions apply to this Part?

Subpart B—Coordination with the Workforce Investment Act

641.200 What is the relationship between SCSEP and the Workforce Investment Act?
641.210 What services, in addition to the applicable core services, must SCSEP grantees provide through the One-Stop Delivery System?
641.220 Does title I of WIA require SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?
641.230 Must the individual assessment conducted by the SCSEP grantee and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title IB of WIA?
641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

Subpart C—The State Senior Employment Services Coordination Plan

641.300 What is the State Plan?
641.305 Who is responsible for developing and submitting the State Plan?
641.310 May the Governor delegate responsibility for developing and submitting the State Plan?
641.315 Who participates in developing the State Plan?
641.320 Must all national grantees operating within a State participate in the State planning process?
641.325 What information must be provided in the State Plan?
641.330 How should the State Plan reflect community service needs?
641.335 How should the Governor address the coordination of SCSEP services with activities funded under title I of WIA?
641.340 Must the Governor submit a State Plan each year?
641.345 What are the requirements for modifying the State Plan?
641.350 How should public comments be solicited and collected?
641.355 Who may comment on the State Plan?
641.360 How does the State Plan relate to the equitable distribution (ED) report?
641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

Subpart D—Grant Application and Responsibility Review Requirements

641.400 What entities are eligible to apply to the Department for funds to administer SCSEP community service projects?
641.410 How does an eligible entity apply?
641.420 What factors will the Department consider in selecting grantees?
641.430 What are the eligibility criteria that each applicant must meet?
641.440 What are the responsibility conditions that an applicant must meet?
641.450 Are there responsibility conditions that alone will disqualify an applicant?
641.460 How will the Department examine the responsibility of eligible entities?
641.465 Under what circumstances may the Department reject an application?
641.470 What happens if an applicant's application is rejected? [Reserved]
641.480 May the Governor make recommendations to the Department on grant applications?
641.490 When may SCSEP grants be awarded competitively?

Subpart E—Services to Participants

641.500 Who is eligible to participate in the SCSEP?
641.505 When is eligibility determined?
641.507 What types of income are included and excluded for participant eligibility determinations? [Reserved]
641. 510 What happens if a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP due to an increase in family income?
641.515 How must grantees/subgrantees recruit and select eligible individuals for participation in the SCSEP?
641.520 Are there any priorities that grantees/subgrantees must use in selecting eligible individuals for participation in the SCSEP?
641.525 Are there any other groups of individuals who should be given special consideration when selecting SCSEP participants?
641.530 Must the grantee/subgrantee always select priority or preference individuals?
641.535 What services must grantees/subgrantees provide to participants?
641.540 What types of training may grantees/subgrantees provide to SCSEP participants?
641.545 What supportive services may grantees/subgrantees provide to participants?
641.550 What responsibility do grantees/subgrantees have to place participants in unsubsidized employment?
641.555 What responsibility do grantees have to participants who have been placed in unsubsidized employment?
641.560 May grantees place participants directly into unsubsidized employment?
641.565 What policies govern the provision of wages and fringe benefits to participants?
641.570 Is there a time limit for participation in the program?
641.575 May a grantee establish a limit on the amount of time its participants may spend at each host agency?
641.580 Under what circumstances may a grantee terminate a participant?
641.585 Are participants employees of the Federal Government?
641.590 Are participants employees of the grantee, the local project and/or the host agency?

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

641.600 What is the purpose of the private sector training projects authorized under section 502(e) of the OAA?
641.610 How are section 502(e) activities administered?

641.620 How may an organization apply for section 502(e) funding?
641.630 What private sector training activities are allowable under section 502(e)?
641.640 How do the private sector training activities authorized under section 502(e) differ from other SCSEP activities?
641.650 Does the requirement that not less than 75 percent of the funds be used to pay participant wages and fringe benefits apply to section 502(e) activities?
641.660 Who is eligible to participate in section 502(e) private sector training activities?
641.665 When is eligibility determined?
641.670 May an eligible individual be enrolled simultaneously in section 502(e) private sector training activities operated by one grantee and a community service SCSEP project operated by a different SCSEP grantee?
641.680 How should grantees report on participants who are co-enrolled?
641.690 How is the performance of section 502(e) grantees measured?

Subpart G—Performance Accountability

641.700 What performance measures apply to SCSEP grantees?
641.710 How are these performance indicators defined?
641.715 What are the common performance measures?
641.720 How do the common performance measures affect grantees and the OAA performance measures?
641.730 How will the Department set and adjust performance levels?
641.740 How will the Department determine whether a grantee fails, meets, or exceeds negotiated levels of performance?
641.750 What sanctions will the Department impose if a grantee fails to meet negotiated levels of performance?
641.760 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance under the total SCSEP grant?
641.770 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance in any State it serves?
641.780 When will the Department assess the performance of a national grantee in a State?
641.790 What sanctions will the Department impose if a State grantee fails to meet negotiated levels of performance?
641.795 Will there be incentives for exceeding performance measures?

Subpart H—Administrative Requirements

641.800 What uniform administrative requirements apply to the use of SCSEP funds?
641.803 What is program income?
641.806 How must SCSEP program income be used?
641.809 What non-Federal share (matching) requirements apply to the use of SCSEP funds?
641.812 What is the period of availability of SCSEP funds?
641.815 May the period of availability be extended?
641.818 What happens to funds that are unexpended at the end of the Program Year?
641.821 What audit requirements apply to the use of SCSEP funds?
641.824 What lobbying requirements apply to the use of SCSEP funds?
641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?
641.830 What nondiscrimination protections apply specifically to participants in SCSEP programs?
641.833 What policies govern political patronage?
641.836 What policies govern political activities?
641.839 What policies govern union organizing activities?
641.841 What policies govern nepotism?
641.844 What maintenance of effort requirements apply to the use of SCSEP funds?
641.847 What uniform allowable cost requirements apply to the use of SCSEP funds?
641.850 Are there other specific allowable and unallowable cost requirements for SCSEP?
641.853 How are costs classified?
641.856 What functions and activities constitute costs of administration?
641.859 What other special rules govern the classification of costs as administrative costs or program costs?
641.861 Must SCSEP recipients provide funding for the administrative costs of subrecipients?
641.864 What functions and activities constitute program costs?
641.867 What are the limitations on the amount of SCSEP administrative costs?
641.870 Under what circumstances may the administrative cost limitation be increased?
641.873 What minimum expenditure levels are required for participant wages and fringe benefits?
641.876 When will compliance with cost limitations and minimum expenditure levels be determined?
641.879 What are the fiscal and performance reporting requirements for recipients?
641.881 What are the SCSEP recipient's responsibilities relating to awards to subrecipients?
641.884 What are the grant closeout procedures?

Subpart I—Grievance Procedures and Appeals Process

641.900 What appeal process is available to an applicant that does not receive a grant? [Reserved]
641.910 What grievance procedures must grantees make available to applicants, employees, and participants?
641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?
641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

Authority: 42 U.S.C. 3056 *et.seq.*

Subpart A—Purpose and Definitions

§ 641.100 What does this Part cover?

This Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under the title V of the Older Americans Act, 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Amendments of 2000 (OAA), Pub. L. 106–501. This Part, and other pertinent regulations expressly incorporated by reference, set forth the regulations applicable to the SCSEP.

(a) Subpart A of this part contains introductory provisions and definitions that apply to this Part.

(b) Subpart B of this part describes the required relationship between the OAA and the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2801 *et seq.* These provisions discuss the coordinated efforts to provide services through the integration of the SCSEP within the One-Stop Delivery System.

(c) Subpart C of this part sets forth the requirements for the State Senior Employment Services Coordination Plan (State Plan), such as required coordination efforts, public comments, and equitable distribution.

(d) Subpart D of this part establishes grant planning and application requirements, including grantee eligibility, and responsibility review.

(e) Subpart E of this part details SCSEP participant services.

(f) Subpart F of this part provides the rules for projects designed to assure second career training and the placement of eligible individuals into unsubsidized jobs in the private sector.

(g) Subpart G of this part outlines the performance accountability requirements. This subpart establishes requirements for performance measures, defines such measures, and establishes corrective actions, including the imposition of sanctions for failure to meet performance measures.

(h) Subpart H of this part sets forth the administrative requirements for SCSEP grants.

(i) Subpart I of this part describes the grievance and appeals processes and requirements.

§ 641.110 What is the SCSEP?

The Senior Community Service Employment Program or the SCSEP is a program administered by the Department of Labor that serves low-income persons who are 55 years of age

and older and have poor employment prospects by placing them in part-time community service positions and by assisting them to transition to unsubsidized employment.

§ 641.120 What are the purposes of the SCSEP?

The purposes of the SCSEP are to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years of age or older; to foster individual economic self-sufficiency; and to increase the number of older persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors.

§ 641.130 What is the scope of this Part?

The regulations in this Part address the requirements that apply to the SCSEP. More detailed policies and procedures are contained in administrative guidelines issued by the Department. Throughout this Part, phrases such as, ''according to instructions (procedures) issued by the Department'' or ''additional guidance will be provided through administrative issuance'' refer to the SCSEP Bulletins, technical assistance guides, and other SCSEP directives.

§ 641.140 What definitions apply to this Part?

The following definitions apply to this Part:

Authorized position level means the number of SCSEP enrollment opportunities that can be supported for a 12-month period based on the average national unit cost. The authorized position level is derived by dividing the total amount of funds appropriated for a Program Year by the national average unit cost per participant for that Program Year as determined by the Department. The national average unit cost includes all costs of administration, other participant costs, and participant wage and fringe benefit costs as defined in section 506(g) of the OAA. A grantee's total award is divided by the national unit cost to determine the authorized position level for each grant agreement.

Community service includes, but is not limited to, social, health, welfare, and educational services (including literacy tutoring); legal assistance, and other counseling services, including tax counseling and assistance and financial counseling; library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; anti-pollution and environmental quality efforts; weatherization activities; and economic development. (OAA sec. 516(1)).

C*omprehensive One-Stop Center* means a facility located in each Local Workforce Investment Area that provides core services, and provides access to other programs and activities carried out by the One-Stop partners. (See WIA sec. 134(c)(2)).

Core Services means those services described in section 134(d)(2) of WIA.

Department or DOL mean the United States Department of Labor, including its agencies and organizational units.

Equitable distribution report means a report based on the latest available Census data, which lists the optimum number of participant positions in each designated area in the State, and the number of authorized participant positions each grantee serves in that area, taking the needs of underserved States into account. This report provides a basis for improving the distribution of SCSEP positions.

Grant period means the time period between the effective date of the grant award and the ending date of the award, which reflects any modifications extending the period of performance, whether by the Department's exercise of options contained in the grant agreement or otherwise. Also referred to as ''project period'' or ''award period.''

Grantee means an entity receiving financial assistance directly from the Department to carry out SCSEP activities. The grantee is the legal entity that receives the award and is legally responsible for carrying out the SCSEP, even if only a particular component of the entity is designated in the grant award document. Grantees include States, tribal organizations, territories, public and private nonprofit organizations, agencies of a State government or a political subdivision of a State, or a combination of such political subdivisions that receive SCSEP grants from the Department. (OAA sec. 502). In the case of the section 502(e) projects, grantee may be used to include private business concerns. As used here, ''grantees'' include ''grantees'' as defined in 29 CFR 97.3 and ''recipients'' as defined in 29 CFR 95.2(g).

Greatest economic need means the need resulting from an income level at or below the poverty guidelines established by the Department of Health and Human Services and approved by the Office of Management and Budget. (OAA sec. 101(27)).

Greatest social need means the need caused by non-economic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks, or threatens the capacity of the individual to live independently. (OAA sec. 101(28)).

Host agency means a public agency or a private nonprofit organization exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, other than a political party or any facility used or to be used as a place for sectarian religious instruction or worship, which provides a work site and supervision for one or more participants. (See also OAA sec. 502(b)(1)(C)). A host agency may be a place of sectarian worship or instruction as long as the work experience provided for the participant is not for sectarian purposes.

Indian means a person who is a member of an Indian tribe. (OAA sec. 101(5)).

Indian tribe means any tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which:

(1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Is located on, or in proximity to, a Federal or State reservation or rancheria. (OAA sec. 101(6)).

Individual employment plan or IEP means a plan for a participant that includes an employment goal, achievement of objectives, and appropriate sequence of services for the participant based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the participant. (*See* OAA sec. 502(b)(1)(N)).

Intensive services means those services authorized by section 134(d)(3) of the Workforce Investment Act.

Jobs for Veterans Act means the program established in section 2 of Pub. L. 107–288 (2002) (38 U.S.C. 4215), that provides a priority for veterans and the spouse of a veteran who died in a service-connected disability, the spouse of a member of the Armed Forces on active duty who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements to receive services in any Department of

Labor-funded workforce development program.

Local Workforce Investment Area or local area means an area established by the Governor of a State under section 116 of the Workforce Investment Act.

Local Board means a Local Workforce Investment Board established under section 117 of the Workforce Investment Act.

National grantee means Federal public agencies and organizations, private nonprofit agencies and organizations, or tribal organizations that operate under title V of the OAA that are capable of administering multi-State projects under a national grant from the Department. (*See* OAA sec. 506(g)(5)).

OAA means the Older Americans Act as amended by the Older Americans Act Amendments of 2000 (Pub. L. 106–501; 42 U.S.C. 3056 *et seq.*).

One-Stop Delivery System means a system under which employment and training programs, services, and activities are available through a network of eligible One-Stop partners, which assures that information about and access to core services is available regardless of where the individuals initially enter the statewide workforce investment system. (WIA sec. 134(c)(2)).

One-Stop partner means an entity described in section 121(b)(1) of the Workforce Investment Act; *i.e.*, required partners, and an entity described in section 121(b)(2) of the Workforce Investment Act, *i.e.*, additional partners.

Other participant (enrollee) cost means participant training, including the payment of reasonable costs to instructors, classroom rental, training supplies, materials, equipment, and tuition, and which may be provided on the job, in a classroom setting, or under other appropriate arrangements; job placement assistance, including job development and job search assistance; participant supportive services to assist a participant to successfully participate in a project, including the payment of reasonable costs of transportation, health care and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services; and outreach, recruitment and selection, intake orientation, and assessments. (OAA sec. 502(c)(6)(A)).

Participant means an individual who is eligible for the SCSEP, has been enrolled and is receiving services as prescribed under subpart E of this part.

Placement into public or private unsubsidized employment means full-or part-time paid employment in the public or private sector by a participant for 30 days within a 90-day period without the use of funds under title V or any other Federal or State employment subsidy program, or the equivalent of such employment as measured by the earnings of a participant through the use of wage records or other appropriate methods. (OAA sec. 513(c)(2)(A)).

Poor employment prospects means the likelihood that an individual will not obtain employment without the assistance of SCSEP or any other workforce development program. Persons with poor employment prospects include, but are not limited to, those without a substantial employment history, basic skills, and/or English-language proficiency; displaced homemakers, school dropouts, persons with disabilities, including disabled veterans, homeless individuals, and individuals residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Program year means the one-year period beginning July 1 and ending on June 30. (OAA sec. 515(b)).

Project means an undertaking by a grantee or subgrantee according to a grant agreement that provides community service, training, and employment opportunities to eligible individuals in a particular location within a State.

Recipient means grantee. As used here, ''recipients'' include ''recipients'' as defined in 29 CFR 95.2(g) and ''grantees'' as defined in 29 CFR 97.3.

Retention in public or private unsubsidized employment means full-or part-time paid employment in the public or private sector by a participant for 6 months after the starting date of placement into unsubsidized employment without the use of funds under title V or any other Federal or State employment subsidy program. (OAA sec. 513(c)(2)(B)).

SCSEP means the Senior Community Service Employment Program authorized under title V of the OAA.

Service area means the geographic area served by a local SCSEP project.

State Workforce Agency means the State agency that administers the State Wagner-Peyser program.

State Board means a State Workforce Investment Board established under section 111 of the Workforce Investment Act.

State grantee means the entity designated by the Governor to enter into a grant with the Department to administer a State or territory SCSEP project under the OAA. Except as applied to funding distributions under section 506 of the OAA, this definition applies to the 50 States, Puerto Rico, the District of Columbia and the following territories: Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

State Plan means the State Senior Employment Services Coordination Plan as required under section 503(a) of the OAA.

Subgrantee means the legal entity to which a subaward of financial assistance, which may include a subcontract, which is made by the grantee (or by a higher tier subgrantee or recipient), and that is accountable to the grantee for the use of the funds provided. As used here, ''subgrantee'' includes ''subgrantees'' as defined in 29 CFR 97.3 and ''subrecipients'' as defined in 29 CFR 95.2(kk).

Subrecipient means a subgrantee.

Title V of the OAA means 42 U.S.C. 3056 *et seq.* or title V of Pub. L. 106–501.

Training Services means those services authorized by section 134(d)(4) of the Workforce Investment Act.

Tribal organization means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. (OAA sec. 101(7)).

Workforce Investment Act or WIA means the Workforce Investment Act of 1998 (Pub. L. 105–220—Aug. 7, 1998; 112 Stat. 936); 29 U.S.C. 2801 *et seq.*

Workforce Investment Act regulations or WIA regulations means regulations at 20 CFR part 652 and parts 660–671.

Subpart B—Coordination With the Workforce Investment Act

§ 641.200 What is the relationship between SCSEP and the Workforce Investment Act?

SCSEP is a required partner under the Workforce Investment Act. As such, it is a part of the One-Stop Delivery System. SCSEP grantees are required to follow all applicable rules under the WIA and its regulations.

§ 641.210 What services, in addition to the applicable core services, must SCSEP grantees provide through the One-Stop Delivery System?

In addition to providing core services, SCSEP grantees must make arrangements to provide eligible and ineligible individuals with access to other activities and programs carried out by other One-Stop partners.

§ 641.220 Does title I of WIA require SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

No, SCSEP requirements continue to apply. Title V resources may only be used to provide title V services to title V-eligible individuals. The Workforce Investment Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop Delivery System. Although the overall effect is to provide universal access to core services, SCSEP resources may only be used to provide services that are authorized and provided under SCSEP to eligible individuals. All other individuals who are in need of the services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in SCSEP, should be referred to or enrolled in WIA or other appropriate partner programs. (WIA sec. 121(b)(1)). These arrangements should be negotiated in the MOU.

§ 641.230 Must the individual assessment conducted by the SCSEP grantee and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in SCSEP and adult programs under title IB of WIA?

Yes, section 502(b)(4) of the OAA provides that an assessment or IEP completed by SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop and vice-versa. These reciprocal arrangements and the contents of the SCSEP IEP and WIA IEP should be negotiated in the MOU. (OAA sec. 502(b)(4)).

§ 641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

(a) Yes, although SCSEP participants are not automatically eligible for intensive and training services under title I of WIA, Local Boards may deem SCSEP participants, either individually or as a group, as satisfying the requirements for receiving adult intensive and training services under title I of WIA.

(b) SCSEP participants who have been assessed through an SCSEP IEP have received an intensive service according to 20 CFR 663.240(a) of the WIA regulations. SCSEP participants who seek unsubsidized employment as part of their SCSEP IEP, may require training to meet their objectives. The SCSEP grantee/subgrantee, the host agency, the WIA program, or another One-Stop partner may provide training as appropriate and as negotiated in the MOU.

(c) SCSEP provides opportunities for eligible individuals to engage in part-time community service activities for which they are compensated. These assignments are analogous to work experience activities or intensive service under 20 CFR 663.200 of the WIA regulations.

Subpart C—The State Senior Employment Services Coordination Plan

§ 641.300 What is the State Plan?

The State Senior Employment Services Coordination Plan (the State Plan) is a plan, submitted by the Governor in each State, as an independent document or as part of the WIA Unified Plan, that describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees operating within the State and to facilitate the efforts of stakeholders, including State and Local Boards under WIA, to work collaboratively through a participatory process to accomplish the SCSEP program's goals. (OAA sec. 503(a)(1)). The State Plan provisions are listed at proposed § 641.325.

§ 641.305 Who is responsible for developing and submitting the State Plan?

The Governor of each State is responsible for developing and submitting the State Plan to the Department.

§ 641.310 May the Governor delegate responsibility for developing and submitting the State Plan?

Yes, the Governor may delegate responsibility for developing and submitting the State Plan, provided that any such delegation is consistent with State law and regulations. To delegate responsibility, the Governor must submit a signed statement indicating the individual and/or organization that will be submitting the State Plan on his or her behalf.

§ 641.315 Who participates in developing the State Plan?

(a) In developing the State Plan the Governor must obtain the advice and recommendations of representatives from:

(1) The State and area agencies on aging;

(2) State and Local Boards;

(3) Public and private nonprofit agencies and organizations providing employment services, including each grantee operating an SCSEP project within the State, except as provided for in § 641.320(b);

(4) Social service organizations providing services to older individuals;

(5) Grantees under title III of the OAA;

(6) Affected communities;

(7) Underserved older individuals;

(8) Community-based organizations serving older individuals;

(9) Business organizations; and

(10) Labor organizations

(b) The Governor may also obtain the advice and recommendations of other interested organizations and individuals, including SCSEP program participants, in developing the State Plan. (OAA sec. 305(a)(2)).

§ 641.320 Must all national grantees operating within a State participate in the State planning process?

(a) Yes, although section 503(a)(2) requires the Governor to obtain the advice and recommendation of SCSEP national grantees with no reciprocal provision requiring the national grantees to participate in the State planning process, the eligibility provision at section 514(c)(5) requires grantees to coordinate with other organizations at the State and local level. Therefore, any national grantee that does not participate in the State planning process may be deemed ineligible to receive SCSEP funds in the following Program Year.

(b) National grantees serving older American Indians are exempted from participating in the planning requirements under section 503(a)(8) of the OAA. These national grantees may choose not to participate in the State planning process, however, the Department encourages participation. If a national grantee serving older American Indians does not participate in the State planning process, it must describe its plans for serving older American Indians in its application for SCSEP grant funds.

§ 641.325 What information must be provided in the State Plan?

The Department issues instructions detailing the information that must be provided in the State Plan. At a minimum, the State Plan must include information on the following:

(a) The ratio of eligible individuals in each service area to the total eligible population in the State;

(b) The relative distribution of:

(1) Eligible individuals residing in urban and rural areas within the State;

(2) Eligible individuals who have the greatest economic need;

(3) Eligible individuals who are minorities; and

(4) Eligible individuals who have the greatest social need;

(c) The employment situations and the types of skills possessed by eligible individuals;

(d) The localities and populations for which community service projects of the type authorized by title V are most needed;

(e) Actions taken or planned to coordinate activities of SCSEP grantees with the activities being carried out in the State under title I of WIA;

(f) A description of the State's procedures and time line for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment;

(g) Public comments received, and a summary of the comments;

(h) A description of the steps taken to avoid disruptions to the greatest extent possible (*see* § 641.365); and

(i) Such other information as the Department may require in the State Plan instructions. (OAA sec. 503(a)(3)–(4), (6)).

§ 641.330 How should the State Plan reflect community service needs?

The Governor must ensure that the State Plan identifies the types of community services that are needed and the places where these services are most needed. The State Plan should specifically identify the needs and locations of those individuals most in need of community services and the groups working to meet their needs. (OAA sec. 503(a)(4)(E)).

§ 641.335 How should the Governor address the coordination of SCSEP services with activities funded under title I of WIA?

The Governor must seek the advice and recommendations from representatives of the State and area agencies on aging in the State and the State and Local Boards established under title I of WIA. (OAA sec. 503(a)(2)). The State Plan must describe the steps that are being taken to coordinate SCSEP activities within the State with activities being carried out under title I of WIA. (OAA sec. 503(a)(4)(F)). The State Plan must describe the steps being taken to ensure that the SCSEP is an active partner in each One-Stop Delivery System and the steps that will be taken to encourage and improve coordination with the One-Stop Delivery System.

§ 641.340 Must the Governor submit a State Plan each year?

The Governor is not required to submit a full State Plan each year; however, at a minimum, the Governor must seek the advice and recommendation of the individuals and organizations identified in the statute at section 503(a)(2) about what, if any, changes are needed, and publish the changes to the State Plan for public comment each year and submit a modification to the Department.

§ 641.345 What are the requirements for modifying the State Plan?

(a) Modifications are required when:

(1) There are changes in Federal or State law or policy substantially changes the assumptions upon which the State Plan is based;

(2) There are changes in the State's vision, strategies, policies, performance indicators, or organizational responsibilities;

(3) The State has failed to meet performance goals and must submit a corrective action plan; or

(4) There is a change in a grantee or grantees.

(b) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the State Plan under §§ 641.325 and 641.350.

(c) The Department will issue additional instructions for the procedures that must be followed when requesting modifications to the State Plan. (OAA sec. 503(a)(1)).

§ 641.350 How should public comments be solicited and collected?

The Governor should follow established State procedures to solicit and collect public comments. The State Plan must include a description of the State's procedures and schedule for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment.

§ 641.355 Who may comment on the State Plan?

Any individual or organization may comment on the Plan.

§ 641.360 How does the State Plan relate to the equitable distribution (ED) report?

The two documents address some of the same areas, and are prepared at different points in time. The ED report is prepared by State agencies at the beginning of each fiscal year and provides a ''snapshot'' of the actual distribution of all of the authorized positions within the State, grantee-by-grantee, and the optimum number of participant positions in each designated area based on the latest available Census data. It provides a basis for improving the distribution of SCSEP positions within the State. (*See* OAA sec. 508). The State plan is prepared by the Governor and covers many areas in addition to equitable distribution, as discussed in proposed § 641.325, and sets forth a proposed plan for distribution of authorized positions in the State. Any distribution or redistribution of positions made as a result of a State Plan proposal will be reflected in the subsequent year's ED report, which then forms the basis for the proposed distribution in the next year's State plan. This process is iterative in that it moves the authorized positions from over-served areas to underserved areas over a period of time.

§ 641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

Governors must describe the steps that are being taken to comply with the statutory requirement to avoid disruptions in the State Plan. (OAA sec. 503(a)(6)). When there is new census data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any other reason, the Department recommends a gradual shift that encourages current participants in subsidized community service positions to move into unsubsidized employment to make positions available for eligible individuals in the areas where there has been an increase in the eligible population. The Department does not define disruptions to mean that participants are entitled to remain in a subsidized community service employment position indefinitely. As discussed in §§ 641.570 and 641.575, grantees may, under certain circumstances, place time limits on an SCSEP community service assignment, thus permitting positions to be transferred over time.

Subpart D—Grant Application, Eligibility, and Award Requirements

§ 641.400 What entities are eligible to apply to the Department for funds to administer SCSEP community service projects?

(a) *National Grants.* Entities eligible to apply for national grants include nonprofit organizations, Federal public agencies, and tribal organizations. These entities must be capable of administering a multi-State program. State and local agencies may not apply for these funds.

(b) *National Grants in a State.* Section 514(e)(3) of the OAA permits nonprofit organizations, public agencies, and States to receive SCSEP funds when a national grantee in a State fails to meet its performance measures in the second and third year of failure. Any entity that

was the subject of the competition is not eligible to receive SCSEP funds.

(c) *State Grants.* Section 506(e) of the OAA requires the Department to enter into agreements with each State to provide SCSEP services. States may use individual State agencies, political subdivisions of a State, a combination of such political subdivisions, or a national grantee operating in the State to administer SCSEP funds. If the State's funds are competed under section 514(f) of the OAA, other agencies within the State, political subdivisions of a State, a combination of political subdivisions of a State, and national grantees operating in the State are eligible to apply for funds. Other States may not apply for this funding.

§ 641.410 How does an eligible entity apply?

(a) *General.* An eligible entity must follow the application guidelines issued by the Department. The Department will issue application guidelines announcing the availability of State and national SCSEP funds whether they are awarded on a competitive or noncompetitive basis. The guidelines will contain application due dates, application instructions, and other necessary information. All entities must submit applications in accordance with the Department's instructions.

(b) *National Grant Applicants.* All applicants for SCSEP national grant funds, except organizations proposing to serve older American Indians, must submit their applications to the Governor of each State in which projects are proposed before submitting the application to the Department. (OAA sec. 503(a)(5)).

(c) *State Applicants.* A State that submits a Unified Plan under WIA may include the State's SCSEP community service project grant application in its Unified Plan. Any State that submits an SCSEP grant application as part of its WIA Unified Plan must address all of the application requirements as published in the Department's instructions. State plan applications, and modifications are addressed in §§ 641.340 and 641.345.

§ 641.420 What factors will the Department consider in selecting grantees?

The Department will select grantees from among applicants that are able to meet the eligibility criteria and responsibility review at section 514 of the OAA. (Section 641.430 contains the eligibility criteria and §§ 641.440 and 641.450 contain the responsibility criteria). If there is a full and open competition, the Department also will take the rating criteria described in the Solicitation for Grant Application into consideration, including the applicant's/grantee's past performance in any prior Federal grants or contracts for the past 3 years.

§ 641.430 What are the eligibility criteria that each applicant must meet?

To be eligible to receive SCSEP funds, each applicant must be able to demonstrate:

(a) An ability to administer a program that serves the greatest number of eligible participants, giving particular consideration to individuals with greatest economic need, greatest social need, poor employment history or prospects, and over the age of 60;

(b) An ability to administer a program that provides employment for eligible individuals in communities in which they reside, or in nearby communities, that will contribute to the general welfare of the community;

(c) An ability to administer a program that moves eligible participants into unsubsidized employment;

(d) An ability to move participants with multiple barriers to employment into unsubsidized employment;

(e) An ability to coordinate with other organizations at the State and local levels, including the One-Stop Delivery System;

(f) An ability to properly manage the program, including its plan for fiscal management of the SCSEP program;

(g) An ability to minimize program disruption for current participants if there is a change in project sponsor and/or location, and its plan for minimizing disruptions; and

(h) Any additional criteria that the Secretary deems appropriate in order to minimize disruptions for current participants.

§ 641.440 What are the responsibility conditions that an applicant must meet?

Each applicant must be able to meet the following responsibility tests:

(a) The Department has been unable to recover a debt from the applicant, whether incurred on its own or through subgrantees or subcontractors, or the applicant has failed to comply with a debt repayment plan to which it agreed. In this context, a debt is established by final agency action, followed by three demand letters to the applicant, without payment in full by the applicant.

(b) Established fraud or criminal activity of a significant nature within the applicant's organization.

(c) Serious administrative deficiencies identified by the Department, such as failure to maintain a financial management system as required by Federal regulations.

(d) Willful obstruction of the auditing or monitoring process.

(e) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance measures.

(f) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities.

(g) Failure to return a grant closeout package or outstanding advances within 90 days after the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted.

(h) Failure to submit required reports.

(i) Failure to properly report and dispose of Government property as instructed by the Department.

(j) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.

(k) Failure to ensure that a subgrantee complies with applicable audit requirements, including OMB Circular A–133 audit requirements specified at 20 CFR 667.200(b) and § 641.821.

(l) Failure to audit a subgrantee within the period required under § 641.821.

(m) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgment of the grant officer, the disallowances are egregious findings.

(n) Failure to establish a mechanism to resolve a subgrantee's audit in a timely fashion.

§ 641.450 Are there responsibility conditions that alone will disqualify an applicant?

(a) Yes, an applicant may be disqualified if either of the first two responsibility tests listed in § 641.440 is not met.

(b) The remainder of the responsibility tests listed in § 641.440 require a substantial or persistent failure (for 2 or more consecutive years).

§ 641.460 How will the Department examine the responsibility of eligible entities?

The Department will conduct a review of available records to assess each applicant's overall fiscal and administrative ability to manage Federal funds. The Department's responsibility review may consider any available information, including the organization's history with regard to the management of other grants awarded by the Department or by other Federal agencies. (OAA secs. 514(d)(1) and (d)(2)).

§ 641.465 Under what circumstances may the Department reject an application?

(a) The Department may question any proposed project component of an application if it believes that the component will not serve the purposes of the SCSEP program. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative.

(b) The Department may reject any application that the Grant Officer determines unacceptable based on the content of the application, rating score, past performance, fiscal management, or any other factor the Grant Officer believes serves the best interest of the program, including the application's comparative rating in a competition.

§ 641.470 What happens if an applicant's application is rejected?

[Reserved].

§ 641.480 May the Governor make recommendations to the Department on grant applications?

(a) Yes, each Governor will have a reasonable opportunity to make comments on any application to operate a SCSEP project located in the Governor's State before the Department makes a final decision on a grant award. The Governor's comments should be directed to the Department and may include the anticipated effect of the proposal on the overall distribution of program positions within the State; recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and recommendations for distributing any new positions that may become available as a result of an increase in funding for the State. The Governor's recommendations should be consistent with the State Plan.

(b) Under noncompetitive conditions, the Governor may make the authorized recommendations on all applications. However, under competitive conditions, the Governor has the option of making the authorized recommendations on all applications or following the rating process. It is incumbent on each Governor to inform the Department of his or her intent to review the applications before or after the rating process.

§ 641.490 When may SCSEP grants be awarded competitively?

(a) The Department must hold a competition for SCSEP funds when a grantee (national grantee, national grantee in a State, or State grantee) fails to meet its performance measures; the eligibility requirements; or the responsibility tests established by section 514 of the OAA.

(b) The Department may hold a full and open competition before the beginning of a new grant period, or if additional grantees are funded. The details of the competition will be provided in a Solicitation for Grant Applications published in the **Federal Register**. The Department believes that full and open competition is the best way to assure the highest quality of services to eligible participants.

Subpart E—Services to Participants

§ 641.500 Who is eligible to participate in the SCSEP?

Anyone who is at least 55 years old and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by the Office of Management and Budget (poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 516(2)). A person with a disability may be treated as a ''family of one'' for income eligibility determination purposes. The Department will issue administrative guidance on the procedures for computing family income for purposes of determining SCSEP eligibility.

§ 641.505 When is eligibility determined?

Initial eligibility is determined at the time individuals apply to participate in the SCSEP. Once individuals become SCSEP participants, the grantee/subgrantee is responsible for verifying their continued income eligibility at least once every 12 months. Grantees may also verify an individual's eligibility as circumstances require.

§ 641.507 What types of income are included and excluded for participant eligibility determinations?

[Reserved].

§ 641.510 What happens if a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP due to an increase in family income?

If a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP, the grantee/subgrantee must give the participant written notification of termination within 30 days, and the participant must be terminated within 30 days of receiving the written notification. Grantees/subgrantees must refer such individuals to the services provided under the One-Stop Delivery System or other appropriate partner program. Participants may file a grievance according to the grantee's procedures and subpart I.

§ 641.515 How must grantees/subgrantees recruit and select eligible individuals for participation in the SCSEP?

(a) Grantees and subgrantees must develop methods of recruitment and selection that assure that the maximum number of eligible individuals have an opportunity to participate in the program. To the extent feasible, grantees should seek to enroll individuals who are eligible minorities, limited English speakers, Indians, or who have the greatest economic need at least in proportion to their numbers in the area, taking into consideration their rates of poverty and unemployment, should be afforded community service opportunities. (OAA sec. 502(b)(1)(M)).

(b) Grantees and subgrantees must notify the State Workforce Agency of all SCSEP community service opportunities and must use the One-Stop Delivery System in the recruitment and selection of eligible individuals. (OAA sec. 502(b)(1)(H)).

§ 641.520 Are there any priorities that grantees/subgrantees must use in selecting eligible individuals for participation in the SCSEP?

(a) Yes, in selecting eligible individuals for participation in the SCSEP, priority must be given to:

(1) individuals who are at least 60 years old (OAA sec. 516(2)); and

(2) a veteran, or the spouse of a veteran who died of a service-connected disability, a member of the Armed Forces on active duty, who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements under section 2 of the Jobs for Veterans Act, Pub. L. 107–288 (2002).

(b) Grantees must apply these priorities in the following order:

(1) Veterans and qualified spouses at least 60 years old;

(2) Other individuals at least 60 years old;

(3) Veterans and qualified spouses aged 55–59; and

(4) Other individuals aged 55–59.

§ 641.525 Are there any other groups of individuals who should be given special consideration when selecting SCSEP participants?

Yes, in selecting participants from among those individuals who are

eligible, to special consideration must be given, to the extent feasible, to individuals who have incomes below the poverty level, who have poor employment prospects and who have the greatest social and/or economic need and who are eligible minorities, limited English speakers, or Indians. (OAA sec. 502(b)(1)(M)).

§ 641.530 Must the grantee/subgrantee always select priority or preference individuals?

Grantees must always select qualified individuals in accordance with § 641.520. Grantees must apply the preference, to the extent feasible, when selecting individuals within the priority groups, unless the grantee determines based on an assessment of their circumstances and the available community service employment opportunities, that a non-preference individual should receive services over a preference individual. When the Department examines the characteristics of a grantee's participant population, the grantee may be asked to provide evidence that it is adhering to the enrollment priorities and preferences set forth in §§ 641.520 and 641.525.

§ 641.535 What services must grantees/subgrantees provide to participants?

(a) When individuals are selected for participation in the SCSEP, the grantee/subgrantee is responsible for:

(1) Providing orientation to the SCSEP, including information on project goals and objectives, community service assignments, training opportunities, available supportive services, the availability of a free physical examination, participant rights and responsibilities, and permitted and prohibited political activities (OAA sec. 502);

(2) Assessing participants' work history, skills and interests, talents, physical capabilities, aptitudes, needs for supportive services, occupational preferences, training needs, potential for performing community service assignments, and potential for transition to unsubsidized employment at least once each quarter;

(3) Using the information gathered during the assessment to develop IEPs for participants; except that if an assessment has already been performed and an IEP developed under title I of WIA, the WIA IEP will satisfy the requirement for an SCSEP assessment and IEP (*see* § 641.260) and updating the IEPs as necessary to reflect information gathered during the quarterly participant assessments (OAA sec. 502(b)(1)(N));

(4) Placing participants in appropriate community service activities in the community in which they reside, or in a nearby community (OAA sec. 502(b)(1)(B));

(5) Providing or arranging for necessary training specific to the participants' community service assignments (OAA sec. 502(b)(1)(I));

(6) Assisting participants in arranging for other training identified in their SCSEP IEPs (OAA sec. 502(b)(1)(N));

(7) Assisting participants in arranging for needed supportive services identified in their SCSEP IEPs (OAA sec. 502(b)(1)(N));

(8) Providing participants with wages and fringe benefits for time spent working in the assigned community service employment activity (OAA sec. 502(c)(6)(A)(i));

(9) Ensuring that participants have safe and healthy working conditions at their community service worksites (OAA sec. 502(b)(1)(J));

(10) Verifying participant income eligibility at least once every 12 months;

(11) Assisting participants in obtaining unsubsidized employment, including providing or arranging for employment counseling in support of their IEPs;

(12) Providing appropriate services for participants through the One-Stop Delivery System established under WIA (OAA sec. 502(b)(1)(O));

(13) Assessing participants' progress in meeting the goals and objectives identified in their IEPs, and meeting with participants to reevaluate their community service assignments, training needs, supportive service needs and potential for transitioning to unsubsidized employment, making appropriate revisions to the SCSEP IEPs as necessary (OAA sec. 502(b)(1)(N)(iii));

(14) Following-up with participants placed into unsubsidized employment during the first 6 months of placement to make certain that participants receive any follow-up services they may need to ensure successful placements; and

(15) Following-up at 6 months with participants who are placed in unsubsidized employment to determine whether they are still employed (OAA sec. 513(c)(2)(B));

(b) In addition to the services listed in paragraph (a) of this section, grantees and subgrantees must provide service to participants according to administrative guidelines that may be issued by the Department.

(c) Grantees may not use SCSEP funds for individuals who only need job search assistance or job referral services.

§ 641.540 What types of training may grantees/subgrantees provide to SCSEP participants?

(a) Grantees and subgrantees must arrange skill training for participants that is realistic and consistent with the participants' IEP, and that makes the most effective use of their skills and talents.

(b) Training may be provided before or after placement in a community service activity.

(c) Training may be in the form of lectures, seminars, classroom instruction, individual instruction, on-the-job experiences or other arrangements, including but not limited to, arrangements with other workforce development programs such as WIA. (OAA sec. 502(c)(6)(A)(ii)).

(d) Grantees and subgrantees are encouraged to place a major emphasis on training available through on-the-job experience.

(e) Grantees/subgrantees are encouraged to obtain training through locally available resources, including host agencies, at no cost or reduced cost to the SCSEP.

(f) Grantees/subgrantees may pay reasonable costs for instructors, classroom rental, training supplies and materials, equipment, tuition and other costs of training. (OAA sec. 502(c)(6)(A)(ii)).

(g) Grantees/subgrantees may reimburse participants for costs associated with travel and room and board necessary to participate in training.

(h) Nothing in this section prevents or limits participants from engaging in self-development training available through other sources during hours when not assigned to community service activities.

§ 641.545 What supportive services may grantees/subgrantees provide to participants?

(a) Grantees/subgrantees may provide or arrange for supportive services to assist participants in successfully participating in SCSEP projects, including but not limited to payment of reasonable costs of transportation; health care and medical services; special job-related or personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; child and adult care; temporary shelter; and follow-up services. (OAA sec. 502(c)(6)(A)(iv)).

(b) To the extent practicable, the grantee/subgrantee should provide for the payment of these expenses from other resources.

§ 641.550 What responsibility do grantees/subgrantees have to place participants in unsubsidized employment?

Because one goal of the program is to foster economic self-sufficiency, grantees and subgrantees should make reasonable efforts to place as many participants as possible into unsubsidized employment, in accordance with each participant's IEP. Grantees are responsible for working with participants to ensure that, for those participants whose IEPs include an unsubsidized employment goal, the participants are receiving services and taking actions designed to help them achieve this goal. Grantees and subgrantees must contact private and public employers directly or through the One-Stop Delivery System to develop or identify suitable unsubsidized employment opportunities. They must also encourage host agencies to assist participants in their transition to unsubsidized employment, including unsubsidized employment with the host agency.

§ 641.555 What responsibility do grantees have to participants who have been placed in unsubsidized employment?

(a) Grantees must contact placed participants during the first 6 months to determine if participants have the necessary supportive services to remain in the job.

(b) Grantees must contact participants 6 months after placement to determine if they have been retained by the employer or use wage records to verify continued employment. (OAA sec. 513(c)(2)(B)).

§ 641.560 May grantees place participants directly into unsubsidized employment?

Grantees are encouraged to refer individuals who may be placed directly in an unsubsidized employment position to an employment provider, including the One-Stop for job placement assistance under WIA. The SCSEP encourages grantees to work closely with participants to develop an IEP and assessment to determine what training the individual may need. The Department encourages grantees to work with those participants who are the most difficult to place to provide them with the services necessary to develop the skills needed for job placement.

§ 641.565 What policies govern the provision of wages and fringe benefits to participants?

(a) *Wages.* Grantees must pay participants the highest applicable minimum wage for time spent in orientation, training required by the grantee/subgrantee, and work in community service assignments. The highest applicable minimum wage is either the minimum wage applicable under the Fair Labor Standards Act of 1938; the State or local minimum wage for the most nearly comparable covered employment; or the prevailing rate of pay for persons employed in similar public occupations by the same employer.

(b) *Fringe benefits.*

(1) *Required fringe benefits.* Except as provided in paragraphs (b)(3) and (b)(4) of this section, grantees must ensure that enrollees receive all fringe benefits required by law.

(i) Grantees must provide fringe benefits uniformly to all participants within a project or subproject, unless the Department agrees to waive this provision due to a determination that such a waiver is in the best interests of applicants, participants, and project administration.

(ii) Grantees must offer participants the opportunity to receive physical examinations annually.

(A) Physical examinations are a fringe benefit, and not an eligibility criterion. The examining physician must provide, to participants only, a written report of the results of the examination. Participants may, at their option, provide the grantee or subgrantee with a copy of the report.

(B) Participants may choose not to accept the physical examination. In that case, the grantee or subgrantee must document this refusal, through a signed statement or other means, within 60 workdays after commencement of the community service assignment. Each year thereafter, grantees and subgrantees must offer the physical examination and document the offer and any participant's refusal.

(iii) When participants are not covered by the State workers'compensation law, the grantee or subgrantee must provide participants with workers' compensation benefits equal to those provided by law for covered employment.

(2) *Allowable fringe benefit costs.* Grantees may provide the following fringe benefits: annual leave; sick leave; holidays; health insurance; social security; and any other fringe benefits approved in the grant agreement and permitted by the appropriate Federal cost principles found in OMB Circulars A–87 and A–122, except for retirement costs. (*See* subpart H, §§ 641.847 and 641.850).

(3) *Retirement.* Grantees may not use grant funds to provide contributions into a retirement system or plan unless the grantee documents the following:

(i) The costs are allowable under the appropriate cost principles indicated at § 641.847; and

(ii) Such contributions bear a reasonable relationship to the cost of providing benefits to participants. A ''reasonable relationship'' exists when the benefits vest at the time contributions are made on behalf of the participants, or the charges to SCSEP funds are for contributions on behalf of participants to a ''defined benefit'' type of plan that do not exceed the amounts reasonably necessary to provide the specified benefit to participants, as determined under a separate actuarial determination.

(4) *Unemployment compensation.* Unless required by law, grantees may not pay the cost of unemployment insurance for participants.

§ 641.570 Is there a time limit for participation in the program?

No, there is no time limit for participation in the SCSEP; however, a maximum duration of enrollment may be established by the grantee in the grant agreement, when authorized by the Department. If there is such a time limit on enrollment established in the grant agreement, the grantee must provide for a system to transition participants to unsubsidized employment or other assistance before the maximum enrollment duration has expired. Provisions for transition must be reflected in the participant's IEP.

§ 641.575 May a grantee establish a limit on the amount of time its participants may spend at each host agency?

Yes, grantees may establish limits on the amount of time that its participants may spend at a host agency. Such limits should be established in the grant agreement, as approved by the Department, and reflected in the participants' IEPs.

§ 641.580 Under what circumstances may a grantee terminate a participant?

(a) If, at any time, a grantee or subgrantee determines that a participant was incorrectly declared eligible as a result of false information given by that individual, the grantee or subgrantee must terminate the participant and provide the participant with a written notice that explains the reason for termination.

(b) If, during annual income verification, a grantee finds a participant to be no longer eligible for enrollment because of changes in family income, the grantee may terminate the participant. In order to terminate the participant in such a case, the grantee must provide the participant with a written notice and terminate the

participant 30 days after the participant receives the notice. (*See* § 641.505).

(c) If, at any time, the grantee or subgrantee determines that it incorrectly determined a participant to be eligible for the program through no fault of the participant, the grantee or subgrantee must give the participant immediate written notice explaining the reason(s) and must terminate the participant 30 days after the participant receives the notice.

(d) A grantee and subgrantee may terminate a participant for cause. In doing so, the grantee or subgrantee must inform the participant, in writing, of the reason(s) for termination. Grantees must discuss the proposed reasons for such terminations in the grant application, and must discuss such reasons with participants and provide each participant a written copy of its policies for terminating a participant for cause or otherwise at the time of enrollment.

(e) A grantee or subgrantee may terminate a participant if the participant refuses to accept a reasonable number of job offers or referrals to unsubsidized employment consistent with the SCSEP IEP and there are no extenuating circumstances that would hinder the participant from moving to unsubsidized employment.

(f) When a grantee or subgrantee makes an unfavorable determination of enrollment eligibility under paragraphs (a), (b), and (c) of this section, it must give the individual a reason for termination and, when feasible, should refer the individual to other potential sources of assistance, such as the One-Stop Delivery System.

(g) Any termination, as described in paragraphs (a) through (f) of this section, must be consistent with administrative guidelines issued by the Department, and the termination must be subject to the applicable appeal rights and procedures described in § 641.910.

(h) Participants may not be terminated from the program solely on the basis of their age. Grantees/subgrantees may not impose an upper age limit for participation in the SCSEP.

§ 641.585 Are participants employees of the Federal Government?

(a) No, participants are not Federal employees. (OAA sec. 504(a)).

(b) If a Federal agency is a grantee or host agency, § 641.590 applies.

§ 641.590 Are participants employees of the grantee, the local project and/or the host agency?

Grantees must consult with an attorney to determine if a participant is an employee of the grantee, local project, or host agency as the definition of an ''employee'' varies depending on the laws defining an employer/employee relationship.

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

§ 641.600 What is the purpose of the private sector training projects authorized under section 502(e) of the OAA?

The purpose of the private sector training projects authorized under section 502(e) of the OAA is to allow States, public agencies, nonprofit organizations, and private businesses through an open competition, to develop and operate projects designed to provide SCSEP participants with second career training and placement opportunities in the private business industry. In addition, the OAA provides section 502(e) grantees or contractors with opportunities to initiate or enhance their relationships with the private sector, fostering collaboration with the One-Stop Delivery System, improving their ability to meet and exceed performance standards, and broadening the range of options available to SCSEP participants.

§ 641.610 How are section 502(e) activities administered?

(a) The Department may enter into agreements with States, public agencies, private nonprofit organizations, and private businesses to carry out section 502(e) projects.

(b) To the extent possible, private sector training activities should emphasize different work modes, such as job sharing, flex-time, flex-place, arrangements relating to reduced physical exertion, and innovative work modes with a focus on second career training and placement in growth industries in jobs requiring new technological skills.

(c) Grantees must coordinate section 502(e) private sector training activities with programs carried out under title I of WIA and with SCSEP projects operating in the area whenever possible.

§ 641.620 How may an organization apply for section 502(e) funding?

Organizations applying for section 502(e) funding must follow the instructions issued by the Department in a Solicitation for Grant Applications, which will be published in the **Federal Register**, or other similar instrument.

§ 641.630 What private sector training activities are allowable under section 502(e)?

Allowable activities authorized under section 502(e) include:

(a) Providing participants with services leading to transition to private sector employment, including:

(1) Training in new technological skills;

(2) On-the-job training with private-for-profit employers;

(3) Work experience with private-for-profit employers;

(4) Adult basic education;

(5) Classroom training;

(6) Occupational skills training;

(7) In combination with other services listed in paragraphs (a)(1) through (6) of this section or in conjunction with the local One-Stop Delivery System, job clubs or job search assistance;

(8) In combination with other services listed in paragraphs (a)(1) through (7) of this section, supportive services, which may include counseling, motivational training, and job development; or

(9) Combinations of the above-listed activities.

(b) Working with employers to develop jobs and innovative work modes including job sharing, flex-time, flex-place and other arrangements, including those relating to reduced physical exertion.

§ 641.640 How do the private sector training activities authorized under section 502(e) differ from other SCSEP activities?

(a) The private sector training activities authorized under section 502(e) are not required to have a community service project component.

(b) The private sector training activities authorized under section 502(e) focus solely on providing SCSEP-eligible individuals with second career training, placement opportunities, and other assistance necessary to obtain unsubsidized employment in the private sector.

(c) The Department is authorized to pay all of the costs of section 502(e) activities (*i.e.,* there is no ''matching funds'' requirement).

(d) The Department may enter directly into agreements with private businesses for section 502(e) activities.

(e) Grantees may fund private-for-profit and other organizations that do not have the IRS 501(c)(3) designation or are not public agencies to conduct section 502(e) activities if provided for in their grant or contract agreement with the Department.

§ 641.650 Does the requirement that not less than 75 percent of the funds be used to pay participant wages and fringe benefits apply to section 502(e) activities?

Yes, under section 502(c)(6)(B) of the OAA, 75 percent of SCSEP funds made available through a grant must be used to pay for the wages and fringe benefits of participants employed under SCSEP

projects. This requirement applies to the total grant, and not necessarily to individual components of the grant. For entities that receive an SCSEP grant for both community service projects and section 502(e) projects, the requirement applies to the total grant. For entities that receive only a section 502(e) grant, the requirement applies to that grant.

§ 641.660 Who is eligible to participate in section 502(e) private sector training activities?

The same eligibility criteria used in the community service portion of the program apply for participation in the private sector training activities. (*See* subpart E, §§ 641.500, 641.510, 641.520, 641.525, 641.530).

§ 641.665 When is eligibility determined?

Eligibility is determined at the time individuals apply to participate in the SCSEP. Grantees may also verify an individual's eligibility as circumstances require.

§ 641.670 May an eligible individual be enrolled simultaneously in section 502(e) private sector training activities operated by one grantee and a community service SCSEP project operated by a different SCSEP grantee?

Yes, an eligible individual may be enrolled simultaneously in section 502(e) private sector training activities and a community service SCSEP project, operated by two different SCSEP grantees. This is known as co-enrollment. When a participant is co-enrolled, the projects that are providing services to the participant must jointly work to ensure that they are providing complementary rather than duplicative services and that they are providing the participant with the services required under § 641.535. Co-enrollment may also describe arrangements such as participants receiving services from both SCSEP and another One-Stop partner program, such as the WIA title I adult program.

§ 641.680 How should grantees report on participants who are co-enrolled?

The Department's reporting instructions provide information on how grantees should report on participants who are co-enrolled.

§ 641.690 How is the performance of section 502(e) grantees measured?

(a) The following performance measures apply to section 502(e) grantees:

(1) Entered employment;

(2) Retention in employment; and

(3) Earnings increase.

(b) These measures are defined and governed by Subpart G of this Part and the applicable provisions of administrative issuances implementing the SCSEP performance standards.

(c) If a section 502(e) grantee fails to meet its performance standards, the Department may require corrective action, may provide technical assistance, or may decline to fund the grantee in the next Program Year.

Subpart G—Performance Accountability

§ 641.700 What performance measures apply to SCSEP grantees?

(a) The OAA, at section 513(b), enumerate the indicators of performance as follows:

(1) The number of persons served, with particular consideration given to individuals with greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60;

(2) Community services provided;

(3) Placement into and retention in unsubsidized public or private employment;

(4) Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided; and

(5) Additional indicators of performance that the Department determines to be appropriate to evaluate services and performance.

(b) The additional indicator of performance is earnings increase.

§ 641.710 How are these performance indicators defined?

(a) For ease of calculation and to make the indicators better measures of performance, the Department has divided some of the indicators into multiple parts.

(b) The individual indicators are defined as follows:

(1) ''The number of persons served'' is defined by comparing the total number of participants served to a grantee's authorized number of positions adjusted for the differences in wages required to be paid in a State or area.

(2) ''The number of persons served with the greatest economic need, greatest social need or with poor employment history or prospects and individuals who are over age 60'' is defined by comparing the total number of participants to the number of participants who:

(i) Have an income level at or below the poverty line; (OAA sec. 101(27))

(ii) Have physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of the individual to perform normal daily tasks, or threatens the capacity of the individual to live independently; or (OAA sec. 101(28))

(iii) Have poor employment history or prospects; and

(iv) Are over the age of 60.

(3) ''Community services provided'' is defined as the number of hours of community service provided by SCSEP participants. ''Community service'' is defined in the OAA at section 516(1) and in § 641.140.

(4) ''Placement into unsubsidized public or private employment'' is defined by comparing the number of participants placed into unsubsidized employment, as defined in § 641.140 to the total number of participants. (OAA sec. 513(c)(2)(A)).

(5) ''Retention in public or private unsubsidized employment'' means the number of participants retained in unsubsidized employment, as defined in § 641.140, compared to the total number of participants. (OAA sec. 513(c)(2)(B)).

(6) ''Satisfaction of participants'' means the results accumulated as the results of surveys of the participant customer group of their satisfaction with their experiences and the services provided.

(7) ''Satisfaction of employers'' means the results accumulated as the results of surveys of the employer customer group of their satisfaction with their experiences and the services provided.

(8) ''Satisfaction of host agencies'' means the results accumulated as the results of surveys of the host agency customer group of their satisfaction with their experiences and the services provided.

(9) ''Earnings increase'' means the percentage change in earnings pre-registration to post-program, and between the first quarter after exit and the third quarter after exit.

(c) The Department will publish administrative issuances that elaborate on these definitions and their application.

§ 641.715 What are the common performance measures?

The common performance measures are a Government-wide initiative adopted by the Department that apply to employment and job training programs. Adoption of these common measures across government will help implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through the local One-Stop Career Centers. Grantees will be required to report on these measures as required under § 641.879. The common performance measure indicators are:

(a) Entered employment, defined as the percentage employed in the first quarter after program exit;

(b) Retention in employment, defined as the percentage of those employed in the first quarter after exit who were still employed in the second and third quarter after program exit; and

(c) Earnings increase defined as the percentage change in earnings pre-registration to post program; and between the first quarter after exit and the third quarter after exit.

§ 641.720 How do the common performance measures affect grantees and the OAA performance measures?

One of the common performance measures, earnings increase, has been included as a performance measures under § 641.700 and § 641.710 under the Secretary's discretionary authority. The two additional common performance measures will be used to determine the overall success of the program as compared to other programs Government-wide. The results will be the basis for making funding determinations. The Department will require grantees to collect data for the common performance measures as a reporting requirement under § 641.879.

§ 641.730 How will the Department set and adjust performance levels?

(a) Before the beginning of each Program Year, the Department will negotiate and set baseline levels of negotiated performance for each measure with each grantee, taking into consideration the need to promote continuous improvement in the program overall, past performance, and, when applicable, the performance of similar programs.

(b) The baseline level of negotiated performance for ''placement into public or private unsubsidized employment'' is set at 20 percent. (OAA sec. 513(a)(2)(C)).

(c) Grantees may request adjustments from these baseline levels before or during the Program Year. Grantees may base such requests only on the factors in paragraph (d) of this section. The Department will issue guidance for negotiating adjustment requests.

(d) Adjustments to performance levels may be made based on the following conditions only:

(1) High rates of unemployment, poverty, or welfare recipiency in the areas served by a grantee relative to other areas of the State or Nation;

(2) Significant economic downturns in the areas served by the grantee or in the national economy; or

(3) Significantly higher numbers or proportions of participants with one or more barriers to employment served by a grantee relative to grantees serving other areas of the State or Nation. (OAA sec. 513(a)(2)(B)).

(e) Grantees may seek an adjustment to their performance levels, based on the factors listed in paragraph (d) of this section, during the negotiation process or during the grant period.

§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds negotiated levels of performance?

(a) The Department will evaluate each performance indicator to determine the level of success that a grantee has achieved and take the aggregate to determine if, on the whole, the grantee met its performance objectives. The aggregate is calculated by combining the percentage results achieved on each of the individual measures to obtain an average score.

(b) Once the aggregate is determined, if a grantee is unable to meet 80 percent of the negotiated level of performance for the aggregate of all of the performance measures, that grantee has failed to meet its performance measures. Performance in the range of 80 to 100 percent constitutes meeting the level for the performance measures. Performance in excess of 100 percent constitutes exceeding the level for the performance measures.

(c) A national grantee in a State must meet 80 percent of the negotiated level of performance for its national measures, and it must meet the measures negotiated for the State in which the national grantee serves.

(c) The Department will impose the sanctions outlined in section 514 of the OAA when a grantee fails to meet overall negotiated levels of performance.

(d) When a grantee fails one or more measures, but does not fail to meet its performance measures in the aggregate, the Department will provide technical assistance on the particular measures that a grantee failed.

(e) The Department will provide further guidance through administrative issuances.

§ 641.750 What sanctions will the Department impose if a grantee fails to meet negotiated levels of performance?

(a) Grantees that fail to meet negotiated levels of performance will be subject to the sanctions established in section 514 of the OAA. The sanctions that apply are grantee specific (*i.e.,* national grantee, national grantee in a State, or State grantee). These sanctions range from requiring grantees to submit a corrective action plan and receive technical assistance, to competition of part of the funds, to a competition of all of the funds.

(b) Grantees that only fail the customer satisfaction performance measure, but meet or exceed all other performance measures, will not be subject to sanctions. The Department will provide additional instructions for how it will measure customer satisfaction.

§ 641.760 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance under the total SCSEP grant?

(a) The Department will annually assess the performance of each national grantee no later than 120 days after the end of a Program Year to determine if a national grantee has failed to meet its negotiated levels of performance. (OAA sec. 514(e)(1)).

(b) If the Department determines that a national grantee has failed to meet its negotiated levels of performance for a Program Year, the national grantee must submit a corrective action plan not later than 160 days after the end of that Program Year. The plan must detail the steps the national grantee will take to improve performance. The Department will provide technical assistance related to performance issue(s). (OAA sec. 514 (e)(2)(A)–(e)(2)(B)).

(c) If a national grantee fails to meet its negotiated levels of performance for a second consecutive Program Year, the Department will conduct a national competition to award an amount equal to 25 percent of that organization's funds in the following full Program Year. (OAA sec. 514(e)(2)(C)). The Department reserves the right to specify the locations of the positions that will be subject to competition.

(d) If a national grantee fails to meet its negotiated levels of performance for a third consecutive Program Year, the Department will conduct a national competition to award an amount equal to the full amount of that organization's remaining grant after deducting the amount awarded in paragraph (c) of this section. (OAA sec. 514(e)(2)(D)).

(e) To the extent possible, the competitions outlined in paragraphs (c) and (d) of this section will be conducted in such a way as to minimize the disruption of services to participants. (OAA sec. 514(e)(2)(C)).

(f) The organizations selected to receive a grant through the national competitions discussed in paragraphs (c) and (d) of this section must continue to provide service to the geographic areas formerly served by the national grantee(s). (OAA sec. 514(e)(2)(D)).

§ 641.770 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance in any State it serves?

(a) Each national grantee must be assessed on the performance of the projects it operates within any State. Such an assessment may lead to a finding that the national grantee has failed to meet negotiated levels of performance for its projects in a particular State. A national grantee's failure to meet performance measures in a State may be mitigated by justifying the failure, such as the size of the project or taking into consideration the adjustments permitted under section 513(a)(2)(B) of the OAA. (OAA sec. 514(e)(3)(A)).

(b) If the Department determines that there has been a failure to meet negotiated levels of performance, the Department will require a corrective action plan and may take other appropriate actions, including transfer of the responsibility for the project to other grantees or providing technical assistance. (OAA sec. 514(e)(3)(B)).

(c) The Department will take corrective action if there is a second consecutive Program Year of failure by a national grantee operating within a particular State. Such corrective action may include transfer of, or a competition for, all or a portion of the operation of the national grantee in the State to another entity. Entities that were the subject of this corrective action will not be eligible to receive the funds of the transfer or to compete. (OAA sec. 514(e)(3)(C)).

(d) If there is a third consecutive Program Year of failure, the Department will conduct a competition for all of the funds available to a national grantee for operations within a particular State. Entities that are the subject of this corrective action will not be eligible to participate in the competition. (OAA sec. 514(e)(3)(D)).

§ 641.780 When will the Department assess the performance of a national grantee in a State?

(a) The Department will assess the performance of a national grantee in a State annually.

(b) The Department may also initiate the assessment of a national grantee's performance in a State if:

(1) The Department receives information indicating that a grantee is having difficulty implementing a particular performance indicator; or

(2) The Governor of a State requests the Department to review the performance of a particular national grantee serving in the State. (OAA sec. 514(e)(4)).

§ 641.790 What sanctions will the Department impose if a State grantee fails to meet negotiated levels of performance?

(a) The Department will annually assess the performance of State grantees no later than 120 days after the end of a Program Year to determine if the State has failed to meet its negotiated levels of performance. (OAA sec. 514(f)(1)).

(b) A State failing to meet its negotiated levels of performance must submit a corrective action plan not later than 160 days after the end of the Program Year in which the failure occurred. The plan must detail the steps the State will take to improve performance. The Department will also provide technical assistance. (OAA sec. 514(f)(2) and (f)(3)).

(c) If a State fails to meet its negotiated levels of performance after two consecutive years, then the State must conduct a competition to award an amount equal to 25 percent of its allotted funds for the following year. The Department reserves the right to specify the locations of the positions that will be subject to competition.

(d) In the event that a State fails to meet its negotiated levels of performance after three consecutive years, then the State must conduct a competition to award an amount equal to 100 percent of its allotted funds for the following year.

(e) Entities that operated any portion of the State's program that contributed to the failure will not be eligible to participate in the competitions.

§ 641.795 Will there be incentives for exceeding performance measures?

Yes, the Department will address non-financial incentives in its administrative issuances. The Department is authorized by section 515(c)(1) of the OAA to use recaptured funds to provide incentive grants. The Department will issue administrative guidance detailing how incentive grants will be awarded.

Subpart H—Administrative Requirements

§ 641.800 What uniform administrative requirements apply to the use of SCSEP funds?

(a) SCSEP recipients and subrecipients must follow the uniform administrative requirements and allowable cost requirements that apply to their type of organization. (OAA sec. 503(f)(2)).

(b) *Governments.* State, local, and Indian tribal government organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' codified at 29 CFR part 97. The allowable cost requirements for governmental recipients and subrecipients are in OMB Circular A–87.

(c) *Nonprofit and commercial organizations.* Institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A–110, codified at 29 CFR part 95. The allowable cost requirements for recipients and subrecipients subject to 29 CFR part 95 are cited in 29 CFR 95.27 (Allowable costs).

§ 641.803 What is program income?

Program income, as described in 29 CFR 97.25 (governments) and 29 CFR 95.2(bb) (nonprofit and commercial organizations), is income earned by the recipient or subrecipient during the grant period that is directly generated by an allowable activity supported by grant funds or earned as a result of the award of grant funds. Program income includes income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. (See 29 CFR 95.24(e) and 29 CFR 97.25(e)). Costs of generating SCSEP program income may be deducted from gross income received by SCSEP recipients and subrecipients to determine SCSEP program income earned or generated provided these costs have not been charged to the SCSEP program.

§ 641.806 How must SCSEP program income be used?

(a) SCSEP recipients that earn or generate program income during the grant period must add the program income to the Federal and non-Federal funds committed to the SCSEP program and use it for the program, as provided in 29 CFR 95.24(a) or 29 CFR 97.25(g)(2), as applicable.

(b) Recipients that continue to receive a SCSEP grant from the Department must spend program income earned or generated from SCSEP funded activities after the end of the grant period for SCSEP purposes in the Program Year it was received.

(c) Recipients that do not continue to receive a SCSEP grant from the Department must remit program income earned or generated during the grant period from SCSEP funded activities to the Department after the end of the grant period.

§ 641.809 What non-Federal share (matching) requirements apply to the use of SCSEP funds?

(a) The Department will pay no more than 90 percent of the total cost of activities carried out under an SCSEP grant. (OAA sec. 502(c)(1)).

(b) All SCSEP recipients, including Federal agencies if there is no statutory exemption, must provide or ensure that at least 10 percent of the total cost of activities carried out under an SCSEP grant (non-Federal share of costs) consists of non-Federal funds, except as provided in paragraph (e) and (f) of this section.

(c) Recipients must calculate the non-Federal share of costs in accordance with 29 CFR 97.24 for governmental units, or 29 CFR 95.23 for nonprofit and commercial organizations.

(d) The non-Federal share of costs may be provided in cash, or in-kind, or a combination of the two. (OAA sec. 502(c)(2)). If, however, recipients plan to obtain the non-Federal share from a subgrantee or host agency, they may not require provision of non-Federal resources as a condition of such relationship.

(e) The Department may pay all of the costs of activities carried out under section 502(e) of the OAA. (OAA sec. 502(e)).

(f) The Department may pay all of the costs of activities in an emergency or disaster project or a project in an economically distressed area. (OAA sec. 502(c)(1)(A) and 502(c)(1)(B)).

§ 641.812 What is the period of availability of SCSEP funds?

(a) Except as provided in proposed § 641.815, recipients must expend SCSEP funds during the Program Year for which they are awarded (July 1–June 30). (OAA sec. 515(b)).

(b) SCSEP recipients must ensure that no subagreement provides for the expenditure of any SCSEP funds before July 1, or after the end of the grant period, except as provided in § 641.815.

§ 641.815 May the period of availability be extended?

SCSEP recipients may request in writing, and the Department may grant, an extension of the period during which SCSEP funds may be obligated or expended. SCSEP recipients requesting an extension must justify that an extension is necessary. (OAA sec. 515(b)). The Department will notify recipients in writing of the approval or disapproval of any such requests.

§ 641.818 What happens to funds that are unexpended at the end of the Program Year?

(a) The Department may recapture any unexpended funds at the end of any Program Year and use the recaptured funds during the two succeeding Program Years for:

(1) Incentive grants;

(2) Technical assistance; or

(3) Grant and contract awards for any other SCSEP programs and activities. (OAA sec. 515(c)).

(b) The Department will provide the necessary information through an administrative issuance.

§ 641.821 What audit requirements apply to the use of SCSEP funds?

(a) Recipients and subrecipients receiving Federal awards of SCSEP funds must follow the audit requirements in paragraphs (b) and (c) of this section that apply to their type of organization. As used here, Federal awards of SCSEP funds include Federal financial assistance and Federal cost-reimbursement contracts received directly from the Department or indirectly under awards by SCSEP recipients or higher-tier subrecipients. (OAA sec. 503(f)(2)).

(b) All governmental and nonprofit organizations that are recipients or subrecipients must follow the audit requirements of OMB Circular A–133. These requirements are codified at 29 CFR, parts 96 and 99 and referenced in 29 CFR 97.26 for governmental organizations; and in 29 CFR 95.26 for institutions of higher education, hospitals, and other nonprofit organizations.

(c)(1) The Department is responsible for audits of SCSEP recipients that are commercial organizations.

(2) Commercial organizations that are subrecipients under the SCSEP program and that expend more than the minimum level specified in OMB Circular A–133 ($300,000 as of July 1, 2001) must have either an organization-wide audit conducted in accordance with OMB Circular A–133 or a program-specific financial and compliance audit.

§ 641.824 What lobbying requirements apply to the use of SCSEP funds?

SCSEP recipients and subrecipients must comply with the restrictions on lobbying codified in the Department's regulations at 29 CFR part 93. (Also refer to § 641.850(c), ''*Lobbying costs.*'')

§ 641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?

(a) SCSEP recipients, subrecipients, and host agencies are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR parts 31 and 32.

(b) Recipients of SCSEP funds are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR part 37 if:

(1) The recipient operates programs and activities through the One-Stop Delivery System established under the Workforce Investment Act; or

(2) The recipient is a State agency that is also a recipient of WIA title I financial assistance.

§ 641.830 What nondiscrimination protections apply specifically to participants in SCSEP programs?

(a) All participants in SCSEP programs under this Part must have such rights as are available under all applicable Federal, State and local laws prohibiting discrimination, and their implementing regulations, including:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*);

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); and

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*). (OAA sec. 503(b)(3)).

(b) Questions about or complaints alleging a violation of the nondiscrimination laws in paragraph (a) of this section may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210 for processing. (See § 641.910(d)).

§ 641.833 What policies govern political patronage?

(a) A recipient or subrecipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs.

(b) A recipient or subrecipient must not provide funds to any subrecipient, host agency or other entity based on political affiliation.

(c) SCSEP recipients must ensure that every entity that receives SCSEP funds through the recipient is applying the policies stated in paragraphs (a) and (b) of this section.

§ 641.836 What policies govern political activities?

(a) No project under title V of the OAA may involve political activities. SCSEP recipients must ensure compliance with the requirements and prohibitions involving political

activities described in paragraphs (b) and (c) of this section.

(b) State and local employees involved in the administration of SCSEP activities may not engage in political activities prohibited under the Hatch Act (5 U.S.C. Chapter 15), including:

(1) Seeking partisan elective office;

(2) Using official authority or influence for the purpose of affecting elections, nominations for office, or fund-raising for political purposes. (5 U.S.C. 1502).

(c) SCSEP recipients must provide all persons associated with SCSEP activities with a written explanation of allowable and unallowable political activities under the Hatch Act. A notice explaining these allowable and unallowable political activities must be posted in every workplace in which SCSEP activities are conducted. This notice must be approved by the Department of Labor and must contain the address and telephone number of the Department of Labor Inspector General. (OAA sec. 502(b)(l)(P)).

(d) SCSEP recipients must ensure that:

(1) No SCSEP participants or staff persons engage in partisan or nonpartisan political activities during hours for which they are being paid with SCSEP funds.

(2) No participants or staff persons engage in partisan political activities in which such participants or staff persons represent themselves as spokespersons for the SCSEP program.

(3) No participants are employed or out-stationed in the offices of a Member of Congress, a State or local legislator, or on the staff of any legislative committee.

(4) No participants are employed or out-stationed in the immediate offices of any elected chief executive officer of a State or unit of general government, except that:

(i) Units of local government may serve as host agencies for participants, provided that their assignments are non-political; and

(ii) While assignments may technically place participants in such offices, such assignments actually must be concerned with program and service activities and not in any way involved in political functions.

(5) No participants are assigned to perform political activities in the offices of other elected officials. Placement of participants in such offices in non-political assignments is permissible, however, provided that:

(i) SCSEP recipients develop safeguards to ensure that participants placed in these assignments are not involved in political activities; and

(ii) These safeguards are described in the grant agreement and are subject to review and monitoring by the SCSEP recipient and by the Department.

§ 641.839 What policies govern union organizing activities?

Recipients must ensure that SCSEP funds are not used in any way to assist, promote, or deter union organizing.

§ 641.841 What policies govern nepotism?

(a) SCSEP recipients must ensure that no recipient or subrecipient hires, and no host agency serves as a worksite for, a person who works in a SCSEP community service position if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, recipient, subrecipient or host agency. The Department may exempt this requirement from worksites on Native American reservations and in rural areas provided that adequate justification can be documented, such as that no other persons are eligible and available for participation in the program.

(b) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, SCSEP recipients must ensure that the more restrictive requirement is followed.

(c) For purposes of this section, ''Immediate family'' means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild.

§ 641.844 What maintenance of effort requirements apply to the use of SCSEP funds?

(a) Employment of a participant funded under title V of the OAA is permissible only in addition to employment that would otherwise be funded by the recipient, subrecipient and the host agency without assistance under the OAA. (OAA sec. 502(b)(1)(F)).

(b) Each project funded under title V:

(1) Must result in an increase in employment opportunities in addition to those that would otherwise be available;

(2) Must not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) Must not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(4) Must not substitute SCSEP-funded positions for existing federally assisted jobs; and

(5) Must not employ or continue to employ any participant to perform work that is the same or substantially the same as that performed by any other person who is on layoff. (OAA sec. 502(b)(1)(G)).

§ 641.847 What uniform allowable cost requirements apply to the use of SCSEP funds?

(a) *General.* Unless specified otherwise in this part or the grant agreement, recipients and subrecipients must follow the uniform allowable cost requirements that apply to their type of organization. For example, a local government subrecipient receiving SCSEP funds from a nonprofit organization must use the allowable cost requirements for governmental organizations in OMB Circular A–87. The Department regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs that each kind of organization must follow. The applicable Federal principles for each kind of organization are described in paragraphs (b)(1) through (b)(5) of this section. (OAA sec. 503(f)(2)).

(b) *Allowable costs/cost principles.*

(1) Allowable costs for State, local, and Indian tribal government organizations must be determined under OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.''

(2) Allowable costs for nonprofit organizations must be determined under OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(4) Allowable costs for hospitals must be determined in accordance with appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(5) Allowable costs for commercial organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 must be determined under the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 641.850 Are there other specific allowable and unallowable cost requirements for SCSEP?

(a) Yes, in addition to the generally applicable cost principles in § 641.847(b), the cost principles in

paragraphs (b) through (e) of this section apply to SCSEP grants.

(b) *Claims against the Government.* For all types of entities, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(c) *Lobbying costs.* In addition to the prohibition contained in 29 CFR part 93, SCSEP funds must not be used to pay any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States or any State legislature. (*See* § 641.824).

(d) *Building repairs and acquisition costs.* Except as provided in paragraph (e) and as an exception to the allowable cost principles in § 641.847(b), no SCSEP funds may be used for the purchase, construction, or renovation of any building except for the labor involved in:

(1) Minor remodeling of a public building necessary to make it suitable for use for project purposes;

(2) Minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and

(3) Minor repair and rehabilitation by participants of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies.

(e) *Accessibility and reasonable accommodation.* Recipients and subrecipients may use SCSEP funds to meet their obligations under section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 to provide physical and programmatic accessibility and reasonable accommodation. (29 U.S.C. 794).

(f) *Participants' fringe benefit costs.* Recipients and subrecipients may use SCSEP funds for participant fringe benefit costs only under the conditions set forth in § 641.565.

§ 641.853 How are costs classified?

(a) All costs must be classified as ''administrative costs'' or ''program costs.'' (OAA sec. 502(c)(6)).

(b) Recipients and subrecipients must assign participants' wage and fringe benefit costs and other participant (enrollee) costs, such as supportive services, to the ''program cost'' category. (*See* § 641.864). When participants are assigned to functions normally classified as administrative costs, recipient must charge the functions, but not the participants' wages and fringe benefits, to the ''administrative cost'' category.

§ 641.856 What functions and activities constitute costs of administration?

(a) The costs of administration are that allocable portion of necessary and reasonable allowable costs of recipients and subrecipients that are associated with those specific functions identified in paragraph (b) of this section and that are not related to the direct provision of programmatic services specified in § 641.864. These costs may be both personnel and non-personnel and both direct and indirect costs.

(b) The costs of administration are the costs associated with:

(1) Performing overall general administrative and coordination functions, including:

(i) Accounting, budgeting, financial and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;

(vii) Audit functions;

(viii) General legal services functions; and

(ix) Developing systems and procedures, including information systems, required for these administrative functions;

(2) Oversight and monitoring responsibilities related to administrative functions;

(3) Costs of goods and services used for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) Travel costs incurred for official business in carrying out administrative activities or the overall management of the program; and

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting and payroll systems) including the purchase, systems development and operating costs of such systems. (OAA sec. 502(c)(4)).

§ 641.859 What other special rules govern the classification of costs as administrative costs or program costs?

(a) Recipients and subrecipients must comply with the special rules for classifying costs as administrative costs or program costs set forth in paragraphs (b) through (f) of this section.

(b) Costs under awards to subrecipients or vendors that are solely for the performance of administrative functions are classified as administrative costs.

(c) Personnel and related non-personnel costs of staff who perform both administrative functions specified in § 641.856(b) and programmatic services or activities must be allocated as administrative or program costs to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(d) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost must be charged as a program cost. Documentation of such charges must be maintained.

(e) Except as provided in paragraph (b) of this section, all costs incurred by vendors are program costs. (*See* 29 CFR 99.210 for a discussion of factors differentiating subrecipients from vendors).

(f) Costs of the following information systems including the purchase, systems development and operating (*e.g.*, data entry) costs are charged to the ''program cost'' category:

(1) Tracking or monitoring of participant and performance information;

(2) Employment statistics information, including job listing information, job skills information, and demand occupation information; and

(3) Local area performance information.

§ 641.861 Must SCSEP recipients provide funding for the administrative costs of subrecipients?

(a) Recipients and subrecipients must obtain funding for administrative costs to the extent practicable from non-Federal sources. (OAA sec. 502(c)(5)).

(b) SCSEP recipients must ensure that sufficient funding is provided for the administrative activities of subrecipients that receive SCSEP funding through the recipient. Each SCSEP recipient must describe in its grant application the methodology used to ensure that subrecipients receive sufficient funding for their administrative activities. (OAA sec. 502(b)(1)(R)).

§ 641.864 What functions and activities constitute program costs?

Program costs include, but are not limited to, the costs of the following functions:

(a) Participant Wages and Fringe Benefits, consisting of wages paid and fringe benefits provided to participants for hours of community service assignments, as described in § 641.565;

(b) Outreach, recruitment and selection, intake, orientation, assessment, and preparation and updating of IEPs;

(c) Participant training provided on the job, in a classroom setting, or utilizing other appropriate arrangements, consisting of reasonable costs of instructors' salaries, classroom space, training supplies, materials, equipment, and tuition;

(d) Job placement assistance, including job development and job search assistance, job fairs, job clubs, and job referrals; and

(e) Participant supportive services, as described in § 641.573. (OAA sec. 502(c)(6)(A)).

§ 641.867 What are the limitations on the amount of SCSEP administrative costs?

(a) Except as provided in paragraph (b), no more than 13.5 percent of the SCSEP funds received for a Program Year may be used for administrative costs.

(b) The Department may increase the amount available for administrative costs to not more than 15 percent, in accordance with § 641.870. (OAA sec. 502(c)(3)).

§ 641.870 Under what circumstances may the administrative cost limitation be increased?

(a) SCSEP recipients may request that the Department increase the amount available for administrative costs. The Department may honor the request if:

(1) The Department determines that it is necessary to carry out the project; and

(2) The recipient demonstrates that:

(i) Major administrative cost increases are being incurred in necessary program components, including liability insurance, payments for workers' compensation, costs associated with achieving unsubsidized placement goals, and other operation requirements imposed by the Department;

(ii) The number of employment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available for paying the cost of administration is not increased; or

(iii) The size of the project is so small that the amount of administrative expenses incurred to carry out the project necessarily exceeds 13.5 percent of the amount for such project. (OAA sec. 502(c)(3)).

(b) A request by a recipient or prospective recipient for an increase in the amount available for administrative costs may be submitted as part of the grant application or as a separate submission at any time after the grant award.

§ 641.873 What minimum expenditure levels are required for participant wages and fringe benefits?

(a) Not less than 75 percent of the SCSEP funds provided under a grant from the Department must be used to pay for the wages and fringe benefits of participants in such projects, including awards made under section 502(e) of the OAA. (OAA sec. 502(c)(6)(B)).

(b) An SCSEP recipient is in compliance with this provision if at least 75 percent of the total expenditures of SCSEP funds provided to the recipient were for wages and benefits, even if one or more subrecipients did not expend at least 75 percent of their SCSEP funds for wages and fringe benefits for community service projects.

(c) Recipients receiving general SCSEP funds and section 502(e) funds must meet the 75 percent requirement based on the total of both grants.

§ 641.876 When will compliance with cost limitations and minimum expenditure levels be determined?

The Department will determine compliance by examining expenditures of SCSEP funds. The cost limitations and minimum expenditure level requirements must be met at the time all such funds have been expended or the period of availability of such funds has expired, whichever comes first.

§ 641.879 What are the fiscal and performance reporting requirements for recipients?

(a) In accordance with 29 CFR 97.40 or 29 CFR 95.51, as appropriate, each SCSEP recipient must submit an SCSEP Quarterly Progress Report (QPR) to the Department in electronic format via the Internet within 30 days after the end of each quarter of the Program Year (PY). The SCSEP recipient must prepare this report to coincide with the ending dates for Federal PY quarters. Each SCSEP recipient must also submit a final QPR to the Department within 45 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal Program Year quarter, the SCSEP recipient must submit the final QPR covering the entire grant period no later than 45 days after the ending date of the grant. Grantees submitting reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions may be treated as failing to submit reports, which may result in failing one of the responsibility tests outlined in proposed § 641.440 and section 514(d) of the OAA. The Department will provide instructions, including instructions concerning reporting frequency, for the preparation of this report. (OAA sec. 503(f)(3)).

(b) In accordance with 29 CFR 97.41 or 29 CFR 95.52, each SCSEP recipient must submit a SCSEP Financial Status Report (FSR) in electronic format to the Department via the Internet within 30 days after the ending of each quarter of the Program Year. Each SCSEP recipient must also submit a final FSR to the Department via the Internet within 45 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal PY quarter, the SCSEP recipient must submit the final FSR covering the entire grant period no later than 45 days after the ending date of the grant. The Department will provide instructions for the preparation of this report. (OAA sec. 503(f)(3)).

(1) Financial data is required to be reported on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities.

(2) If the SCSEP recipient's accounting records are not normally kept on the accrual basis of accounting, the SCSEP recipient must develop accrual information through an analysis of the documentation on hand.

(c) Each State agency receiving title V funds must annually submit an equitable distribution report of SCSEP positions by all recipients in the State. The Department will provide instructions for the preparation of this report. (OAA sec. 508).

(d) Each SCSEP recipient that receives section 502(e) funds must submit reports on its section 502(e) activities. The Department will provide instructions for the preparation of these reports. (OAA sec. 503(f)(3)).

(e) Each SCSEP recipient must collect data and submit reports regarding the program performance measures and the common performance measures. *See* §§ 641.700–641.720. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(f) Each SCSEP recipient may be required to collect data and submit reports regarding the demographics of program participants. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(g) Federal agencies that receive and use SCSEP funds under interagency agreements must submit project fiscal and progress reports in accordance with this subsection. Federal recipients must maintain the necessary records that support required reports according to

instructions provided by the Department. (OAA sec. 503(f)(3)).

(h) Recipients may be required to maintain records that contain any other information that the Department determines to be appropriate in support of any other reports that the Department may require. (OAA sec. 503(f)(3)).

§ 641.881 What are the SCSEP recipient's responsibilities relating to awards to subrecipients?

(a) The SCSEP recipient is responsible for all grant activities, including the performance of SCSEP activities by subrecipients, and ensuring that subrecipients comply with the OAA and this Part. (*See also* OAA sec. 514 on responsibility tests).

(b) Recipients must follow their own procedures for allocating funds to other entities. The Department will not grant funds to another entity on the recipient's behalf.

§ 641.884 What are the grant closeout procedures?

SCSEP recipients must follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71, as appropriate. The Department will issue supplementary closeout instructions to title V recipients as necessary.

Subpart I—Grievance Procedures and Appeals Process

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

[Reserved].

§ 641.910 What grievance procedures must grantees make available to applicants, employees, and participants?

(a) Each grantee must establish, and describe in the grant agreement, grievance procedures for resolving complaints, other than those described by paragraph (d) of this section, arising between the grantee, employees of the grantee, subgrantees, and applicants or participants.

(b) The Department will not review final determinations made under paragraph (a) of this section, except to determine whether the grantee's grievance procedures were followed, and according to paragraph (c) of this section.

(c) Allegations of violations of Federal law, other than those described in paragraph (d) of this section, which are not resolved within 60 days under the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Allegations determined to be substantial and credible will be investigated and addressed.

(d) Allegations of discrimination must be resolved according to complaint processing procedures meeting the requirements of 29 CFR 37.70 through 37.80 or any other applicable regulation. Questions about or complaints alleging discrimination may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210.

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

(a) Appeals from a final disallowance of costs as a result of an audit must be made under 29 CFR 96.63.

(b) Appeals of suspensions or terminations on the grounds of discrimination are processed under 29 CFR parts 31 or 37, as appropriate.

(c) Upon a grantee's receipt of the Department's final determination relating to costs (except final disallowance of costs as a result of an audit, as described in paragraph (a) of this section), payment, suspension or termination, the grantee may appeal the final determination to the Department's Office of Administrative Law Judges, as follows:

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Room 400 N, Washington, DC 20001 with a copy to the Department official who signed the final determination. The Chief Administrative Law Judge will designate an Administrative Law Judge to hear the appeal.

(2) The request for hearing must be accompanied by a copy of the final determination, and must state specifically those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review.

(3) *The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges,* set forth at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(i) The appeal is not considered as a complaint; and

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and Subpart B of 29 CFR part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when they are considered reasonably necessary by the Administrative Law Judge conducting the hearing. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(4) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record.

(d) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96), specifically identifying the procedure, fact, law or policy to which exception is taken. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

§ 641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

(a) Parties to a complaint that has been filed according to the requirements of § 641.920 may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as a final decision of an Administrative Law Judge.

Signed at Washington, DC this 14th day of April, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–9579 Filed 4–25–03; 8:45 am]

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Federal Register

Monday,
April 28, 2003

Part IV

The President

Executive Order 13297—Applying the Federal Physicians Comparability Allowance Amendments of 2000 to Participants in the Foreign Service Retirement and Disability System, the Foreign Service Pension System, and the Central Intelligence Agency Retirement and Disability System

Federal Register
Vol. 68, No. 81
Monday, April 28, 2003

Presidential Documents

Title 3—

The President

Executive Order 13297 of April 23, 2003

Applying the Federal Physicians Comparability Allowance Amendments of 2000 to Participants in the Foreign Service Retirement and Disability System, the Foreign Service Pension System, and the Central Intelligence Agency Retirement and Disability System

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067), section 292 of the Central Intelligence Agency Retirement Act of 1964 (50 U.S.C. 2141), and section 301 of title 3, United States Code, and in order to conform the Foreign Service Retirement and Disability System, the Foreign Service Pension System, and the Central Intelligence Agency Retirement and Disability System to the Civil Service Retirement System, it is hereby ordered as follows:

Section 1. *Foreign Service Retirement and Disability System.* (a) The following provisions of the Federal Physicians Comparability Allowance Amendments of 2000 (Public Law 106–571) shall apply to the Foreign Service Retirement and Disability System, subchapter I of chapter 8 of the Foreign Service Act of 1980, as amended:

(i) Section 3(a) of Public Law 106–571 to provide that any amount received under section 5948 of title 5, United States Code (physicians comparability allowance), be included in the definition of basic pay; and

(ii) Section 3(b) of Public Law 106–571 to provide for the inclusion of the physicians comparability allowance in the computation of an annuity under the same rules that apply with respect to the Civil Service Retirement System.

(b) The Secretary of State shall issue regulations that reflect the application of sections 3(a) and 3(b) of Public Law 106–571 to the Foreign Service Retirement and Disability System. Such regulations shall provide that the foregoing provisions be retroactive to December 28, 2000.

Sec. 2. *Foreign Service Pension System.* (a) The following provisions of the Federal Physicians Comparability Allowance Amendments of 2000 (Public Law 106–571) shall apply to the Foreign Service Pension System, subchapter II of chapter 8 of the Foreign Service Act of 1980, as amended:

(i) Section 3(a) of Public Law 106–571 to provide that any amount received under section 5948 of title 5, United States Code (physicians comparability allowance), be included in the definition of basic pay; and

(ii) Section 3(c) of Public Law 106–571 to provide for the inclusion of the physicians comparability allowance in the computation of an annuity under the same rules that apply with respect to the Federal Employees Retirement System.

(b) The Secretary of State shall issue regulations that reflect the application of sections 3(a) and 3(c) of Public Law 106–571 to the Foreign Service Pension System. Such regulations shall provide that the foregoing provisions be retroactive to December 28, 2000.

Sec. 3. *Central Intelligence Agency Retirement and Disability System.*

(a) The following provisions of the Federal Physicians Comparability Allowance Amendments of 2000 (Public Law 106–571) shall apply to the

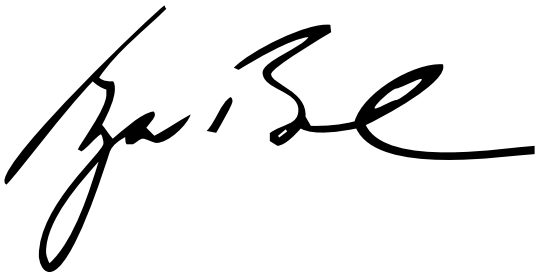
Central Intelligence Agency Retirement and Disability System, title II of the Central Intelligence Agency Retirement Act of 1964, as amended:

(i) Section 3(a) of Public Law 106–571 to provide that any amount received under section 5948 of title 5, United States Code (physicians comparability allowance), be included in the definition of basic pay; and

(ii) Section 3(b) of Public Law 106–571 to provide for the inclusion of the physicians comparability allowance in the computation of an annuity under the same rules that apply with respect to the Civil Service Retirement System.

(b) The Director of Central Intelligence shall issue regulations to reflect the application of sections 3(a) and 3(b) of Public Law 106–571 to the Central Intelligence Agency Retirement and Disability System. Such regulations shall provide that the foregoing provisions be retroactive to December 28, 2000.

Sec. 4. *Judicial Review.* This order is not intended to create, nor does it create any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, employees, or any other person.



THE WHITE HOUSE,
April 23, 2003.

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Reader Aids

Federal Register

Vol. 68, No. 81

Monday, April 28, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
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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**

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FEDERAL REGISTER PAGES AND DATE, APRIL

15653–15920 1
15921–16164 2
16165–16402 3
16403–16714 4
16715–16942 7
16943–17252 8
17253–17528 9
17529–17726 10
17727–17876 11
17877–18080 14
18081–18530 15
18531–18832 16
18833–19134 17
19135–19320 18
19321–19706 21
19707–19928 22
19929–20068 23
20069–20326 24
20327–22292 25
22293–22566 28

CFR PARTS AFFECTED DURING APRIL

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:
7657 15921
7658 16403
7659 17253
7660 17873
7661 17875
7662 18081
7663 18831
7664 19135
7665 19929

Executive Orders:
10448 (Amended by 13293) 15917
10789 (See Memorandum of April 17, 2003) 19705
11157 (Revoked by 13294) 15919
11800 (Revoked by 13294) 15919
12452 (Revoked by 13295) 17255
13045 (Amended by 13296) 19931
13293 15917
13294 15919
13295 17255
13296 19931
13297 22565

Administrative Orders:
Memorandums:
Memorandum of March 28, 2003 17529
Presidential Determinations:
No. 2003–18 of March 24, 2003 16165
No. 2003–19 of March 24, 2003 16167
No. 2003–20 of April 16, 2003 20327
No. 2003–21 of April 21, 2003 20329
Memorandum of April 17, 2003 19705

5 CFR

531 19707
532 19708
Ch. 67 17877
5201 16398

Proposed Rules:
870 17315
1600 16449
1605 16449
1606 16449
1655 16449

6 CFR

Proposed Rules:
29 18524

7 CFR

25 16169
718 16170
723 16170
800 19137
916 17257
917 17257
923 15923
925 19708
927 19139
989 15926
993 ..... 17267, 17539
1412 16170
1413 16170
1427 20331
1464 18833
1465 17272
1940 17153

Proposed Rules:
205 18556
762 17316
772 17320
916 19466
917 19466
929 18908
930 15971
956 17325
985 19755
1580 20062
1901 17320
1941 17316
1943 17316
1951 ..... 17316, 17320

9 CFR

71 16922
77 20333
82 18531
92 16922
93 16922
94 ..... 15932, 16922
98 16922
130 16922

Proposed Rules:
2 17752
77 16733
94 17886
105 17327
115 17327
317 18560
381 18560

10 CFR

2 ..... 18836, 19711
20 19711
35 19321
50 19711

Proposed Rules:
Ch. 1 19162
35 19466
170 16374
171 ..... 16374, 17987

709.....17886, 19166

11 CFR

110.....16715

Proposed Rules:

104.....18484
107.....18484
110.....18484
9003.....18484
9004.....18484
9008.....18484
9032.....18484
9033.....18484
9034.....18484
9035.....18484
9036.....18484
9038.....18484

12 CFR

226.....16185
268.....18083
615.....18532
701.....18334
1730.....16715

Proposed Rules:

5.....17890, 19949
28.....19949
702.....16450
704.....16450
712.....16450
723.....16450

13 CFR

Proposed Rules:

121.....15971, 20350
124.....20350

14 CFR

1.....16943
25.....18843, 19933
39 .....15653, 15937, 16190, 16192, 16195, 16198, 16200, 16203, 16205, 16948, 17544, 17727, 17879, 18103, 18105, 18107, 18112, 18535, 18536, 18852, 18854, 18856, 19326, 19328, 19330, 19334, 19337, 19339, 19341, 19728, 19937, 19940, 19944, 20336, 20339, 20341
71 .....16207, 16351, 16409, 16410, 16943, 16950, 16951, 16952, 17153, 17729, 18114, 18115, 18117, 18118, 18857, 18858, 18860, 19342, 19343, 19344, 19885, 19945
73.....19946
77.....19730
91.....17545, 17870
93.....15657
95.....16943, 17730
97 .....16411, 16412, 16943, 19733, 19734
121 .....15884, 17514, 17545
125.....15884
129.....15884
135.....17545
145.....17545
1214.....19947

Proposed Rules:

1.....16992
21.....16217
25.....16458, 19958
39 .....15682, 15684, 15687, 16220, 16222, 16225, 16458, 16735, 16736, 17563, 17755, 17757, 17893, 18168, 18170, 18565, 18567, 18569, 18571, 18908, 19757, 19759, 19761, 19962, 19963, 20087, 22339
71 .....16227, 16229, 16230, 16992, 17987, 18173, 18910, 19470
91.....16992
95.....16992
97.....16992
121.....16992
125.....16992
129.....16992
135.....16992

15 CFR

740.....16144, 16208
742.....16144, 16208
762.....16208
774.....16144, 16208

Proposed Rules:

911.....16993

16 CFR

1500.....19142

Proposed Rules:

305.....16231
310.....16238, 16414
1026.....20356

17 CFR

210.....17880
228.....15939, 18788
229.....15939, 18788
240.....18788
244.....15939
249.....15939, 18788
274.....18788

Proposed Rules:

240.....15688

18 CFR

4.....18538
16.....18538
35.....19610
101.....19610
141.....18538
154.....19610
157.....18538
201.....19610
346.....19610
352.....19610
1305.....17545

Proposed Rules:

4.....19607
16.....19607
141.....19607
157.....19607

20 CFR

404.....15658
408.....16415

Proposed Rules:

641.....22520

21 CFR

172.....17277
201.....18861
310.....18869
335.....18869
341.....17881
369.....18869
510.....17881
520.....18882, 22293
558.....17881, 22294
872.....19736
1308.....16427

Proposed Rules:

Ch. I.....19766
1.....16998
10.....16461
106.....22341
107.....22341
111.....17896, 19471
112.....19471
335.....18915

24 CFR

245.....20324

Proposed Rules:

202.....15906
902.....16461
1000.....17000

26 CFR

1 .....15940, 16430, 17002, 17277, 20069
40.....15940
48.....15940
49.....15940
54.....17277
301.....16351
602 .....15940, 15942, 17277

Proposed Rules:

1 .....15801, 16462, 17759, 20089
49.....15690

27 CFR

Proposed Rules:

9.....20090
73.....17760

28 CFR

2.....16718
16.....19148, 20225
50.....18119
501.....18544
551.....19149
810.....19738
811.....19739
812.....19741

Proposed Rules:

2.....16743
803.....19770
804.....19771

29 CFR

70.....16398
71.....16398
96.....16162
99.....16162
2509.....16399
2510.....16399, 17472
2520.....16399, 17494
2550.....16399
2560.....16399, 17503
2570 .....16399, 17484, 17506
2575.....16399
2582.....16399
2584.....16399
2589.....16399
2590.....16399, 18048
4022.....18122
4044.....18122

Proposed Rules:

1910.....19472
1915.....19472
1926.....19472

30 CFR

56.....19344
57.....19344
71.....19347
75.....19347
250.....19352
901.....17545
938.....19742

Proposed Rules:

56.....19474
57.....19474
70.....15691
71.....19477
72.....15691
75.....15691, 19477
90.....15691
206.....17565
250.....20091
943.....17566
948.....17896

31 CFR

50.....19302
800.....16720

Proposed Rules:

50.....19309
103.....17569, 18917
240.....20046

32 CFR

Proposed Rules:

199.....16247, 18575
312.....16249
806b.....16746

33 CFR

Ch. 1.....16953
100.....19150
110.....20344
117 .....15943, 16721, 16953, 18123, 22294
165 .....16955, 17291, 17733, 17734, 17736, 18123, 19355, 20344, 22296, 22298, 22301, 22303, 22305
203.....19357

Proposed Rules:

110.....15691
117.....17571, 18922
165 .....15694, 18579, 19166

34 CFR

200.....19152
668.....19152

36 CFR

7.....16432, 17292
242.....22308

Proposed Rules:

7.....19966
1280.....19168

37 CFR

2.....19371
201.....16958

Proposed Rules:

1.....22343
201.....15972, 19966
260.....19482

38 CFR

1.....15659, 17549
14.....17549
17.....17549

39 CFR

964.....19152

Proposed Rules:
111 18174

40 CFR

9 16708
46 16708
51 18440
52 ....15661, 15664, 16721, 16724, 16726, 16959, 17551, 18546, 18883, 19106, 19316, 19318, 19371, 19373, 20070, 20072, 20075
60 17990
61 16726
62 ....17738, 17883
63 ....18008, 18062, 18730, 19076, 19375, 19885
70 18548
81 ....18883, 20077
82 ....16728, 16729
89 17741
112 18890
180 ....15945, 15958, 15963, 16436, 17307, 18550
271 ....17308, 17553, 17556, 17748, 18126, 19744
300 19444

Proposed Rules:
Ch. 1 16747
52 ....15696, 16644, 16748, 17002, 17331, 17573, 17576, 18177, 18581, 18934, 19485, 20095, 20096, 20356
60 18003
62 ....17763, 17903
70 18581
81 18934
82 16749
89 17763
180 ....18582, 18935, 19170
261 ....17234, 18052
271 ....17332, 17576, 17577, 17767, 18177

41 CFR

Ch. 101 16730
Ch. 301-11 22314
Ch. 302-4 22314

42 CFR

70 17558
71 17558
405 22268
411 20347
412 22268
413 22268
422 ....16652, 20349
485 22268
489 ....16652, 20349

Proposed Rules:
420 22064
424 22064
440 15973
489 22064
498 22064

43 CFR

10 16354
423 16214
1820 18553

44 CFR

Ch. 1 15666
61 15666
64 15967

45 CFR

160 ....18895, 22453
164 17153
2506 16437

46 CFR

Ch. 1 16953
Ch. 3 16953

Proposed Rules:
401 15697
530 15978
540 17003

47 CFR

1 22315
2 16962
15 19746
21 16962
25 ....16446, 16962
54 ....15669, 18906
64 ....18826, 19152
73 ....16730, 16968, 18135, 18136, 20082, 22319, 22321, 22322
74 ....16962, 17560, 20225
76 17312
78 16962
90 19444
101 16962

Proposed Rules:
1 17577
15 ....19485, 19773
64 ....16250, 19176
73 ....16750, 16968, 17592, 17593, 18177, 18178, 18179, 18180, 19486
101 19486

48 CFR

1847 16969
1852 16969

Proposed Rules:
2 16366
4 16366
8 19294
13 16366
32 16366
38 19294
52 16366

49 CFR

Ch. 4 16953
1 16215
107 19258
171 19258
172 19258
173 19258
177 19258
178 19258
180 19258
385 22456
390 22456
395 22456
533 16868
571 19752
573 18136
577 18136
579 ....18136, 20225
665 15672
1109 17312
1111 17312
1114 17312

Proposed Rules:
172 16751
173 16751
174 16751
175 16751
176 16751
177 16751
178 16751
192 17593
266 16753
541 18181

50 CFR

17 ....15804, 16970, 17156, 17428, 17430, 17560, 20083
100 22308
222 17560
224 15674
226 17560
229 ....18143, 19464
230 15680
300 ....18145, 22323
600 18145
635 16216
648 ....16731, 19160, 22325, 22333
660 18166
679 ....15969, 16990, 17314, 17750, 18145, 19465, 20083, 20086
697 16732

Proposed Rules:
17 ....15876, 15879, 16602, 19888, 20228, 22353
600 ....17004, 17005, 17333, 18185, 19180
622 18942
648 ....17903, 20096
660 16754
679 ....18187, 19182, 20360

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 APRIL 28, 2003

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered Species Act:
- Evaluation of conservation efforts when making listing decisions; policy; published 3-28-03

Fishery conservation and management:
- Atlantic coastal fisheries cooperative management—
  - American lobster; published 3-27-03
  - American lobster; correction; published 4-7-03

International fisheries regulations:
- Pacific halibut - -
  - Catch sharing plan and sport fishing management; published 4-28-03

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Virgin Islands; published 2-27-03

Air quality implementation plans; approval and promulgation; various States:
- California; published 2-26-03
- Kansas; published 2-26-03
- Maryland; published 2-27-03
- Pennsylvania; published 2-25-03

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:
- Non-discrimination on the basis of disability in the Commission's programs and activities; amendment; published 4-28-03

Radio stations; table of assignments:
- Georgia; published 3-28-03
- Louisiana; published 3-28-03
- Texas; published 3-28-03

GENERAL SERVICES ADMINISTRATION

Federal travel:
- Per diem rates; per diem rate tables in Chapter 301 removed, and prescribed maximum per diem rates for Continental United States; published 4-28-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Chlortetracycline and sulfamethazine; published 4-28-03
- Praziquantel, pyrantel pamoate, and febantel tablets; published 4-28-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Federal claims collection:
- Administrative wage garnishment; published 3-28-03

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered Species Act:
- Evaluation of conservation efforts when making listing decisions; policy; published 3-28-03

SMALL BUSINESS ADMINISTRATION

Small business size standards:
- Petroleum refiners; published 3-28-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Learjet; published 4-21-03
- Rolls-Royce Deutschland Ltd. & Co. KG; published 4-11-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Animal health status of foreign regions; recognition requirements; comments due by 5-5-03; published 3-6-03 [FR 03-05280]

Plant-related quarantine, domestic:
- Mexican fruit fly; comments due by 5-9-03; published 3-10-03 [FR 03-05594]

Plant pests:
- Plants engineered to produce pharmaceutical and industrial compounds; field testing; comments due by 5-9-03; published 3-10-03 [FR 03-05427]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Recovery plans—
  - Loggerhead sea turtle; comments due by 5-5-03; published 3-20-03 [FR 03-06714]

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources, etc.; comments due by 5-5-03; published 3-4-03 [FR 03-05048]
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permit applications; comments due by 5-5-03; published 4-18-03 [FR 03-09636]

Space-based data collection systems; policies and procedures; comments due by 5-8-03; published 4-8-03 [FR 03-08184]

EDUCATION DEPARTMENT

Elementary and secondary education:
- Elementary and Secondary Education Act; implementation—
  - Unsafe School Choice Option; dangerous schools identification and transfer opportunity for student victims of violent criminal offenses; comments due by 5-7-03; published 4-7-03 [FR 03-08400]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Massachusetts; comments due by 5-8-03; published 4-8-03 [FR 03-08359]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Massachusetts; comments due by 5-8-03; published 4-8-03 [FR 03-08360]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; comments due by 5-7-03; published 4-7-03 [FR 03-08361]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; comments due by 5-7-03; published 4-7-03 [FR 03-08362]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:
- Oklahoma; comments due by 5-9-03; published 4-9-03 [FR 03-08667]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:
- Oklahoma; comments due by 5-9-03; published 4-9-03 [FR 03-08668]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Aluminum tris (O-ethylphosphonate); comments due by 5-9-03; published 3-10-03 [FR 03-05616]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Federal-State Joint Board on Universal Service—
  - High-cost universal service support and eligible telecommunications carrier designation process; comments due by 5-5-03; published 3-5-03 [FR 03-05155]
- Telephone Consumer Protection Act; implementation—
  - Do-Not-Call Implementation Act; comments due by 5-5-03; published 4-3-03 [FR 03-08077]

Radio stations; table of assignments:
- California; comments due by 5-5-03; published 3-28-03 [FR 03-07467]
- Colorado; comments due by 5-5-03; published 4-7-03 [FR 03-08402]

Georgia; comments due by 5-5-03; published 4-7-03 [FR 03-08403]

Oklahoma and Texas; comments due by 5-5-03; published 3-28-03 [FR 03-07471]

Texas; comments due by 5-5-03; published 3-28-03 [FR 03-07469]

Various States; comments due by 5-5-03; published 3-28-03 [FR 03-07466]

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:

Presidential candidates and nominating conventions; public financing; comments due by 5-9-03; published 4-15-03 [FR 03-08761]

FEDERAL TRADE COMMISSION

Appliances, consumer; energy consumption and water use information in labeling and advertising:

Comparability ranges—

Clothes washers; comments due by 5-5-03; published 4-3-03 [FR 03-07933]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Long-term care hospitals; prospective payment system; annual payment rate updates and policy changes; comments due by 5-6-03; published 3-7-03 [FR 03-05206]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Nutrient content claims; sodium levels definition for term ≥healthy≥; comments due by 5-6-03; published 2-20-03 [FR 03-04100]

HEALTH AND HUMAN SERVICES DEPARTMENT

Energy Employees Occupational Illness Compensation Program Act; implementation:

Special Exposure Cohort; classes of employees designated as members; procedures; comments due by 5-6-03; published 3-25-03 [FR 03-07243]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Cleveland Harbor, OH; regulated navigation area; comments due by 5-10-03; published 4-16-03 [FR 03-09358]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Recovery plans—

Loggerhead sea turtle; comments due by 5-5-03; published 3-20-03 [FR 03-06714]

INTERIOR DEPARTMENT

National Park Service

Special regulations:

Saguaro National Park, AZ; designated bicycle routes; comments due by 5-6-03; published 3-7-03 [FR 03-05501]

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:

District of Columbia and United States Code; prisoners serving sentences—

Conditions for release; comments due by 5-7-03; published 4-7-03 [FR 03-07849]

NUCLEAR REGULATORY COMMISSION

Fee schedules revision; 94% fee recovery (2003 FY); comments due by 5-5-03; published 4-3-03 [FR 03-07814]

Correction; comments due by 5-5-03; published 4-14-03 [FR C3-07814]

PERSONNEL MANAGEMENT OFFICE

Practice and procedure:

Agency regulations; posting notices; comments due by 5-5-03; published 3-6-03 [FR 03-05021]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Aging airplane safety; inspections and records reviews; comments due by 5-5-03; published 2-4-03 [FR 03-02679]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Area navigation and miscellaneous amendments; comments due by 5-8-03; published 4-8-03 [FR 03-08286]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 5-5-03; published 4-3-03 [FR 03-08065]

Eurocopter France; comments due by 5-6-03; published 3-7-03 [FR 03-05250]

Iniziative Industriali Italiane S.p.A.; comments due by 5-9-03; published 4-3-03 [FR 03-08048]

Pratt & Whitney; comments due by 5-7-03; published 4-7-03 [FR 03-08328]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Wytwornia Sprzetu Komunikacyjnego (WSK) PZL-Rzeszow S.A.; comments due by 5-5-03; published 3-6-03 [FR 03-05246]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E2 airspace; comments due by 5-5-03; published 4-3-03 [FR 03-08127]

Class E5 airspace; comments due by 5-5-03; published 4-3-03 [FR 03-08129]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. 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.

H.R. 145/P.L. 108–14

To designate the Federal building located at 290 Broadway in New York, New York, as the ''Ted Weiss Federal Building''. (Apr. 23, 2003; 117 Stat. 614)

H.R. 258/P.L. 108–15

American 5-Cent Coin Design Continuity Act of 2003 (Apr. 23, 2003; 117 Stat. 615)

H.R. 273/P.L. 108–16

Nutria Eradication and Control Act of 2003 (Apr. 23, 2003; 117 Stat. 621)

H.R. 1505/P.L. 108–17

To designate the facility of the United States Postal Service located at 2127 Beatties Ford Road in Charlotte, North Carolina, as the ''Jim Richardson Post Office''. (Apr. 23, 2003; 117 Stat. 623)

S. 380/P.L. 108–18

Postal Civil Service Retirement System Funding Reform Act of 2003 (Apr. 23, 2003; 117 Stat. 624)

Last List April 23, 2003

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