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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV03–993–1 FIR]

Dried Prunes Produced in California; Changes in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the reporting requirements currently prescribed under the California dried prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule continues to allow California prune handlers to report their shipments quarterly, rather than monthly, and to no longer report export shipment destination countries. Also, handlers will continue to report type of pack as ''bulk and consumer pack'' to reveal less marketing information. This action will continue the reduced information collection burden upon handlers, while still enabling the Committee to collect information necessary for program administration.

EFFECTIVE DATE: October 22, 2003.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule continues in effect modifications to language in the order's administrative rules and regulations to allow California prune handlers to report their shipments quarterly, rather than monthly. Also, handlers will continue to report their export market shipments to the Committee by region, rather than by country. The amount of information disseminated by the Committee is also reduced. The Committee is no longer reporting the export shipments to the industry by country, and the regions that handlers ship into is only reported once a year, when the marketing policy is prepared. Also, the reporting of type of pack is changed from ''carton, visipak, and other'' to ''bulk and consumer pack''. These changes reduce the information collection burden upon handlers and the Committee's administrative costs because of the switch to quarterly distribution. This action was unanimously recommended by the Committee at a meeting on April 3, 2003.

Marketing Order Authority

Section 993.72 of the order provides authority for the Committee to require handlers to file such reports of acquisitions, sales, uses, and shipments of prunes, as may be requested by the Committee. Also, pursuant to § 93.36(c), one of the Committee's duties is to assemble data on the producing, handling, shipping, and marketing conditions relative to prunes in connection with the performance of its official duties. To prevent the release of proprietary business information, the information from all of the handlers is totaled and then distributed.

Administrative Rules and Regulations

Prior to implementation of the interim final rule, § 993.172 required handlers to report each month on their holdings, receipts, uses, and shipments of prunes produced in California.

Paragraph (d) of § 993.172 requires handlers to report shipments of dried prunes produced in California. This information is reported on PMC Form 12.1, ''Report of Shipments,'' and an addendum to that form referred to as PMC Form 12.1A, ''Cumulative Prune Export Shipments.''

Prior to the implementation of the interim final rule, each handler was required to file with the Committee for each month, not later than the 5th working day of the next succeeding month, Forms PMC 12.1 and 12.1A, reporting shipments (including cumulative exports by country) of

prunes during the crop year through the last day of the immediately preceding month. PMC Form 12.1 was required to contain at least the following information:

(1) The date, the name, and address of the handler, and the period covered by the report;

(2) The pounds of prunes shipped or otherwise disposed of, other than shipments to or for the account of other handlers as follows: (i) Domestic outlets segregated by uses (including Federal Government agencies); (ii) export markets segregated by countries; (iii) both domestic and export totals segregated by type of pack (carton, visipak, and other); and (iv) pitted prunes (pitted weight) segregated as to total to domestic outlets and total to export markets;

(3) The total pounds shipped to or for the account of other handlers, including interhandler transfers; and

(4) The total pounds of prunes not covered by, or excluded from, the definition of the term ''prunes'' (§ 993.5) shipped.

PMC Form 12.1A included a listing of the quantities of whole and pitted prunes exported together with the countries to which the exports were made.

Recommended Action

Based upon competition concerns, the Committee unanimously recommended changing the frequency and amount of information that is required to be reported by handlers. This rule continues to allow the Committee to obtain the information it needs for program purposes, and continues to permit California prune handlers to file their Shipment Reports on a quarterly, rather than monthly basis.

Handlers are no longer reporting their export shipment destination countries to the Committee. Instead handlers are reporting the regions into which they ship. The amount of information disseminated by the Committee continues to be reduced. The Committee is no longer reporting the countries to which the industry exports, but only the total export shipments (except that total export shipments into regions is reported annually for marketing policy purposes). The reporting of type of pack is changed from ''carton, visipak, and other'' to ''bulk and consumer pack'' to reveal less marketing information.

By distributing the Shipment Report quarterly, instead of monthly, and revising the report's format to provide less detailed information, the Committee reduces the amount of marketing information it is releasing. However, this information still satisfies the Committee's need for information to prepare the marketing policy, verify compliance, monitor the accuracy of handler reports, justify government purchases or supply control recommendations, and to help the industry develop their marketing programs and evaluate USDA Market Access Program applications. At least once a year, export shipments by region are reported for the entire crop year. During the remainder of the year, the Committee may only report total export shipments.

These recommendations by the Committee reduce the reporting burden on California prune handlers as well as help address some of the marketing concerns of the industry and Committee. These changes also reduce some of the Committee's administrative costs in disseminating this information quarterly, rather than monthly. Accordingly, appropriate changes are continued in paragraph (d) of § 993.172.

Final Regulatory Flexibility Analysis and the Paperwork Reduction Act

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

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

Industry Profile

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Currently 8 of the 21 handlers (38 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than $5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, will be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

Summary of Rule Change

This rule continues to change the reporting requirements specified in § 993.172(d) of the administrative rules and regulations regarding the reporting of dried prune shipments by handlers. This rule continues to allow the California prune handlers to file their Shipment Reports quarterly, rather than monthly. Also handlers are no longer reporting their export market shipments to the Committee by country, but by region. The amount of information disseminated by the Committee continues to be reduced. The Committee is no longer reporting export shipments by country, but only in total (except that total export shipments into regions are reported annually to enable the Committee to prepare its marketing policy). The reporting of type of pack is changed from ''carton, visipak, and other'' to ''bulk and consumer pack''.

Impact of Regulation

Regarding the impact of this rule on affected entities, this action continues the reduced reporting and recordkeeping burden on California prune handlers and continues the reduction in the Committee's administrative costs. The Committee estimates that 21 California prune handlers are required to file the Supply and Disposition reports each month. It is estimated that it takes each handler about 20 minutes to complete each revised PMC Form 12.1, and about 20 minutes to complete each revised PMC Form 12.1A. In comparison it is estimated that previously each handler needed about 30 minutes to complete each PMC Form 12.1, and about 35 minutes to complete each PMC Form 12.1A. Thus, completion of the revised reports takes 10 minutes less, and 15 minutes less, respectively, than was required for each of the reports previously. The total annual industry reporting burden for the current PMC Form 12.1 was 120 hours, and for the PMC Form 12.1A was 139 hours, for a combined total of 259 hours. The total burden hours for the revised PMC Forms 12.1 and 12.1A is 28 hours each, for a combined total of 55 hours. These changes thereby reduce the annual industry information collection burden by 204 hours. Committee costs are also reduced because the report is compiled

and distributed quarterly, rather than monthly.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection burden reduction contained in this rule has been submitted to the Office of Management and Budget. This action reduces existing approved burden requirements which have been assigned OMB No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Alternatives Considered

The Committee considered alternatives to this action at meetings on March 11, April 2, and April 3, 2003. The Executive Subcommittee and Committee discussed the possibility of eliminating all reporting, but determined that this was not viable because it needs certain information to prepare its marketing policy and for other decision-making. Some industry leaders also felt that the statistics are important for grower, handler, and bargaining association decisions that need to be made each year. Finally, the Executive Subcommittee and Committee discussed disseminating the information only to members and alternates of the Committee, its subcommittees, and to California prune handlers. Ultimately, the Executive Subcommittee and Committee decided to proceed with the changes in shipment reporting requirements to reduce the frequency of the reports, and to reduce the amount of information reported to and disseminated by the Committee.

The Executive Subcommittee's March 11 and April 2, 2003, meetings and the Committee's April 3, 2003, meeting where this issue was deliberated were public and widely publicized throughout the prune industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. All entities, both large and small, were able to express their views on this issue at the meetings.

An interim final rule concerning this action was published in the **Federal Register** on June 24, 2003. Copies of the rule were provided by the Committee's staff to all who attended a June 26, 2003, Committee meeting. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period, which ended August 25, 2003. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 37391, June 24, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

PART 993—DRIED PRUNES IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 993 which was published in the **Federal Register** at 68 FR 37391 on June 24, 2003, is adopted as a final rule without change.

Dated: September 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–24099 Filed 9–18–03; 12:01 pm]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 11

[Docket No. 03–23]

RIN 1557–AC75

Electronic Filing and Disclosure of Beneficial Ownership Reports

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

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this interim rule, with a request for comments, to amend our rules, policies, and procedures to require the electronic filing of beneficial ownership reports by officers, directors, and major shareholders of national banks that have equity securities registered under the Securities Exchange Act of 1934 (registered national banks).

This interim rule also requires that all reports required to be filed with the OCC under section 16(a) of the Securities Exchange Act of 1934 (Exchange Act) must be filed electronically and posted on a registered national bank's Web site, if it has one, as soon as practicable. This rule clarifies procedures for officers, directors, and principal shareholders of registered national banks to comply with these mandated electronic filing requirements.

DATES: *Effective Date:* This rule is effective on September 22, 2003.

Compliance Date: To provide for an orderly transition to using a new interagency electronic filing system, FDIC*connect,* for section 16(a) filings, the OCC will not enforce the mandatory filing requirement or the Web-site posting requirement until beginning with reports required to be filed on or after January 1, 2004. Until that date, the OCC expects that persons filing 16(a) reports will, as instructed by the OCC, begin making electronic filings, as soon as practicable, and any such electronic filings will be posted on a registered national bank's Web site, if it has one.

Comment Date: Comments must be received by November 21, 2003.

ADDRESSES: You should direct comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: Docket No. 03–23, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington, DC, area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Asa Chamberlayne, Counsel, Securities and Corporate Practices Division, 202–874–5210, or Martha Vestal Clarke, Counsel, Legislative and Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

The Exchange Act seeks to protect investors by requiring accurate, reliable, and timely corporate securities disclosures. Generally, companies with equity securities that are subject to the

registration requirements under section 12 of the Exchange Act (15 U.S.C. 78*l*) must register these securities with the Securities and Exchange Commission (SEC). Section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) requires directors, executive officers, and direct or indirect beneficial owners of more than 10 percent of a class of securities that are registered under the Exchange Act (insiders) to file beneficial ownership reports regarding their ownership and transactions in the company's securities.[1] Section 12(i) of the Exchange Act (15 U.S.C. 78l(i) vests the OCC, rather than the SEC, with the power to issue regulations implementing certain Exchange Act requirements with respect to registered national banks, including section 16, and with the authority to administer and enforce these requirements.[2]

As amended by the Sarbanes-Oxley Act of 2002, Public Law 107–204, section 16(a) requires that insiders of a registered company, including a registered national bank, must file beneficial ownership reports (1) at the time the company registers its securities pursuant to section 12 of the Exchange Act, (2) within 10 days after becoming an insider of a registered national bank, and (3) within two business days after an insider consummates a transaction resulting in a change in ownership, or resulting in the purchase or sale of a security-based swap agreement,[3] in the registered securities. These provisions became effective on August 29, 2002.

Section 16(a)(4) also requires that, beginning July 30, 2003, insiders must file their change-in-ownership reports electronically. Moreover, the SEC, and the OCC in the case of registered national banks, must make these filings available to the public on the Internet not later than the end of the business day following the filing. Also, a registered company, including a registered national bank, must post its insiders' change-in-ownership reports on its Web site, if it has a Web site, not later than the end of the business day following the filing.

The SEC's final rules implementing these requirements for other public companies mandate that all beneficial ownership reports filed under section 16(a), not only the change-in-ownership reports, must be filed electronically and posted on a public company's Web site (if the company has a Web site).[4] In addition, the SEC will provide Internet access to all such filings that are filed with the SEC. The SEC's rules are effective for all section 16(a) filings that are made on or after June 30, 2003.

The SEC's rulemaking also amended 17 CFR 240.16a–3 which applies to registered national banks through the OCC's regulations at 12 CFR 11.2(b)(2). As recently amended by the SEC, 17 CFR 240.16a–3 provides that any issuer that has a corporate Web site must post any section 16(a) report on that Web site by the end of the business day after the filing and the filing must remain accessible on the Web site for at least 12 months. These same requirements apply to registered national banks.

The OCC is imposing similar requirements to those adopted by the SEC and is requiring that all section 16(a) reports must be filed electronically by the required due dates. To provide for the electronic filing of insiders' reports under section 16(a) of the Exchange Act, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the OCC have created an electronic filing system utilizing the FDIC*connect* secure Web platform. This filing system became operational beginning July 30, 2003.

In order to assure that this new system is fully functional, the OCC will not require compliance with the electronic filing and Web site posting requirements until January 1, 2004. To the extent practicable, however, registered national banks should post the section 16(a) filings on their Web sites and their insiders should file their section 16(a) reports electronically before January 1, 2004.

This short delay will give registered national banks' insiders a transition period for using the new electronic filing system so as to ensure that the new system is fully functional and accessible to the public before requiring that it be used as the only form of filing section 16(a) reports. Moreover, there will be no delay in the due date of any insider's section 16(a) report and all such reports must still be filed with the OCC within the required time frame and will continue to be publicly available as provided by the OCC's current rules.[5] In addition, the impact of the short transition period is further minimized because we expect that insiders will begin using FDIC*connect* and registered national banks will begin posting these filings on their Web sites (if the bank maintains a Web site) as soon as practicable and will not wait until the compliance deadline.

Description of Rule

The interim rule revises section 11.3(a), which relates to filing requirements and the inspection of documents filed with the OCC pursuant to the Exchange Act. The rule contains a new paragraph 11.3(a)(2), which provides that statements required to be filed electronically pursuant to section 16(a) of the Exchange Act shall be filed electronically. New paragraph 11.3(a)(4) clarifies that the electronic filing and Web site posting requirements are mandatory for section 16(a) statements required to be filed on or after January 1, 2004.

The rule also adds a new subparagraph 11.3(a)(3)(ii) which provides that, an electronic filing pursuant to section 16(a) of the Exchange Act submitted by direct transmission on or before 10 p.m. eastern standard time or eastern daylight savings time, whichever is currently in effect, shall be deemed filed on the same business day. This aspect of the rule is consistent with the SEC's rules applicable to electronic filings that apply to other registered companies. *See* 17 CFR 232.13(a)(4).

The OCC's current rule 11.2(b)(2) incorporates by reference the requirements in the SEC's rules that a public company that has a Web site must post any filings on Forms 3, 4, or 5—the forms for filing beneficial ownership reports under section 16(a) of the Exchange Act—by the end of the business day after the filing and continue to make that form accessible on its Web site for at least 12 months. *See* 17 CFR 240.16a–3. Under the OCC's current rules, a registered national bank is required to post these filings on its Web site, if it has one, in accordance with the 17 CFR 240.16a–3.

Transition Period for Compliance

This interim final rule is effective on September 22, 2003. National bank insiders should begin to file reports electronically as soon as practicable. Section 16(a) reports must be filed electronically beginning with reports due to be filed on or after January 1, 2004. Insiders will file their section 16(a) reports on FDIC*connect* by submitting completed SEC Form 3 (Initial Statement of Beneficial Ownership of Securities), Form 4

[1] Section 16(a) also requires an entity that has registered its securities under the Exchange Act to file initial and transactional reports with any national securities exchange on which it has listed its securities.

[2] Under section 12(i), the other Federal banking agencies have the same authority with respect to the registered depository institutions that they supervise.

[3] The term ''security-based swap agreement'' is defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

[4] *See* 68 FR 25788 (May 13, 2003).

[5] During the transition period, paper copies of any section 16(a) reports that are not filed electronically still may be obtained as provided under the OCC's current rules. *See* 12 CFR 11.2(b).

(Statement of Changes in Beneficial Ownership), or Form 5 (Annual Statement of Changes in Beneficial Ownership of Securities), as recently amended by the SEC's rules.[6] The OCC already has provided instructions for using FDIC*connect* to affected national banks. When the forms are electronically filed on FDIC*connect,* the forms will be made available immediately on the FDIC's external public Web site (*http://www2.fdic.gov/efr*). Filings will be retrievable by bank name, insider name,[7] bank state, and filing date.

To assure that these reports continue to be publicly accessible until such time as we are confident that the electronic filing system is fully functional, insiders should continue to submit these reports on paper within the required time frames during the transition period and, as soon as practicable, also file their reports electronically. The paper filing requirement can be met by simply completing the on-line version of the report, then printing and faxing the electronic filing system confirmation screen (which contains the completed report). Paper reports may be faxed to the OCC at (202) 874–5279 and filed electronically with FDIC*connect* as of July 30, 2003.

During this transition period, a registered national bank whose insiders choose to file electronically (in addition to making a paper filing) may satisfy the requirement to post the report on its Web site by providing a link on its Web site to the FDIC's public Web site (*http://www2.fdic.gov/efr*). The OCC also will have a link on its Web site to the FDIC's Web site to make it easier for interested persons to retrieve FDIC*connect* filings.

Notice and Comment; Effective Date

Under the Administrative Procedure Act (APA), the requirement that an agency provide public notice and an opportunity for comment does not apply to ''rules of agency organization, procedure, or practice.''[8] This exemption applies to a rule that does not itself affect the substantive rights of those affected, even though the rule ''may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *JEM Broadcasting Co., Inc.* v. *FCC,* 22 F.3d 320, 326–27 (D.C. Cir. 1994).

The interim rule has no effect on the substantive rights of registered national banks or their insiders who are filing section 16(a) reports. Amendments to section 16(a)(4) of the Exchange Act require the electronic filing of change-in-ownership reports and the posting of these reports on a registered national bank's Web site. The electronic filing requirements and Web-site posting requirements imposed under this interim rule implement the statutory requirements and require the electronic filing and Web site posting of other section 16(a) reports, as well. These requirements pertain only to the form in which an insider submits his or her information to the OCC or the form in which it is publicly accessible. The electronic filing and Web-site posting requirements do not modify the substantive information in the filing, the deadlines for the filing, or the public availability of the section 16(a) reports. For these reasons, we conclude that this interim rule is not subject to the notice and comment requirements of the APA.

An agency may dispense with the delayed effective date requirement of the APA for ''good cause.''[9] As we have described, we expect that the interim rule, which itself imposes no new substantive requirements, will help produce efficiencies for and reduce burden on national banks by enabling them to save time and money in the preparation and processing of certain required filings. The rule clarifies that insiders have a transition period for compliance and, thus, provides for an orderly transition to the electronic filing requirement. For these reasons, we conclude that the benefits of the interim rule outweigh any burdens imposed by the rule and that there is good cause to dispense with the 30-day delayed effective date prescribed by the APA.

The OCC is seeking public comment on all aspects of this interim rule and will consider those comments when promulgating the final rule. The OCC will publish in the **Federal Register** a response to any significant adverse comments received, along with modifications to the rule, if any.

Finally, subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. Because the OCC will not enforce the mandatory electronic filing requirement and the Web site posting requirement until beginning with section 16(a) reports due to be filed on or after January 1, 2004, the requirements in 12 U.S.C. 4802(b)(1) are satisfied.

Comment Solicitation

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve this rule before it is adopted in final form. We therefore request comment on all aspects of this interim rule. We invite insiders to submit feedback on their use of this system.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The collections of information requirements in 12 CFR part 11 are approved under OMB Control Number 1557–0106. The information collection requirements contained in this interim rule with request for comments have been submitted to the OMB for review as a revision of a currently approved collection. The OCC is also soliciting public comments on the information collection requirements contained in this interim rule for 60 days.

12 CFR part 11 incorporates by reference the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

The OCC is revising 12 CFR part 11 to reflect amendments to section 16(a)(4) of the Exchange Act made by the Sarbanes-Oxley Act of 2002 and, like the SEC, is also requiring insiders of registered national banks to file all of their section 16(a) reports electronically in the future.

Section 11.3(a)(2) requires that beneficial ownership reports by officers, directors, and major shareholders of national banks with equity securities that are subject to registration and disclosure requirements of the Exchange Act must be filed electronically, as directed by the OCC. The FDIC*connect* secure Web platform electronic filing

[6] *See supra* note 4.

[7] The ability to be able to retrieve the filing by insider name will be delayed but it is expected to be functional on or about January 1, 2004 if all applicable regulatory requirements are satisfied.

[8] 5 U.S.C. 553(b)(A).

[9] Id. at 553(d)(3).

system will accept beneficial ownership reports that are designated as Forms 3, 4, and 5. These forms contain the same information as currently required on SEC Forms 3, 4, and 5. National banks currently file these SEC forms in paper form with the OCC.

The FDIC*connect* secure Web platform became operational on a voluntary basis beginning July 30, 2003. However, 12 CFR 11.3(a)(4) clarifies that the electronic filing requirement will become mandatory for section 16(a) statements required to be filed on or after January 1, 2004.

National banks will continue to file SEC forms 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C, as required by part 11, in paper form.

Title: (MA)-Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557–0106.

Form Numbers: Forms 3, 4, 5, SEC Forms 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.

Estimated number of respondents (Forms 3, 4, and 5): 65.

Estimated number of responses (Forms 3, 4, and 5): 185.

Average hours per response (Forms 3, 4, and 5): Ranges from ½ hour to one hour.

Estimated total annual burden hours (Forms 3, 4, and 5): 97.5 hours.

The likely respondents are national banks and individuals.

Comments

The OCC invites comments on:

(1) Whether the collection of information contained in the interim rule is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

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

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

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

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

Comments should be sent to the OCC and to the OMB Desk Officer:

Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: Docket No. 03–23, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington, DC, area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.*

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557–0106, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *jlackeyj@omb.eop.gov.*

Community Bank Comment Request

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

Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the interim rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106–102 requires each Federal agency to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[10] Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this interim rule.

[10] *Id.* at 553(d).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–04 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the interim rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

The OCC has determined that this rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends part 11 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265.

■ 2. Section 11.3(a) is revised to read as follows:

§ 11.3 Filing requirments and inspection of documents.

(a) *Filing requirements.* (1) *General.* Except as otherwise provided in this section, all papers required to be filed with the OCC pursuant to the 1934 Act or regulations thereunder shall be submitted in quadruplicate to the

Securities and Corporate Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Material may be filed by delivery to the OCC through the mail, by fax (202–874–5279), or otherwise.

(2) *Statements filed pursuant to section 16(a) of the 1934 Act.* Statements required under section 16(a) of the 1934 Act shall be filed electronically, as directed by the OCC.

(3) *Date of filing.* (i) *General.* The date on which papers are actually received by the OCC shall be the date of filing, if the person or bank filing the papers has complied with all applicable requirements.

(ii) *Electronic filings.* An electronic filing of a statement required under section 16(a) of the 1934 Act that is submitted by direct transmission on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day.

(4) *Mandatory compliance date.* Compliance with paragraph (a)(2) of this section and any applicable requirements that such statements must be posted on a registered national bank's Web site are mandatory for statements required to be filed on or after January 1, 2004.

* * * * *

Dated: September 8, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–24057 Filed 9–18–03; 12:01 pm]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–179–AD; Amendment 39–13305; AD 2003–09–04 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, that currently requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness by incorporating new structural inspection intervals for the pressure floor skin of the center fuselage at fuselage stations 460 and 513; repair if necessary; and submission of inspection findings to the airplane manufacturer. This amendment terminates the reporting requirement and includes a provision to allow removal of the referenced service information when the information specified in it is included in the general revisions of the maintenance manual. The actions specified in this AD are intended to detect and correct in a timely manner fatigue cracks of the pressure floor skin of the center fuselage at fuselage stations 460 and 513, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 14, 2003 (68 FR 22587, April 29, 2003).

Comments for inclusion in the Rules Docket must be received on or before October 22, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–179–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On April 21, 2003, the FAA issued AD 2003–09–04, amendment 39–13133 (68 FR 22587, April 29, 2003), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, to require revising the airworthiness limitations (AWL) section of the Instructions for Continued Airworthiness by incorporating new structural inspection intervals for the pressure floor skin of the center fuselage at fuselage stations 460 and 513; repair if necessary; and submission of inspection findings to the airplane manufacturer. That action was prompted by a report of fatigue cracks on the pressure floor skin of the center fuselage at fuselage stations 460 and 513. The actions required by that AD are intended to detect and correct in a timely manner fatigue cracks of the pressure floor skin of the center fuselage at fuselage stations 460 and 513, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight.

Comments

Interested persons were afforded an opportunity to submit comments in response to AD 2003–09–04. Due consideration has been given to the comments received.

Request To Specify the Provisions of Referenced Temporary Revision (TR)

One commenter requests that AD 2003–09–04 be revised to specify the provisions of Canadair TR 2B–1230, Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' approved on July 26, 2002, by Transport Canada Civil Aviation (TCCA) as a method of compliance, rather than specifying insertion of the TR into the AWL section as the only means of compliance. The commenter states that there is no provision to maintain compliance when revising the maintenance manual with a formal revision that incorporates the TR text.

We agree. We have added a new paragraph (b) (subsequent paragraphs have been redesignated) stating, ''When the information in Canadair TR 2B–1230, Canadair Regional Jet

Maintenance Requirements Manual, Part 2, Appendix B, 'Airworthiness Limitations,' approved on July 26, 2002, by TCCA, is included in the general revisions of the maintenance manual, this TR may be removed.''

Request To Eventually Terminate Reporting Requirement

The same commenter requests that the reporting requirement specified in paragraph (c) of AD 2003–09–04 be terminated after a reasonable period of time. The commenter states that, although data gathering is important, particularly when evaluating the need for continued compliance with the type of required inspection, continued compliance with the type of required inspection is a burden to operators.

We agree. The purpose of the reporting requirement is for the airplane manufacturer and TCCA to further analyze the need for follow-on action. After consulting with the airplane manufacturer and TCCA, we have determined that reporting inspection findings after four years would be burdensome to the operators and is unnecessary for gathering any salient information. Therefore, we have revised paragraph (d) of this AD by adding the following statement: ''This requirement ends 4 years after the effective date of this AD.''

FAA's Findings

This airplane model is manufactured in Canada and is 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, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, 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.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD revises AD 2003–09–04 to continue to require revising the AWL section of the Instructions for Continued Airworthiness by incorporating new structural inspection intervals for the pressure floor skin of the center fuselage at fuselage stations 460 and 513; repair if necessary; and submission of inspection findings to the airplane manufacturer. This AD revises the existing AD by terminating the reporting requirement four years after the effective date of this AD. This AD also revises the existing AD by including a provision to allow removal of the referenced TR when the information specified in it is included in the general revisions of the maintenance manual.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). However, for clarity and consistency in this AD, we have retained the language of AD 2003–09–04 regarding that material.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–179–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–13133 (68 FR 22587, April 29, 2003), and by adding a new airworthiness directive (AD), amendment 39–13305, to read as follows:

2003–09–04 R1 Bombardier, Inc. (Formerly Canadair): Amendment 39–13305. Docket 2003–NM–179–AD. Revises AD 2003–09–04, Amendment 39–13133.

Applicability: Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, serial numbers 7003 through 7999 inclusive; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR Part 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR part 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct in a timely manner fatigue cracks of the pressure floor skin of the center fuselage at fuselage stations 460 and 513, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight, accomplish the following:

Revise Airworthiness Limitations (AWL) Section

(a) Within 14 days after May 14, 2003 (the effective date AD 2003–09–04, amendment 39–13133), revise the AWL section of the Instructions for Continued Airworthiness by inserting a copy of Canadair Temporary Revision (TR) 2B–1230, Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' approved on July 26, 2002, by Transport Canada Civil Aviation (TCCA), into the AWL section. Thereafter, except as provided in paragraph (e) of this AD, no alternative structural inspection intervals may be approved for the pressure floor skin of the center fuselage at fuselage stations 460 and 513.

(b) When the information in Canadair TR 2B–1230, Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' approved on July 26, 2002, by TCCA, is included in the general revisions of the maintenance manual, this TR may be removed.

Repair and Revise AWL Section

(c) If any crack is found during any inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Repair per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or TCCA (or its delegated agent).

(2) Revise the AWL section of the Instructions for Continued Airworthiness by inserting a copy of the new airworthiness limitation and inspection requirements associated with the FAA-or TCCA-approved repair referred to in paragraph (c)(1) of this AD into the Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations'' section. Thereafter, except as provided in paragraph (e) of this AD, no alternative structural inspection intervals specified in the FAA-or TCCA-approved repair may be approved for the pressure floor skin of the center fuselage at fuselage stations 460 and 513.

Reporting

(d) Within 30 days after each inspection required by this AD, submit a report of the inspection results (both positive and negative findings) to Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada; telephone (514) 855–5001, extension 58500; fax (514) 855–8501. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056. This requirement ends 4 years after the effective date of this AD.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the AWL revision shall be done in accordance with Canadair Temporary Revision 2B–1230, Canadair Regional Jet Maintenance Requirements Manual, Part 2, Appendix B, ''Airworthiness Limitations,'' approved on July 26, 2002, by TCCA. (The approval date of this document is indicated only on page 2 of 2.) The incorporation by reference of that document was approved previously by the Director of the Federal Register as of May 14, 2003 (68 FR 22587, April 29, 2003). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–39, effective date October 25, 2002.

Effective Date

(h) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington on September 10, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23933 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–342–AD; Amendment 39–13312; AD 2003–19–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, that requires repetitive inspections and tests for discrepancies of the drainage system of the canted pressure deck located in the wheel wells of the main landing gear (MLG) of the left and right wings, and corrective actions if necessary. This action is necessary to prevent ice accumulation on the lateral flight control cables and/or components due to water entering the wheel well of the MLG and freezing, which could restrict or jam control cable movement, resulting in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes was published in the **Federal Register** on April 24, 2003 (68 FR 20087). That action proposed to require repetitive inspections and tests for discrepancies of the drainage system of the canted pressure deck located in the wheel wells of the main landing gear (MLG) of the left and right wings, and corrective actions if necessary.

Comments

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

Request To Withdraw the Proposed AD

One commenter requests that, rather than issue an AD to require the inspections proposed in the Notice of Proposed Rulemaking (NPRM), the inspections be incorporated into the Maintenance Planning Document (MPD). The commenter states that since certain of the proposed inspections (the Phase 2 inspection) are already specified as tasks in the MPD, it is unnecessary to require them by AD action. Additionally, the commenter points out the amount of work and time necessary to gain access (removal of several rows of seats, floor panels, and partitions) for the existing MPD inspections would also be required by the inspections proposed in the NPRM.

The FAA does not agree that the NPRM should be withdrawn. The repetitive intervals in Section 8 of the MPD are a baseline inspection program and are written in terms of ''check'' intervals. The check intervals may be extended by an FAA-approved maintenance program revision. Some operators have had ''C'' checks extended from 18 to 24 months. For some operators, Section 8 of the MPD may be different than the manufacturer's baseline program. We have determined that the unsafe condition addressed in this AD requires inspections at the intervals specified in the NPRM. To ensure those specific inspection intervals are adhered to, an AD must be issued.

Request To Revise the Unsafe Condition

One commenter, the manufacturer, requests that the unsafe condition be revised to clarify that the AD actions also are required to prevent ice accumulation on components. (The NPRM specified prevention of ice on the lateral flight control cables.) The commenter also requests that the unsafe condition be revised to specify that the unsafe condition ''could result in 'degraded' or loss of controllability of the airplane.''

The FAA agrees that addition of the words ''and/or components'' clarifies the unsafe condition, and has revised the final rule to reflect this change. We do not agree that the word ''degraded'' should be added to the unsafe condition statement. The phrase ''loss of controllability of the airplane'' adequately describes the end-level effect on the airplane. ''Degraded controllability'' would not necessarily result in loss of control of the airplane, unless there were other contributing factors. We do not list all possible conditions that could result from ice accumulation, only the end-level effect. No change to the final rule is necessary in this regard.

Requests To Revise Compliance Times

One commenter requests that the compliance times stated in paragraphs (a) and (b) of the NPRM be expressed in terms of ''C'' checks rather than months. The commenter explains that its ''C'' checks are every 24 months so that inspections would occur at 24 months, 48 months, and 72 months, respectively. The commenter states that the compliance time intervals specified in the NPRM of 18, 36, and 54 months would require its fleet to have special maintenance visits scheduled in addition to the normally scheduled ''C'' checks. The commenter points out that the cost of special visits and downtime would be considerable.

The FAA does not agree with the commenter's request. The commenter did not provide any justification to show that increasing the compliance time intervals would provide an acceptable level of safety. However, under the provisions of paragraph (e) of the final rule, we may approve requests for adjustments to the compliance times if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Another commenter requests that, for airplanes specified in Work Package 2, the repetitive inspection compliance times be extended from intervals not to exceed 36 months as proposed in the NPRM, to intervals not to exceed 72 months. The commenter explains that the actions specified in Work Package 2 will require significant cabin disassembly. Therefore, the commenter would like to perform the proposed inspections at its ''4C'' (72 months) heavy maintenance visits.

The FAA does not agree that the repetitive inspection interval should be extended. The commenter provided no technical justification to show that a 72-month interval would provide an acceptable level of safety. However, under the provisions of paragraph (e) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Request To Revise the Threshold for Work Package 2

One commenter points out that new airplanes already have the improved drain systems. Additionally, the commenter notes that it is unlikely that the area inside the canted pressure deck has been contaminated with debris on new airplanes, since that area should not have been disturbed from years of service or by heavy maintenance activities. The commenter objects to the amount of work and time necessary to gain access (removal of several rows of seats, floor panels, and partitions) to perform inspections that the commenter does not consider necessary.

The FAA does not agree. As explained in the preamble of the NPRM, we have received reports of ice accumulation around control cables on Boeing Model 767 series airplanes. We point out that we have also received similar reports on Boeing Model 747 series airplanes, one of which was a report of an event that occurred on the airplane approximately three years after the date of manufacture. Therefore, we consider that the service history demonstrates

that new airplanes are not exempt from water accumulation in the canted pressure deck. No change to the final rule is necessary in this regard.

Request To Revise Work Package Number

Two commenters request that bullet number three under the paragraph titled ''Difference Between This Proposed AD and Service Bulletins'' be revised to read, ''For Work Package 3,'' instead of, ''For Work Package 1'' as stated in the NPRM.

The FAA acknowledges that a typographical error occurred in that paragraph and that bullet number three should read, ''For Work Package 3.'' Since it is clear that our intent was to specify that bullet number three read, ''For Work Package 3,'' and because the ''Difference Between This Proposed AD and Service Bulletins'' paragraph does not reappear in this final rule, no change to the final rule is necessary in this regard.

Editorial Clarification

The FAA has revised certain wording regarding the compliance times of the repetitive inspection requirements specified in paragraphs (a), (b), and (d) of this rule. Instead of specifying that the repetitive inspections be repeated ''at least every,'' as stated in paragraphs (a), (b), and (d) of the NPRM, this final rule specifies that the inspections be repeated ''at intervals not to exceed.''

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 814 airplanes of the affected design in the worldwide fleet. The FAA estimates that 345 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection/test of the drainage system specified in Work Package 1 of the service bulletins, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $22,425, or $65 per airplane.

It will take approximately 4 work hours per airplane to accomplish the required inspection/cleaning specified in Work Package 2 of the service bulletins, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection/cleaning required by this AD on U.S. operators is estimated to be $89,700, or $260 per airplane, per cycle.

It will take approximately 2 work hours per airplane to accomplish the required inspection specified in Work Package 3 of the service bulletins, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $44,850, or $130 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–19–09 Boeing: Amendment 39–13312. Docket 2001–NM–342–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the lateral flight control cables and/or components due to water entering the wheel well of the main landing gear and freezing, which could

restrict or jam control cable movement, resulting in loss of controllability of the airplane; accomplish the following:

Repetitive Inspections/Tests of the Drainage System/Corrective Actions

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD: Do a general visual inspection of the external drains, reducer, and drain lines for discrepancies (including damage, holes, signs of frozen water, and signs of blockage), per Work Package 1 of the Work Instructions of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both dated September 27, 2001; as applicable. Repeat the test after that at intervals not to exceed 18 months.

(1) Within 18 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 18 months after the effective date of this AD.

(b) At the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD: Clean the cavity for the canted pressure deck and do a general visual inspection of the drainage system for discrepancies per Work Package 2 of the Work Instructions of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both dated September 27, 2001; as applicable. Repeat the cleaning and inspection after that at intervals not to exceed 36 months.

(1) Within 36 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 36 months after the effective date of this AD.

(c) If any discrepancy is found during any inspection or test required by paragraphs (a) and (b) of this AD, before further flight, repair per the Work Instructions of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both dated September 27, 2001; as applicable.

Repetitive Inspections of the Canted Pressure Deck/Corrective Action

(d) At the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD: Do a general visual inspection of the canted pressure deck for discrepancies (including loose or missing fasteners; loose, missing, or cracked sealant; and leak paths), per Work Package 3 of the Work Instructions of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both dated September 27, 2001; as applicable. If any discrepancy is found, before further flight, repair (including replacing any loose or missing fastener or loose, missing, or cracked sealant; and repairing any leak found) per the applicable service bulletin. Repeat the inspection after that at intervals not to exceed 54 months.

(1) Within 54 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 54 months after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–51A0023, dated September 27, 2001; or Boeing Alert Service Bulletin 767–51A0024, dated September 27, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on October 27, 2003.

Issued in Renton, Washington, on September 12, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23828 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–324–AD; Amendment 39–13311; AD 2003–19–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections for discrepancies of certain areas of the forward and aft sides of the body station 2598 bulkhead, and repair if necessary. This action is necessary to find and fix such discrepancies of the bulkhead structure, which could result in failure of the structure to carry flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on April 17, 2003 (68 FR 18908). That action proposed to require repetitive inspections for discrepancies of certain areas of the forward and aft sides of the body station 2598 bulkhead, and repair if necessary.

Comments

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

Agreement with the Notice of Proposed Rulemaking (NPRM)

One commenter states that it agrees with the NPRM and has no further comments.

Request To Specify Approval of Certain Previous Repairs

One commenter requests that additional verbiage be added to paragraph (b) of the NPRM stating that FAA 8110–3 forms that were approved before the issuance of the final rule by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle Aircraft Certification Office (ACO) to make such findings, meet the requirements of paragraph (b). The commenter states that it is unnecessary for additional approval to be required for such FAA 8110–3 forms. The commenter notes that the NPRM, as written, would require the operator to resubmit the FAA Form 8110–3 forms for FAA approval, simply because there was no way for a Boeing DER to reference a final rule that has not been issued yet. The commenter points out that previously approved repair and follow-on inspections are no different than the actions specified in the NPRM for the repair and follow-on inspections.

The FAA does not agree. We have determined that such repairs previously approved may not automatically be considered to be approved as alternate methods of compliance (AMOC) for the requirements of this final rule. We, or one of our authorized Boeing DERs, must make a separate determination to confirm that any existing repairs and/or follow-on inspections provide for an acceptable AMOC with the final rule. Such requests for AMOCs should be made in accordance with paragraph (c) of this final rule. No change is necessary to the final rule in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Changes to 14 CFR part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,147 airplanes of the affected design in the worldwide fleet. The FAA estimates that 280 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $72,800, or $260 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–19–08 Boeing: Amendment 39–13311. Docket 2001–NM–324–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1307 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of the bulkhead structure, which could result in failure of the structure to carry flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later: Do a detailed inspection of the body station 2598 bulkhead for discrepancies (cracking, elongated fastener holes) of the lower aft inner chords; upper aft outer chords; and diagonal brace attachment fittings, flanges, and rods; per Boeing Alert Service Bulletin 747–53A2467, dated July 26, 2001. Repeat the inspection after that at intervals not to exceed 3,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repair

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD: Before further flight, repair per Boeing Alert Service Bulletin 747–53A2467, dated July 26, 2001. If any discrepancy is found and the service bulletin specifies to contact Boeing for appropriate action. Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2467, dated July 26, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on October 27, 2003.

Issued in Renton, Washington, on September 12, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23829 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–164–AD; Amendment 39–13308; AD 2003–19–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F Airplanes; and Model MD–10–10F and –30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F airplanes; and certain Model MD–10–10F and –30F airplanes, that requires inspections for cracking and corrosion of the bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, and follow-on and corrective actions. This action is necessary to prevent failure of the bolt and bushing that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F airplanes; and certain Model MD–10–10F and –30F airplanes, was published in the **Federal Register** on June 10, 2003 (68 FR 34557). That action proposed to require inspections for cracking and corrosion of the bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, and follow-on and corrective actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 402 airplanes of the affected design in the worldwide fleet. The FAA estimates that 297 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required initial inspections, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the required initial inspections on U.S. operators is estimated to be $19,305, or $65 per airplane.

It will take approximately 2 work hours per flap to accomplish the required replacement. Each wing has 2 flaps; therefore, it will take approximately 4 work hours per airplane to accomplish the required replacement, at an average labor rate of $65 per work hour. Required parts will cost approximately $2,982 for the outboard flap, and $2,825 for the inboard flap. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $1,801,899, or $6,067 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–19–05 Boeing: Amendment 39–13308. Docket 2002–NM–164–AD.

Applicability: Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bolt and bushing that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane, accomplish the following:

Initial General Visual and Magnetic Particle Inspections

(a) Within 6 months after the effective date of this AD: Do initial general visual and magnetic particle inspections for cracking and corrosion of the pivot bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, per Boeing Alert Service Bulletin DC10–57A148, Revision 01, dated August 13, 2002; and Boeing Alert Service Bulletin DC10–57A117, Revision 01, dated July 23, 2002; as applicable. Before further flight, do the applicable follow-on and corrective actions required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Follow-On and Corrective Actions

(1) If no cracking or corrosion is found: Before further flight, do the actions specified in either paragraph (a)(1)(i) or (a)(1)(ii) of this AD per Condition 1 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 1 per the applicable service bulletin. The actions include (for the inboard flaps) reinstalling each existing bushing, replacing each existing pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating the assembly; (for the outboard flaps) replacing each existing pivot bolt assembly with a new assembly made from multi-phase material, and lubricating the assembly.

(ii) Do the actions specified in Option 2 of Condition 1 per the applicable service bulletin. The actions include (for the inboard flaps) reinstalling the existing bushing and pivot bolt assembly, lubricating the assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) reinstalling the pivot bolt assembly, lubricating the assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified. Accomplishment of paragraph (a)(1)(i) of this AD terminates the requirements of this paragraph.

(2) If corrosion is found: Before further flight, do the actions specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD per Condition 2 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 2 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing with a

new equivalent part, replacing the affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating each assembly; (for the outboard flaps) replacing the affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricating each assembly.

(ii) Do the actions specified in Option 2 of Condition 2 per the applicable service bulletin. The actions include (for the inboard flaps) repairing and re-installing the existing bushing and affected pivot bolt assembly, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) repairing and installing the existing pivot bolt assembly, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking, at the intervals specified. Do the inspections until paragraph (a)(2)(i) of this AD has been done.

(3) If cracking is found: Before further flight, do the actions specified in either paragraph (a)(3)(i) or (a)(3)(ii) of this AD per Condition 3 of the Work Instructions of the applicable service bulletin.

(i) Do the actions specified in Option 1 of Condition 3 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing with a new equivalent part, replacing the affected pivot bolt assembly with a new assembly made from corrosion-resistant steel, and lubricating each assembly; (for the outboard flaps) replacing the affected pivot bolt assembly with a new assembly made from multi-phase material, and lubricating each assembly.

(ii) Do the actions specified in Option 2 of Condition 3 per the applicable service bulletin. The actions include (for the inboard flaps) replacing the affected bushing and pivot bolt assembly with new equivalent parts, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified; (for the outboard flaps) replacing the affected pivot bolt assembly with a new equivalent part, lubricating each assembly, repeating the lubrication at the intervals specified, and doing repetitive ultrasonic inspections of the assembly for cracking at the intervals specified. Do the inspections until paragraph (a)(3)(i) of this AD has been done.

Credit for Actions Done per Previous Issue of Service Bulletins

(b) Accomplishment of the specified actions before the effective date of this AD per Boeing Alert Service Bulletin DC10–57A148, dated June 14, 2002; or Boeing Alert Service Bulletin DC10–57A117, dated February 11, 1991; is considered acceptable for compliance with the applicable requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin DC10–57A148, Revision 01, dated August 13, 2002; and Boeing Alert Service Bulletin DC10–57A117, Revision 01, dated July 23, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on October 27, 2003.

Issued in Renton, Washington, on September 11, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23670 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–176–AD; Amendment 39–13307; AD 2003–19–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes, that requires, for certain airplanes, a one-time inspection to detect chafing or other damage of the integrated drive generator (IDG) cables and the firewall separators of the pylon, and corrective action if necessary. For other airplanes, this AD requires identification of the part number of the clamps, and replacement with new clamps if necessary. The actions specified by this AD are intended to prevent electrical arcing between the IDG cables and the firewall separators due to chafing, which could result in an in-flight fire and/or loss of electrical power. This action is intended to address the identified unsafe condition.

DATES: Effective October 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW, Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano L. Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes was published in the **Federal Register** on June 18, 2002 (67 FR 41357). That action proposed to require, for certain affected airplanes, a one-time inspection to detect chafing or other damage of the integrated drive generator (IDG) cables and the firewall separators of the pylon, and corrective action if necessary. For other affected airplanes, that action proposed to require identification of the part number of the clamps, and replacement with new clamps if necessary.

Comments

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

Request To Revise Service Information Citation

One commenter requests that the FAA revise paragraph (a) of the proposed AD

to cite only Bombardier Alert Service Bulletin A601R–24–091, dated March 9, 2000; and Revision A, dated May 10, 2000; as the appropriate sources of service information for reinspecting for proper clamp part numbers. The commenter notes that Revision B of the alert service bulletin, dated September 14, 2000, was issued to, among other things, specify the proper clamp installations. The commenter agrees, however, that use of Revision B was correctly addressed in Note 2 of the proposed AD.

The FAA agrees. Paragraph (a) has been revised accordingly in this final rule.

Request To Remove ''Spares'' Paragraph

This same commenter requests that paragraph (c) of the proposed AD be removed. Paragraph (c) of the proposed AD stated that only those IDG cable clamps having part number TA121010R14–04 (P/N ''–R'') may be installed on affected airplanes. The commenter describes other legitimate installations for another part number, TA121010L14–04 (P/N ''–L''), for securing IDG cables elsewhere on the airplane. The commenter suggests revising the proposed AD to prohibit installation of P/N ''–L'' during accomplishment of Bombardier Alert Service Bulletin A601R–24–091, but to specify that P/N ''–R'' must be used to obtain the proper IDG cable orientation/clearance from the pylon separator panel.

The FAA concurs. Paragraph (c) has been revised in this final rule to prohibit installation of P/N ''–L'' during incorporation of Revision ''C'' of Bombardier Alert Service Bulletin A601R–24–091.

Conclusion

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

Changes to Proposed AD

The identity of affected airplanes has been changed in this final rule to ''Bombardier Model CL–600–2B19 (Regional Jet series 100 and 440) airplanes'' to match the type certificate data sheet for these airplanes.

Paragraph (a)(2) has been revised in this final rule to identify the source of service information to clarify the required method for the clamp replacement.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Revised Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 160 airplanes of U.S. registry will be affected by this AD.

It will take approximately 7 work hours per airplane to accomplish the inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this action is estimated to be $455 per airplane.

It will take approximately 1 work hour per airplane to determine the part number of the clamp, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this action is estimated to be $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–19–04 Bombardier, Inc. (Formerly Canadair): Amendment 39–13307. Docket 2001–NM–176–AD.

Applicability: Model CL–600–2B19 (Regional Jet series 100 and 440) airplanes, serial numbers 7003 through 7269 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the integrated drive generator (IDG) cables and the firewall separators due to IDG cable chafing, which could result in an in-flight fire and/or loss of electrical power, accomplish the following:

Part Number Identification

(a) For airplanes that have been repaired or modified before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–091, dated March 9, 2000; or Revision ''A,'' dated May 10, 2000: Within 550 flight hours or 2 months after the effective date of this AD, whichever occurs first, determine the part numbers (P/Ns) of the clamps that hold the IDG cables on the left and right pylons.

(1) If the P/N of all clamps is TA121010R14–04: No further action is required by this paragraph.

(2) If the P/N of any clamp is NOT TA121010R14–04: Before further flight, replace the discrepant clamp with a clamp having P/N TA121010R14–04, in accordance with Bombardier Alert Service Bulletin A601R–24–091, Revision 'C,' dated February 1, 2001.

Inspection

(b) For airplanes not identified in paragraph (a) of this AD: Within 550 flight hours or 2 months after the effective date of this AD, whichever occurs first, perform a one-time general visual inspection to detect chafing and other damage of the IDG cables and the firewall separators of the pylon, in accordance with Bombardier Alert Service Bulletin A601R–24–091, Revision 'C,' dated February 1, 2001. Prior to further flight thereafter, perform all applicable corrective actions and install a clamp, a conduit, and Teflon strips, in accordance with the alert service bulletin. If a temporary repair is performed, replace the harnesses with new parts within 4,000 flight hours after the repair, in accordance with the alert service bulletin.

(c) Accomplishment of an inspection and applicable corrective actions before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–091, Revision 'B,' dated September 14, 2000, is acceptable for compliance with the requirements of paragraph (b) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Part Installation

(d) As of the effective date of this AD, no person may install an IDG cable clamp, P/N TA121010L14–04, during incorporation of Revision 'C' of Bombardier Alert Service Bulletin A601R–24–091.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions must be done in accordance with Bombardier Alert Service Bulletin A601R–24–091, Revision 'C,' dated February 1, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–17R1, dated October 30, 2000.

Effective Date

(h) This amendment becomes effective on October 27, 2003.

Issued in Renton, Washington, on September 11, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23671 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–60–AD; Amendment 39–13306; AD 2003–19–03]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 and –300 series airplanes, that requires inspection of the nose landing gear (NLG) and main landing gear (MLG) to ensure that certain bolts are in place; repetitive inspections of the bolts and bolt areas for evidence of corrosion; and corrective action, if necessary. This action is necessary to prevent failure of the NLG or MLG due to corroded or missing bolts, which could cause loss of connection pins, and consequent collapse of the landing gear during ground maneuvers or upon landing. This action is intended to address the identified unsafe condition.

DATES: Effective October 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes was published in the **Federal Register** on July 9, 2003 (68 FR 40831). That action proposed to require inspection of the nose landing gear (NLG) and main landing gear (MLG) to ensure that certain bolts are in place; repetitive inspections of the bolts and bolt areas for evidence of corrosion; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

We have determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 53 Model 328–100 series airplanes and 39 Model 328–300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection for bolt placement, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,980, or $65 per airplane.

We estimate that it will take approximately 5 work hours per airplane to accomplish the required inspection for corrosion, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact on U.S. operators for the required inspection for corrosion is estimated to be $29,900, or $325 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–19–03 Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Amendment 39–13306. Docket 2002–NM–60–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3119 inclusive, and Model 328–300 series airplanes having serial numbers 3105 through 3200 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) or main landing gear (MLG) due to corroded or missing bolts, which could cause loss of connection pins, and consequent collapse of the landing gear during ground maneuvers or upon landing, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 328–100 series airplanes: Dornier Service Bulletin SB–328–32–414, dated December 3, 2001.

(2) For Model 328–300 series airplanes: Dornier Service Bulletin SB–328J–32–147, dated December 3, 2001.

Inspection of Bolt Placement

(b) Perform a one-time general visual inspection of the NLG and MLG to ensure that the bolts are in place, per paragraph 2.B1) of the applicable service bulletin. Do the inspection at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD. If all bolts are in place, no further action is required by this paragraph.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) Within 4,000 total flight hours, or within 24 months since the date of issuance of the original Airworthiness Certificate, or within 24 months since the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 6 days after the effective date of this AD.

Corrective Action

(c) During the inspection required by paragraph (b) of this AD, if any bolt is missing or is not in position: Prior to further flight, replace the bolt with a bolt having the same part number, per the applicable service bulletin.

Inspections for Corrosion

(d) Within 400 flight hours or 6 months after accomplishing the inspection required by paragraph (b) of this AD, whichever occurs first: Remove the nuts, bolts, and washers of the NLG and MLG, and perform a detailed inspection for evidence of corrosion. Do the inspection per the applicable service bulletin. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours or 24 months, whichever occurs first.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good

lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no evidence of corrosion is found on any part, or if a new bolt is installed: Prior to further flight, apply corrosion prevention compound to the bolt shaft and install the bolt, per the applicable service bulletin.

(2) If any evidence of corrosion is found: Prior to further flight, replace the bolt with a part having the same part number and apply corrosion prevention compound to the bolt shaft and install the bolt, per the applicable service bulletin.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) The actions shall be done in accordance with Dornier Service Bulletin SB–328–32–414, dated December 3, 2001; or Dornier Service Bulletin SB–328J–32–147, dated December 3, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 2002–014/2 and 2002–015/2, both dated March 7, 2002.

Effective Date

(g) This amendment becomes effective on October 27, 2003.

Issued in Renton, Washington, on September 11, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23672 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30387 ; Amdt. No. 3075]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 22, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 22, 2003.

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

For Examination—

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

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

good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on September 12, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective October 2, 2003*

South St. Paul, MN, South St. Paul Muni-Richard E. Fleming Field, LOC RWY 34, Orig

** * * Effective October 30, 2003*

Clinton, AR, Holley Mountain Airpark, RNAV (GPS) RWY 23, Amdt 1
Clinton, AR, Holley Mountain Airpark, RNAV (GPS) RWY 5, Amdt 1
Bakersfield, CA, Meadows Field, GPS RWY 30R, Orig–B, CANCELLED
Redding, CA, Redding Muni, LOC/DME BC RWY 16, Amdt 6B
Douglas, GA, Douglas Muni, ILS OR LOC RWY 4, Orig
Douglas, GA, Douglas Muni, LOC RWY 4, Amdt 2C, CANCELLED
Kingman, KS, Kingman Airport-Clyde Cessna Field, RNAV (GPS) RWY 18, Orig
Kingman, KS, Kingman Airport-Clyde Cessna Field, RNAV (GPS) RWY 36, Orig
Kingman, KS, Kingman Airport-Clyde Cessna Field, VOR/DME RWY 18, Amdt 2
Kingman, KS, Kingman Airport-Clyde Cessna Field, GPS RWY 18, Orig-B, CANCELLED
Lawrence, KS, Lawrence Muni, RNAV (GPS) RWY 15, Orig
Lawrence, KS, Lawrence Muni, RNAV (GPS) RWY 33, Orig
Lawrence, KS, Lawrence Muni, VOR/DME–A, Amdt 10
Lawrence, KS, Lawrence Muni, VOR/DME RNAV RWY 33, Amdt 4A, CANCELLED
Eunice, LA, Eunice, VOR/DME–A, Amdt 3
Eunice, LA, Eunice, RNAV (GPS) RWY 16, Orig
Eunice, LA, Eunice, RNAV (GPS) RWY 34, Orig
Eunice, LA, Eunice, GPS RWY 34, Orig-A, CANCELLED
Jennings, LA, Jennings, RNAV (GPS) RWY 8, Orig
Jennings, LA, Jennings, VOR/DME RWY 8, Amdt 1
Jennings, LA, Jennings, GPS RWY 8, Orig-A, CANCELLED
Lake Providence, LA, Byerley, RNAV (GPS) RWY 17, Orig
Lake Providence, LA, Byerley, GPS RWY 17, Orig, CANCELLED
Detroit, MI, Berz-Macomb, NDB OR GPS RWY 22, Orig, CANCELLED
Detroit, MI, Berz-Macomb, VOR OR GPS-A, Orig, CANCELLED
Grants, NM, Grants-Milan Municipal, RNAV (GPS) RWY 13, Orig
Ponca City, OK, Ponca City Rgnl, NDB RWY 17, Amdt 5
Ponca City, OK, Ponca City Rgnl, NDB RWY 35, Amdt 4
Ponca City, OK, Ponca City Rgnl, VOR-A, Amdt 10
Seminole, OK, Seminole Muni, RNAV (GPS) RWY 16, Orig
Seminole, OK, Seminole Muni, NDB RWY 16, Amdt 3
Seminole, OK, Seminole Muni, GPS RWY 16, Orig, CANCELLED
Shawnee, OK, Shawnee Rgnl, ILS OR LOC RWY 17, Amdt 1
Shawnee, OK, Shawnee Rgnl, RNAV (GPS) RWY 17, Orig
Shawnee, OK, Shawnee Rgnl, GPS RWY 17, Orig-A, CANCELLED
Tahlequah, OK, Tahlequah Muni, RNAV (GPS) RWY 17, Orig
Tahlequah, OK, Tahlequah Muni, RNAV (GPS) RWY 35, Orig
Tahlequah, OK, Tahlequah Muni, GPS RWY 17, Orig, CANCELLED
Tahlequah, OK, Tahlequah Muni, GPS RWY 35, Orig, CANCELLED
Chambersburg, PA, Chambersburg Muni, RNAV (GPS) RWY 6, Orig
Chambersburg, PA, Chambersburg Muni, RNAV (GPS) RWY 24, Orig
Chambersburg, PA, Chambersburg Muni, GPS RWY 24, Amdt 1, CANCELLED
Philadelphia, PA, Philadelphia Intl, ILS RWY 9L, Amdt 4
Philadelphia, PA, Philadelphia Intl, ILS RWY 9R, Amdt 9
Philadelphia, PA, Philadelphia Intl, ILS RWY 17, Amdt 6
Philadelphia, PA, Philadelphia Intl, ILS RWY 26, Amdt 3
Philadelphia, PA, Philadelphia Intl, ILS RWY 27R, Amdt 10
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 26, Amdt 2
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 27L, Amdt 2
Philadelphia, PA, Philadelphia Intl, CONVERGING ILS RWY 9R, Amdt 4
Philadelphia, PA, Philadelphia Intl, CONVERGING ILS RWY 17, Amdt 3
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 26, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27L, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27R, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 35, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9L, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Z RWY 9L, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9R, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Z RWY 9R, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 17, Orig
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Z RWY 17, Orig
Philadelphia, PA, Philadelphia Intl, VOR/DME-A, Amdt 2
Philadelphia, PA, Philadelphia Intl, GPS RWY 17, Orig-A, CANCELLED
Philadelphia, PA, Philadelphia Intl, GPS RWY 27L, Orig-B, CANCELLED
Philadelphia, PA, Philadelphia Intl, GPS RWY 35, Orig-A, CANCELLED
Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 8L, Orig, ILS RWY 8L (CAT II, III), Orig
Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 8R, Amdt 21
Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 9, Amdt 6

Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 26L, Amdt 17, ILS RWY 26L (CAT II, III), Amdt 17

Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 26R, Orig, ILS RWY 26R (CAT II, III), Orig

Houston, TX, George Bush Intercontinental Arpt/Houston, ILS OR LOC RWY 27, Amdt 5/ILS RWY 27 (CAT II, III), Amdt 5

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 8L, Orig

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 8R, Orig

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 9, Amdt 1

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 26L, Orig

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 26R, Orig

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Z RWY 27, Orig

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) RWY 8, Orig-C, CANCELLED

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) Y RWY 9, Orig-B, CANCELLED

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) RWY 26, Orig-C, CANCELLED

Houston, TX, George Bush Intercontinental Arpt/Houston, RNAV (GPS) RWY 27, Orig-C,

CANCELLED

Manassas, VA, Manassas Regional/Harry P. Davis Field, RNAV (GPS) RWY 16R, Orig

Manassas, VA, Manassas Regional/Harry P. Davis Field, RNAV (GPS) RWY 34R, Orig

Manassas, VA, Manassas Regional/Harry P. Davis Field, GPS RWY 34R, Orig-A, CANCELLED

Manassas, VA, Manassas Regional/Harry P. Davis Field, VOR/DME RNAV OR GPS RWY 16R, AMDT 7C, CANCELLED

[FR Doc. 03–23969 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 12

[CBP Decision 03–28]

RIN 1515–AD34

Import Restrictions Imposed on Archaeological Materials From Cambodia

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological materials originating in Cambodia. These restrictions are being imposed pursuant to an agreement between the United States and the Government of the Kingdom of Cambodia that was entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document amends the Customs Regulations by adding Cambodia to the list of countries for which an agreement has been entered into for imposing import restrictions. The document contains the list of designated archaeological materials that describes the types of articles to which the restrictions apply. The document also rescinds the emergency restrictions already in place for certain stone archaeological material from Cambodia. These materials are subsumed in the restrictions published today.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Michael Craig, Trade Operations (202) 927–1684.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The United States shares in the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the United States to join with other countries to control illegal trafficking of such articles in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). United States acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (the Act). This was done to promote United States leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to nations from where they originate and greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations and pursuant to bilateral agreements between the United States and these other countries. Additional information on cultural property import restrictions can be found on the International Cultural Property Protection web site (*http://exchanges.state.gov/education/culprop*).

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). With respect to the import restrictions in the instant case, these determinations, made initially on August 25, 1999, by the then Associate Director for Education and Cultural Affairs, United States Information Agency, and subsequently

affirmed on January 23, 2003, by the Assistant Secretary of Educational and Cultural Affairs, Department of State, provide the following: (1) That the cultural patrimony of Cambodia is in jeopardy from the pillage of the archaeological materials described further below in the list of designated materials; (2) that Cambodia has taken measures consistent with the Convention to protect its cultural patrimony; (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage, if applied in concert with similar restrictions implemented or to be implemented by those nations having a significant import trade in such material, and remedies less drastic are not available; and (4) that the application of import restrictions is consistent with the general interests of the international community in the interchange of the designated archaeological materials among nations for scientific, cultural, and educational purposes.

The Agreement

On September 19, 2003, the United States and Cambodia entered into a bilateral agreement (the Agreement) pursuant to the provisions of 19 U.S.C. 2602(a)(2) covering certain Khmer stone, metal, and ceramic archaeological material ranging in date from the 6th century through the 16th century A.D. Accordingly, Customs and Border Protection (CBP; the bureau of the new Department of Homeland Security that includes much of the former U.S. Customs Service) is amending § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) to indicate that import restrictions have been imposed pursuant to the Agreement. The archaeological materials subject to the restrictions are described further below.

Restrictions

CBP notes that emergency import restrictions (19 U.S.C. 2603) on certain stone archaeological materials from Cambodia were imposed under T.D. 99–88 (64 FR 67479, December 2, 1999). These materials covered by T.D. 99–88 are subsumed in the recently signed bilateral Agreement and continue to be subject to import restrictions. Thus, this document amends the Customs Regulations to remove the listing of Cambodia from § 12.104g(b) pertaining to emergency actions.

Importation of the materials described in the list below, including those which, up to now, have been subject to the restrictions of T.D. 99–88, are subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the regulations (19 CFR 12.104c) are met. For example, these materials may be permitted entry if accompanied by appropriate export certification issued by the Government of Cambodia or by documentation showing that exportation from Cambodia occurred before December 2, 1999, with respect to the Khmer stone archaeological materials that have been covered under T.D. 99–88, and September 22, 2003, with respect to the Khmer archaeological materials not covered previously under T.D. 99–88 (See 19 U.S.C. 2606(b)(1) and (2)(B); 19 CFR 12.104c(a) and (c); see also 19 U.S.C. 2606(a) and 2604.)

List of Categories of Khmer Archaeological Materials from Cambodia (6th c. through the 16th c. A.D.)

Khmer archaeological material of the 6th through the 16th century A.D. from Cambodia includes the categories listed below. The following list is representative only.

I. Stone

This category consists largely of materials made of sandstone, including many color shades (grey to greenish to black, pink to red and violet, and some yellowish tones) and varying granulosity. Due to oxidation and iron content, the stone surface can become hard and take on a different color than the stone core. These surface colors range from yellowish to brownish to different shades of grey. This dense surface can be polished. Some statues and reliefs are coated with a kind of clear shellac or lacquer of different colors (black, red, gold, yellow, brown). The surface of sandstone pieces can also however be quite rough. Chipped surfaces can be white in color. In the absence of any systematic technical analysis of ancient Khmer stonework, no exact description of other stone types can be provided. It is clear however that other types of stone were also used (some volcanic rock, rhyolite, and schist, etc.), but these are nonetheless exceptional. Some quartz objects are also known. Precious and semi-precious stones were also used as applied decor or in jewelry settings.

Different types of stone degradation can be noted. Eroded surfaces result from sanding (loss of surface grains), contour scaling (detachment of surface plaques along contour lines), flaking, and exfoliation. The stone can also split along sedimentation layers. Chipping or fragmentation of sculpted stone is also common.

Stone objects included here come under three historical periods: pre-Angkorian (6th–9th c.), Angkorian (9th–14th c.), and post-Angkorian (14th–16th c.). Many stone objects can be firmly assigned to one of these three periods; some, notably architectural elements and statues, can be further assigned a specific style and a more precise date within the given period.

A. Sculpture

1. Architectural Elements

Stone was used for religious architecture in the pre-Angkorian and Angkorian periods. The majority of ancient Khmer temples were built almost entirely in stone. Even for those temples built primarily in brick, numerous decorative elements in stone were also employed. Only small portions of early post-Angkorian edifices were built in stone. The architectural elements that follow are therefore characteristic of pre-Angkorian and Angkorian times. The state of the material varies greatly, some objects being well preserved, others severely eroded or fragmented. The sculpture of some pieces remains unfinished.

a. *Pediments.* Pediments are large decorative stone fixtures placed above temple doorways. They are triangular in shape and composed of two or more separate blocks that are fitted together and sculpted with decorative motifs. The ensemble can range from approximately 1–3 meters in width and 1–3 meters in height. Motifs include floral scrolls, medallions, human figures, and animals. A whole scene from a well-known story can also be represented.

b. *Lintels.* Lintels are rectangular monoliths placed directly above temple entrance gates or doorways, below the pediments described above. They are decorated with motifs similar to those of pediments. They can reach up to nearly one meter in height and one and one half meters in width.

c. *False doors.* Three of the four doorways of a temple sanctuary are frequently ''false doors''; that is, though they are sculpted to look like doors, they do not open. They bear graphic and floral motifs, sometimes integrating human and animal figures. These doors can reach up to more than two meters in height and more than one meter in width. They can be monolithic or composed of separate blocks fitted together.

d. *Columnettes.* Columnettes are decorative columns placed on either side of a temple door entrance. They can

be sculpted in deep relief out of a temple doorway and therefore remain attached to the doorway on their back side. The earliest columnettes are round and sculpted with bands which themselves are sculpted with decorative motifs. Later in the Angkorian period, the columnettes are octagonal in shape and bear more complex and abundant sculpted decor on the concentric bands. This decor includes graphic designs (pearls, diamond shapes, flowers, etc.) repeated at regular intervals along the length of the column. The base of the column is square and is also sculpted with diverse motifs and figures. The columnettes can reach around 25 cm. in diameter and more than two meters in height.

e. *Pilasters.* Pilasters are decorative rectangular supports projecting partially from the wall on either side of a temple doorway. They are treated architecturally as columns with base, shaft, and capital. Motifs include floral scrolls and graphic designs of pearls, diamond shapes, etc., as well as human or animal figures. They range in width from approximately 20–30 cm. and can reach a height of more than two meters.

f. *Antefixes.* Antefixes are decorative elements placed around the exterior of each level of temple tower. They are small free-standing sculptures and can take multiple forms, including but not limited to graphic designs, animal figures, human figures in niches, and miniature models of temples.

g. *Balustrade finials.* Long balustrades in the form of mythical serpents are found in many Angkorian temples. Often, these line either side of the entrance causeways to temples. The ends of the balustrade take the form of the serpent's multiple cobra-like heads.

h. *Wall reliefs.* Much of the surface area of most temples is sculpted with decorative reliefs. This decor includes graphic designs and floral motifs as well as human or animal figures. The figures can range in size from just a few centimeters to more than one meter in height. They can be integrated into the decor or set off in niches. Narrative scenes can also be represented.

i. *Other decorative items.* Other decorative items include wall spikes, roof tile finials, sculpted steps, and other architectural decorations.

2. Free-Standing Sculpture

The pre-Angkorian and Angkorian periods are characterized by extensive production of statuary in stone. Some stone statuary was also produced during the post-Angkorian period. This statuary is relatively diverse, including human figures ranging from less than one half meter to nearly three meters in height, as well as animal figures. Some figures, representations of Indian gods, have multiple arms and heads. Figures can be represented alone or in groups of two or three. When male and female figures are presented together as an ensemble, the female figures are disproportionately smaller than their male counterparts. Some are part-human, part-animal. Figures can be standing, sitting, or riding animal mounts. Many figures are represented wearing crowns or special headdresses and holding attributes such as a baton or a conch shell. Clothing and sometimes jewelry are sculpted into the body. Though statues are generally monolithic, later post-Angkorian statues of the Buddha can have separate arms sculpted in wood and attached to the stone body. Many statues were once lacquered in black, dark brown, red, or gold colors and retain lacquer traces. Some yellow lacquer is also found.

a. *Human and hybrid (part-human, part-animal) figures.* Examples include statues of the eight-armed god and the four-armed god, representations of Buddha in various attitudes or stances, and female and male figures or deities, including parts (heads, hands, crowns, or decorative elements) of statuary and groups of figures.

b. *Animal figures.* Examples include bulls, elephants, lions, and small mammals such as squirrels.

c. *Votive objects.* A number of more abstract sculptures were also the object of religious representation from pre-Angkorian to post-Angkorian times. Examples include ritual phallic symbols and sculpted footprints of Buddha.

d. *Pedestals.* Pedestals for statues can be square, rectangular, or round. They vary greatly in size and can be decorated with graphic and floral decor, as well as animal or human figures. They are usually made of numerous components fitted together, including a base and a top section into which the statue is set.

e. *Foundation deposit stones.* Sacred deposits were placed under statues, as well as under temple foundations and in temple roof vaults, from pre-Angkorian to post-Angkorian times. Marks on these stones indicate sacred configurations, which could contain deposits such as gold or precious stones.

3. Stela

a. *Sculpted stelae.* Free-standing stela, sculpted with shallow or deep reliefs, served as objects of worship and sometimes as boundary stones from pre-Angkorian to post-Angkorian times. Examples include stela with relief images of gods and goddesses, Buddhas, figures in niches, and other symbols.

b. *Inscriptions.* Texts recording temple foundations or other information were inscribed on stone stela from pre-Angkorian to post-Angkorian times. Such texts can also be found on temple doorjambs, pillars, and walls. The stela are found in a number of different shapes and sizes and can also bear decorative reliefs, for example a bull seated on a lotus flower.

4. Sculpture in Brick

Brick was used mainly in pre-Angkorian and some relatively early Angkorian religious architecture. Yet, typically, while the bodies of buildings were in brick, some of the decorative elements listed above—pediments, lintels, etc.—were in stone. The brick, of light orange color, was usually sculpted with a preliminary relief, which was then covered over with white stucco, itself sculpted along brick contours. Some brick reliefs seem however to have been fully sculpted and not meant to be covered in stucco. Brick temple reliefs include graphic design, as well as floral or animal decor. Human and animal figures can also be represented.

II. Metal

This category consists mainly of bronze objects. No singular alloy is characteristic of Khmer bronzes, which contain varying degrees of copper, zinc, lead, and iron. Surface colors can range from dark to light brown to goldish; a green patina is found on many objects. Some bronzes are also gilt. Some artwork in silver and gold also survives but is much less common.

Most objects were cast with the ''lost wax'' technique, by which a mold of the object is built around a full or hollow wax model; the wax is then melted out with hot metal, which then hardens in the mold. Decor can be chiseled into the finished metal surface. The ''repousse'' technique, by which metal is beaten into shape in a concave mold, was also used.

Most of the objects presented here can be assigned to one of the major historical periods defined for stone objects above: pre-Angkorian (6th–9th c.), Angkorian (9th–14th c.), and post-Angkorian (14th–16th c.). Some pieces, in particular statuary and ritual or domestic accessories with motifs akin to architectural decor in stone, can also be assigned to specific styles and corresponding time periods within the larger historical periods. It should be noted however that, though the earliest full-sized statues in bronze found in Cambodia to date are attributed to pre-Angkorian times, metallurgy seems to have flourished in pre- and protohistoric periods and was indeed characteristic of cultures situated in southern Cambodia in the early centuries A.D. Excavations have

uncovered bronze and gold jewelry, as well as diverse accessory objects, attesting to a metal industry in this early period.

A. Statues and Statuettes

Khmer metal statuary is comparable to Khmer stone statuary in both thematic and stylistic treatment. (*See* general description of free-standing sculpture above.) Statues can be represented alone or in groups ranging from human figures on animal mounts to triads, to more complex ensembles including architectural structures and decor. Though some colossal statues are known in both pre-Angkorian and Angkorian times, metal statues are, generally, relatively smaller in scale than their stone counterparts. Colossal statues can reach more than two meters in height; fragments demonstrate that one reclining figure measured some six meters in length. Such colossal pieces are nonetheless rare.

Statuettes as small around as 15 cm. are common; larger statues more typically reach around one meter in height. Small-scale statues are generally composed of a single cast; separate pieces however can be placed together, for example on a single pedestal, to form an ensemble. Larger works can be composed of multiple pieces fitted together with joints which can be concealed by chiseled decor. Only some small statuettes are solid. Others are composed of two plaques, one for the front of the piece and the other for the back; the plaques are filled with a resin- or tar-based substance and soldered together. Larger pieces are hollow. It should be noted that the Bayon period (late 12th–early 13th c.) has left more bronze statuary than any other period.

Post-Angkorian bronze statues and statuettes, like their stone counterparts, take on certain characteristics of Siamese sculpture but can nonetheless usually be identified as Khmer due to certain types of decor and bodily form which maintain or develop on a specific Angkorian tradition.

1. Human and Hybrid (Part-human, Part-animal) Figures

Examples include standing male figures, Buddhas, four-armed male figures, female figures, gods, and goddesses, all in various attitudes and dress, including fragments of sculpture such as hands, arms, and heads.

2. Animal Figures

Animal representations in bronze resemble those in stone in both thematic and stylistic treatment. Statues and statuettes include primarily bulls, lions, and elephants with one or three trunks. Other animals, such as horses, are also represented but are less common. The only colossal animal images known date to the late 12th–early 13th c. Other animal figures, such as the mythical multiheaded serpent and mythical birds and monkeys, are also frequently found as decor of ritual or domestic objects.

3. Pedestals

Pedestals in bronze often appear to be simplified and reduced versions of their stone counterparts. One innovation of sculpting the base in openwork is to be noted.

B. Other Ritual and Domestic Objects

1. Special Objects Used in Ritual

Special ritual objects include bells, conch shells, and musical instruments such as tambourines, *etc.*

2. Containers

Ritual and domestic containers include such items as perfume holders, oil lamps or bowls, and boxes with decorative or sculptural features.

3. Decorative Elements From Ritual or Domestic Objects

In addition to the decorative accessory items noted below, there exist insignia finials for banner poles which often take the form of small human or animal figures.

4. Jewelry

Jewelry, including but not limited to rings, bracelets, arm bands, necklaces, and belts, could have been worn not only by people but also by statues. Different types of rings can be noted: Ring-stamps, rings with ornamental settings, rings with settings in the form of a bull or other animal, and rings with settings for stones.

5. Instruments

Diverse percussion instruments, including varying sizes of gongs and cymbals, are made in bronze from ancient to modern times.

6. Animal Fittings

In addition to bells to be suspended around the necks of animals, common to both the Angkorian and the post-Angkorian periods, various kinds of decorative animal harness accessories are known in post-Angkorian times.

C. Architectural Elements

Metal architectural elements include ceiling or wall plaques sculpted with flowers or other motifs, floral plaques, and panels.

D. Weapons

Metal weapons include bows and arrows, daggers, and spear tips.

III. Ceramics

Khmer ceramics include both glazed and unglazed stonewares. Stonewares, and particularly glazed wares, are characteristic of the Angkorian period (9th–14th c.). Khmer ceramics production primarily concerned functional vessels (vases, pots, *etc.*) but also included sculpture of figurines and architectural or other decorative elements. Angkorian period vessels were generally turned on a wheel and fired in kilns. Vessels range in size from around five to at least 70 cm. in height. Glaze colors are fairly limited and include creamy white, pale green (color of Chinese tea), straw-yellow, reddish-brown, brown, olive, and black. Light colors are generally glossy, while darker colors can be glossy or matte. Some two-colored wares, primarily combining pale green and brown, are also known. Decoration is relatively subtle, limited to incisions of graphic designs (criss-crosses, striations, waves, *etc.*), some sculpted decor such as lotus petal shapes, and molding (ridges, grooves, *etc.*); some applied work is also seen. Most decoration is found on shoulders and necks, as on lids; footed vessels are typically beveled at the base. Many wasters (imperfect pieces) are found and are also subject to illicit trade.

A. Sculpture

Ceramic sculpture known to have been produced in Cambodia proper largely concerns architectural elements. Though some figurines are known and are of notable refinement, statuary and reliefs in ceramics seem to be more characteristic of provincial production.

1. Architectural Elements

Some pre-Angkorian, Angkorian, and post-Angkorian period buildings, primarily but not exclusively royal or upper-class habitation, were roofed with ceramic tiles. The tiles include undecorated flat tiles and convex and concave pieces fitted together; a sculpted tile was placed as a decor at the end of each row of tiles. These pieces were produced in molds and can be unglazed or glazed. The unglazed pieces are orange in color; the glazed pieces are creamy white to pale green. Spikes placed at the crest of roof vaults can also be made in ceramics. These spikes were fit into a cylinder, also made of ceramics, which was itself fitted into the roof vault.

2. Figurines and Ritual Objects

Figurines, statuettes, or plaques can include human, hybrid (part-human, part-animal), and animal figures. These are typically small in size (around 10 cm.). Ritual objects found in Cambodia proper are limited primarily to pieces in the shape of a conch shell, used for pouring sacral water or as blowing horns.

B. Vessels

1. Lidded Containers

Examples include round lidded boxes with incised or sculpted decoration, bulbous vases with lids, and jars with conical multi-tiered lids. Lids themselves include conical shapes and convex lids with knobs.

2. Lenticular Pots

Pots of depressed globular form are commonly referred to as lenticular pots. The mouth of the vessel is closed with a stopper.

3. Animal-shaped Pots

The depressed globular form can take animal shapes, with applied animal head, tail, or other body parts that can serve as handles. The animal-shaped pot is also found in other forms. Animal-shaped pots often contain remains of white lime, a substance used in betel nut chewing. Shapes include bulls, elephants, birds, horses, and other four-legged creatures.

4. Human-shaped Pots

Anthropomorphic vessels often have some applied and incised decoration representing human appendages, features, or clothing. The vessels are usually gourd-shaped bottles.

5. Bottles

This category includes a number of different kinds of vessels with raised mouths.

6. Vases

A number of different types of vases are grouped together under this general heading. Some are flat based and bulbous or conical. Others have pedestal feet. Some are characterized by their elongated necks. The ''baluster vases,'' for which Khmer ceramics are particularly known, have pedestal feet, conical bodies, relatively long necks, and flared mouths.

7. Spouted Pots

These are vessels, usually in the ''baluster vase'' form, that have short pouring spouts attached to the shoulder. Some spouted pots also have ring handles on the opposite shoulder.

8. Large Jars

Large barrel-shaped jars or vats have flat bases, wide mouths, short necks, and flattened everted rims. They are always iron glazed.

9. Bowls

Bowls with broad, flat bases and flaring walls that are either straight or slightly concave, ending in plain everted or incurving rims, usually have green or yellowish glaze, although some brown-glazed bowls are known. Some are decorated with incised lines just below the rim. Most have deep flanges above the base; some are plain. Small hemispherical cups on button bases bear brown glaze. Another form is the bowl on a pedestal foot, most bearing an iron glaze.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document imposes import restrictions on the above-listed cultural property of Cambodia by the terms of a bilateral agreement entered into in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspections, Imports.

Amendment to the Regulations

■ Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

■ 1. The general authority citation and specific authority citations for Part 12, in part, continue to read as follows:

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

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), the list of agreements imposing import restrictions on described articles of cultural property of State Parties, is amended by adding ''Cambodia'' in the appropriate alphabetical order, and paragraph (b), the list of emergency actions imposing import restrictions, is amended by removing the entry for ''Cambodia''. The addition reads as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	T.D. No.
* *	* * *	* *
Cambodia	Khmer Archaeological Material from the 6th century through the 16th century A.D.	CBP Dec. 03–BC28
* *	* * *	* *

* * * * *

Dated: September 17, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–24085 Filed 9–18–03; 12:01 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–032]

RIN 1625–AA09

Drawbridge Operation Regulation; Teche Bayou at Levert, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the existing drawbridge operation regulation for the draw of the St. John Road bridge across Teche Bayou, mile 77.7, at Levert, St. Martin Parish, Louisiana. The historic bridge has been replaced by a new bridge and taken out of service. While awaiting removal, it will remain in place in the open-to-navigation position and no special operation regulation is necessary.

DATES: This rule is effective September 22, 2003.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for not Publishing an NPRM

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. Public comment is not necessary since the proposed change reduces the burden to the public and is being made at the request of the drawbridge owner, the only party that could reasonably object to the change.

Good Cause for Making Rule Effective in Less Than 30 Days

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

Background and Purpose

The St. Martin Parish Government has constructed a bridge of modern safe design to replace the existing St. John historic bridge. The original plan was to leave the bridge in place to use for pedestrian traffic; however, the parish now plans to relocate the bridge to another location as part of an agreement with the State Historic Preservation Officer. The parish received a grant to help relocate the bridge but there are insufficient funds in the grant to cover the relocation. The bridge owner has requested permission to leave the bridge in place in the open-to-navigation position until adequate funding is available to relocate the bridge. The bridge owner will maintain the navigation lights on the bridge but the bridge will not be manned. Presently, the draw of the bridge opens on signal if at least 24 hours' notice is given in accordance with 33 CFR 117.501(b).

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 improves the service for waterway users and will not have a negative impact on them.

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 will have no negative impact on any small entities because the modification to the regulation improves service to the waterway users.

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 process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have 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 (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations 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. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.501(b) is revised to read as follows:

§ 117.501 Teche Bayou.

* * * * *

(b) The draws of the S96 bridge, mile 75.2 at St. Martinville, and the S350 bridge, mile 82.0 at Parks, shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: September 9, 2003.

R.F. Duncan,

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

[FR Doc. 03–24097 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Copper River

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

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management action in the Copper River to provide for a subsistence harvest opportunity. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 12, 2003. Those regulations established seasons, harvest limits, and methods relating to the taking of fish and shellfish for subsistence uses during the 2003 regulatory year.

DATES: The first action for the Chitina Subdistrict of the Upper Copper River District described in this notice was effective July 15, 2003, through July 20, 2003. The second action for the Chitina Subdistrict of the Upper Copper River District described in this notice was effective July 22, 2003, through July 27, 2003. The third action for the Chitina Subdistrict of the Upper Copper River District described in this document was effective July 31, 2003, through August 3, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (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 in Alaska, 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. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

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. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). 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 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, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 fishing seasons, harvest limits, and methods and means were published on February 12, 2003 (68 FR 7276). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to maintain the viability of salmon stocks based on in-season run assessments and to provide opportunity for subsistence harvest in the Copper River. These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. That preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. The Board initially closed the salmon season until the first open period scheduled for June 7, 2003, at 8 a.m. through Sunday, June 8, 8 p.m.

In the first action of this notice, a new open period for the taking of salmon was established from 8 a.m. on July 15 to 11:59 p.m. on July 20, 2003. A slightly larger than anticipated sockeye run allowed the Board to open the season to continuous harvest for an additional 136 hours.

The second action of this notice was an opening effective from 12:01 a.m. July 22 to 11:59 p.m. July 27, 2003. Based on the run strength to date, this opening had been anticipated.

The third action of this notice was an opening effective at 12:01 a.m. July 31 to 11:59 p.m. August 3, 2003. This was predicated on a lower than expected subsistence harvest with no need to further restrict subsistence users.

The normal open period started on August 4, 2003, and continues until closure on September 30, 2003. State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2003. No deviation from this date is anticipated.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. 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) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276).

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, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

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 effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. 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 economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

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

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do 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. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. 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 these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Dennis Tol, 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 Steve Kessler, USDA-Forest Service, provided additional guidance.

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

Dated: September 4, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 03–24059 Filed 9–18–03; 12:01 pm]

BILLING CODE 3410–11–P, 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ–094–FOAa; FRL–7561–5]

Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for the Phoenix Metropolitan Area, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to find that the Phoenix metropolitan nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) by its Clean Air Act deadline of December 31, 2000. The Phoenix area has had no qualifying exceedances of the CO standard since 1996, and has six years of clean air quality data.

DATES: This rule is effective on November 21, 2003 unless EPA receives adverse comments by October 22, 2003. If EPA receives adverse comments, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments should be mailed or emailed to Wienke Tax, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, *tax.wienke@epa.gov.* We prefer electronic comments.

You can inspect copies of EPA's **Federal Register** document and TSD at our Region IX office during normal business hours (see address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** notice and TSD are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street (AIR–2), San Francisco, California 94105–3901. Phone: (520) 622–1622, email: *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action. Throughout this document, the words ''we,'' ''us,'' or ''our'' mean U.S. EPA.

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I. Background

A. Designation and Classification of CO Nonattainment Areas

The Clean Air Act Amendments (CAAA) of 1990 authorized EPA to designate areas across the country as nonattainment, and to classify these areas according to the severity of the air pollution problem. Pursuant to section 107(d) of the CAAA, following enactment on November 15, 1990, States were requested to submit lists, within 120 days, which designated all areas of the country as either attainment, nonattainment, or unclassifiable for CO. The EPA was required to promulgate these lists of areas no later than 240 days following enactment of the CAAA (see 56 FR 56694, (November 6, 1991)).

On enactment of the CAAA, a new classification structure was created for CO nonattainment areas, pursuant to section 186 of the CAAA, which included both a moderate and a serious area classification. Under this classification structure, moderate areas with a design value of 9.1–16.4 ppm, were expected to attain the CO NAAQS as expeditiously as practicable, but no later than December 31, 1995. CO nonattainment areas designated as serious, with a design value of 16.5 ppm and above, were expected to attain the CO NAAQS as expeditiously as practicable, but no later than December 31, 2000.

States containing areas classified as either moderate or serious for CO had the responsibility of developing and submitting to EPA State Implementation Plans (SIPs) which addressed the nonattainment air quality problems in those areas. The air quality planning requirements for moderate and serious CO nonattainment areas are addressed in sections 186–187 respectively of the CAAA, which pertain to the classification of CO nonattainment areas as well as to the requirements for the submittal of both moderate and serious area SIPs. The EPA issued general guidance concerning the requirements for SIP submittals, which included requirements for CO nonattainment area SIPs, pursuant to Title I of the CAAA (See generally, 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)).

The EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date.[1]

B. How Does EPA Make Attainment Determinations?

Section 179(c)(1) of the CAAA provides that attainment determinations are to be based upon an area's ''air quality as of the attainment date'', and section 186(b)(2) is consistent with this requirement. EPA makes the determination as to whether an area's air quality is meeting the CO NAAQS based upon air quality data gathered at CO monitoring sites in the nonattainment area. This air quality data is entered into the Aerometric Information Retrieval System (AIRS). This data is reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR 50.8, and in accordance with EPA policy and guidance.[2]

Attainment of the CO NAAQS requires that not more than one 8-hour average per year can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and are not considered exceedances). CO attainment is evaluated and determined by reviewing 8 quarters of data, or a total of 2 complete calendar years of data for an area. If an area's design value is greater than 9.0 ppm, this means that a monitoring site in the area has recorded more than one value above the level of the NAAQS and therefore the area has not attained the CO NAAQS.

The 8-hour CO design value is used to determine attainment of CO areas. The design value for an area is determined by first finding the design value at each CO monitoring site in the area. The highest of these individual site design values then becomes the design value for the area. To determine the design value for a site we look at the highest and second highest (non-overlapping) 8-hour values for the most recent two years prior to the attainment date (in this case 1999 and 2000). The highest of the two second high values is used as the design value for the monitoring site.

C. What Is the Attainment Date for the Phoenix Metropolitan CO Nonattainment Area?

Phoenix was originally classified as a moderate CO nonattainment area, with an attainment date no later than December 31, 1995. On May 10, 1996, EPA made a finding that Phoenix did not attain the CO NAAQS by the December 31, 1995 attainment date for the moderate nonattainment area. This finding was based on EPA's review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding, the Phoenix CO nonattainment area was reclassified as a serious CO nonattainment area (*See* 61 FR 39343, July 29, 1996), and its attainment date was extended to December 31, 2000. Phoenix has not had an exceedance of the CO NAAQS since 1996, and therefore has more than enough years of clean data for EPA to make an attainment finding.

II. Basis for EPA's Action

Arizona has 13 CO monitoring sites in the Phoenix CO nonattainment area. The air quality data in AIRS for these monitors show that, for the 2-year period from 1999 through 2000, there were no violations of the 8-hour CO standard. The monitoring site with the highest 8-hour design value during this 2-year period was at the Grand Ave. and 27th Ave. which had a design value of 8.1 ppm. Based on this information, EPA has determined that the area attained the CO NAAQS standard as of the attainment date of December 31, 2000.

This finding of attainment should not be confused with a redesignation to attainment under CAAA section 107(d). Arizona has recently submitted a redesignation request and a maintenance plan as required under section 175A(a) of the CAAA, which EPA intends to act on in the near future. The area will remain a serious CO nonattainment area with the planning requirements that apply to serious CO nonattainment areas until such time that EPA acts on the redesignation request and maintenance plan.

III. EPA's Action

By today's action, EPA is making the determination that the Phoenix serious CO nonattainment area did attain the CO NAAQS by the attainment date of December 31, 2000 based on no exceedances since 1996. As explained above, the Phoenix nonattainment area remains classified a serious CO nonattainment area, and today's action does not redesignate the Phoenix nonattainment area to attainment.

IV. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

[1] See sections 172(C), 179(c) and 186(b)(2) of the CAAA.

[2] The relevant guidance is in a memorandum from William G. Laxton, Director Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations,'' dated June 18, 1990.

22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

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

Dated: September 9, 2003.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 03–24002 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021223329–2329–01; I.D. 091203A]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Transfer

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia has transferred a total of 500,000 lb (226,860 kg) of commercial bluefish quota to the State of New York for 2003. NMFS has adjusted the quotas and announces the revised commercial quotas for Virginia and New York. This action is permitted under the regulations implementing the Fishery Management Plan for the Bluefish Fishery (FMP) and is intended to reduce discards and prevent negative economic impacts to the New York commercial bluefish fishery.

DATES: Effective September 17, 2003 through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, fax (978)281–9135, e-mail *Myles.A.Raizin@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.160.

The initial total commercial quota for bluefish for the 2003 calendar year was set equal to 10,460,058 lb (4,755,017 kg) (68 FR 25305; May 12, 2003). The resulting quota for New York was 1,086,286 lb (492,870 kg), and for Virginia was 1,242,601 lb (563,794 kg).

The FMP allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial quota. The Regional Administrator must consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia has agreed to transfer 500,000 lb (226,860 kg) of its 2003 commercial quota to New York. The revised quotas for the calendar year 2003 are: Virginia, 742,601 lb (336,933 kg), and New York, 1,586,286 lb (719,730 kg). The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. This action does not alter any of the conclusions reached in the environmental assessment for the 2003 specifications for the Atlantic bluefish fishery. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: September 16, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–24112 Filed 9–17–03; 1:54 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 183
Monday, September 22, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 310

RIN 3206–AK03

Employment of Relatives

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations regarding the employment of relatives as part of a broader review of OPM's regulations. The purpose of the revision is to make the regulations more readable.

DATES: Comments must be received on or before November 21, 2003.

ADDRESSES: Send, deliver or fax comments to Ms. Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415–9700; e-mail: *employ@opm.gov*; FAX: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Mr. Raleigh M. Neville by telephone at (202) 606–0960; by TTY at (202) 418–3134; by fax at (202) 606–0390; or by e-mail at *rmnevill@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is reviewing and revising its regulations to make them more readable. In the process, we are making sure that our regulations do not merely repeat statutory provisions. We are revising Part 310 to eliminate subpart A because it merely restates the provisions of 5 U.S.C. 3110 which outline the legal restrictions on the employment of relatives.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 310

Government employees.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to revise 5 CFR part 310 to read as follows:

PART 310—EMPLOYMENT OF RELATIVES

Sec.
310.101 Are there exceptions to the legal restrictions on the employment of relatives?

Authority: 5 U.S.C. 3110.

Subpart A—Employment of Relatives

§ 310.101 Are there exceptions to the legal restrictions on the employment of relatives?

Section 3110 of title 5, United States Code, sets forth the legal restrictions on the employment of relatives. Subsection (d) of that section authorizes the Office of Personnel Management to prescribe regulations authorizing the temporary employment of relatives, in certain conditions, notwithstanding the restrictions. This regulation sets forth exceptions to the restrictions. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in § 230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions on the employment of relatives in 5 U.S.C. 3110. Such appointments are temporary and may not exceed 1 month, but the agency may extend such an appointment for one additional month if the emergency need still exists at the time of the extension.

[FR Doc. 03–24082 Filed 9–18–03; 12:01 pm]

BILLING CODE 6325–38–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16083; Airspace Docket No. 03–AAL–19]

Proposed Establishment of Class E Airspace; Manokotak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Manokotak, AK. A new Standard Instrument Approach Procedure (SIAP) and a Textual Departure Procedure are being published for the Manokotak Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approach at Manokotak, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Manokotak, AK.

DATES: Comments must be received on or before November 6, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16083/ Airspace Docket No. 03–AAL–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587;

telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16083/Airspace Docket No. 03–AAL–19.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71) by establishing new Class E airspace at Manokotak, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Manokotak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP and Textual Departure Procedure for the Manokotak Airport. The new approach is Area Navigation (Global Positioning System) (RNAV GPS) A, original. New Class E controlled airspace extending upward from 700 ft. above the surface within the Manokotak, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedure for the Manokotak Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Manokotak, AK [New]

Manokotak Airport, AK
(Lat. 58°59′25″ N., long. 159°03′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Manokotak Airport.

* * * * *

Issued in Anchorage, AK, on September 12, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–24140 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16075; Airspace Docket No. 03–AAL–18]

Proposed Establishment of Class E Airspace; Mentasta Lake/Mountains Area, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace in the Mentasta Lake/Mountains Area, AK. A commercial flight operator has identified a need to operate via Instrument Flight Rules (IFR) from Tok, AK off-airways, to/from Anchorage, AK. There is no existing Class E airspace below 14,500 feet in the vicinity of the area of Mentasta Lake/Mountains, AK to allow Anchorage ARTCC to provide IFR enroute services to accommodate the request. Adoption of this proposal would result in the establishment of Class E airspace upward from 1,200 feet (ft.) above the surface in the Mentasta Lake/Mountains Area, AK.

DATES: Comments must be received on or before November 6, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16075/ Airspace Docket No. 03–AAL–18, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16075/Airspace Docket No. 03–AAL–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71) by establishing new Class E airspace in the area of the Mentasta Lake and Mountains, AK. The intended effect of this proposal is to establish Class E airspace upward from 1,200 ft. above the surface, to contain IFR enroute operations in the area of Mentasta Lake/ Mountains, AK.

A commercial flight operator (Part 135) has identified a need for more direct IFR routings to/from Tok, Alaska. New Class E enroute controlled airspace extending upward from 1,200 ft. above the surface within the Mentasta Lake and Mountains area, Alaska would be created by this action. The proposed airspace is sufficient to contain aircraft proceeding to or from the south of Tok, AK direct to join or leave federal airways in the vicinity of Gulkana, AK. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 1200 foot enroute domestic airspace areas are published in paragraph 6006 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6006 Class E En Route Domestic Airspace Areas.

* * * * *

AAL AK E6 Mentasta Lake/Mountains, AK [New]

That airspace extending upward from 1,200 feet bounded on the north by V–444, on the south by G–8, and on the west by V–515, excluding the Fairbanks Class E Airspace and that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on September 12, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–24141 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16079; Airspace Docket No. 03–ACE–71]

Proposed Establishment of Class E4 Airspace; and Modification of Class E5 Airspace; Goodland, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed to serve Renner Field-Goodland Municipal Airport, Goodland, KS. An Instrument Landing System (ILS) or Localizer (LOC)/Distance Measuring Equipment (DME) SIAP has also been developed to serve the airport. In addition, several existing SIAPs serving Renner Field-Goodland Municipal Airport have been amended. This notice proposes to establish a Class E airspace area designated as an extension to the existing Class E surface area and to modify Class E airspace extending upward from 700 feet above the surface at Goodland, KS in order to accommodate the new and amended SIAPs.

The intended effect of this proposal is to provide controlled Class E airspace for aircraft executing instrument approach procedures to Renner Field-Goodland Muncipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Comments for inclusion in the Rules Docket must be received on or before October 27, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16079/Airspace Docket No. 03–ACE–71, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16079/Airspace Docket No. 03–ACE–71.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing a Class E airspace area designated as an extension to the Class E surface area at Goodland, KS. It also proposes to revise the Class E airspace area extending upward from 700 feet or more above the surface at Goodland, KS. RNAV (GPS) RWY 30, ORIGINAL SIAP; RNAV (GPS) RWY 12, ORIGINAL SIAP; RNAV (GPS) RWY 23, ORIGINAL SIAP; ILS or LOC/DME RWY 30, ORIGINAL SIAP; VOR RWY 30, AMENDMENT 8 SIAP; Nondirectional Radio Beacon (NDB) RWY 30, AMENDMENT 7 SIAP; and VOR/DME RWY 30, AMENDMENT 7 SIAP have been developed to serve Renner Field-Goodland Municipal Airport. The extension to the Goodland, KS Class E surface area must be established and the Class E airspace area extending upward from 700 feet above the surface must be tailored to contain aircraft executing the approach procedures. These areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as an extension to a Class D or Class E surface area are published in Paragraph 6004 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension To Class D or Class E Surface area.

* * * * *

ACE KS E4 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″ N., long. 101°41′56″ W.)
Goodland VORTAC
(Lat. 39°23′16″ N., long. 101°41′32″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Goodland VORTAC 164° radial extending from the 4.1-mile radius of Renner Field-Goodland Municipal Airport to 7 miles southeast of the VORTAC.

* * * * *

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

* * * * *

ACE KS E5 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″ N., long. 101°41′56″ W.)
Goodland VORTAC
(Lat. 39°23′16″ N., long. 101°41′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Renner Field-Goodland Municipal Airport.

* * * * *

Issued in Kansas City, MO, on September 9, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–24143 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Treasury Inspector General for Tax Administration; Privacy Act of 1974; Proposed Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Treasury gives notice of a proposed amendment to this part to exempt several systems of records maintained by the Treasury Inspector General for Tax Administration (TIGTA) from certain provisions of the Privacy Act.

DATES: Comments must be received no later than October 22, 2003.

ADDRESSES: Please submit comments to Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, 202–622–4068. Comments will be made available for inspection and/or copying upon written request.

FOR FURTHER INFORMATION CONTACT: Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, 202–622–4068.

SUPPLEMENTARY INFORMATION: The Treasury Inspector General for Tax Administration (TIGTA) was established pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998. TIGTA's duties and operating authority are set forth in the Inspector General Act of 1978, 5 U.S.C app. 3. TIGTA exercises all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). TIGTA conducts, supervises, and coordinates audits and investigations relating to the programs and operations of the IRS and related entities. TIGTA is organizationally placed within the Department of the Treasury, but is independent of the Department and all other Treasury offices.

The Department of the Treasury is publishing separately the notice of new systems of records to be maintained by TIGTA.

Under 5 U.S.C. 552a(j)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and paroled and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any state of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.''

To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C.

552a(j)(2), the Department of the Treasury proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2):

DO .303–TIGTA General Correspondence;
DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files;
DO .308–TIGTA Data Extracts;
DO .309–TIGTA Chief Counsel Case Files, and
DO .310–TIGTA Chief Counsel Disclosure Section Records.

The proposed exemption under 5 U.S.C. 552a(j)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (c)(4), (d), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

The following are the reasons why the investigative material contained in the above-referenced systems of records maintained by TIGTA are exempt from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2).

(1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation. Further, providing information as required by this provision would alert the individual to the existence of an investigation and afford the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension and may enable the individual to avoid detection or apprehension, enable the destruction or alteration of evidence of the criminal conduct that would form the basis for an arrest, and could impede or impair TIGTA's ability to investigate the matter. In addition, to provide this type of information would give individuals an opportunity to learn whether they have been identified as subjects of investigation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to themselves. Disclosure of this information to the subjects of an investigation would provide them with information concerning the nature and scope of any current investigation and may enable them to avoid detection or apprehension, enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede or impair TIGTA's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by the informant as well as endanger the physical safety of those sources by exposing them to possible reprisal for having provided the information. Confidential sources and informers might refuse to provide TIGTA with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair TIGTA's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, and thereby endanger the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping with these provisions would also discourage other law enforcement and regulatory agencies from freely sharing information with TIGTA and thus would restrict its access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual and require the agency either to amend the record, or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that TIGTA is conducting an investigation into their activities as well as identify the nature, scope, and purpose of that investigation. Providing accountings to the subjects of investigations would alert them to the fact that the TIGTA has information regarding their activities and could inform them of the general nature of that information. The subjects of the investigations, if provided an accounting of disclosures would be able to take measures to avoid detection or apprehension by altering their operations or by destroying or concealing evidence that would form the basis for detection or apprehension.

(5) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to the individual, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to, and amendment of, records, for the reasons set out in paragraph (2) of this section, this provision should not apply to these systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources of information could disclose investigative techniques and procedures, result in threats or reprisals against confidential informants by the subjects of investigations, and cause confidential informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision could impair TIGTA's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon review of information developed subsequently, prove particularly relevant to a law enforcement program. Compliance with the records maintenance criteria listed in the foregoing provision would require TIGTA to periodically up-date the investigatory material it collects and

maintains in these systems to ensure that the information remains timely and complete. Further, TIGTA oftentimes will uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, TIGTA will refer this evidence to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. If required to adhere to the provisions of 5 U.S.C. 552a(e)(1), TIGTA might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to TIGTA's attention during the collection and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the above-referenced systems of records would impair TIGTA's ability to collect, analyze, and disseminate investigative, intelligence, and enforcement information. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify the accuracy of the information obtained. TIGTA often collects information about the subject of a criminal investigation from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a credible source for information regarding his or her alleged criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual, whom it asks to supply information, of the agency's authority for soliciting the information, whether disclosure of information is voluntary or mandatory, the principal purposes for which the agency will use the information, the routine uses that may be made of the information, and the effects on the individual of not providing all or part of the information. The above-referenced systems of records should be exempted from these provisions to avoid impairing TIGTA's ability to collect and maintain investigative material. Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. In collecting information during a criminal investigation, it is often neither possible nor feasible to determine accuracy, relevance, timeliness, or completeness at the time that the information is collected. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when analyzed with other available information, become more relevant as an investigation progresses. Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic review of TIGTA's investigative records to insure that the records maintained in the system remain timely, accurate, and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The above-referenced systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The investigatory information in the above-referenced systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which TIGTA is exempted. Exemption from this provision will also protect TIGTA from baseless civil court actions that might hamper its ability to collect, analyze, and disseminate investigative, intelligence, and law enforcement data.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).'' To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(k)(2), the Department of the Treasury proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2):

DO .303–TIGTA General Correspondence;
DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files;
DO .308–TIGTA Data Extracts;
DO .309–TIGTA Chief Counsel Case Files, and
DO .310–TIGTA Chief Counsel Disclosure Section Records.

The proposed exemption under 5 U.S.C. 552a(k)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(2), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The following are the reasons why the investigative material contained in the above-referenced systems of records maintained by TIGTA are exempt from various provisions pursuant to 5 U.S.C. 552a(k)(2).

(1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the

name and address of the recipient. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that TIGTA is conducting an investigation into their activities as well as identifying the nature, scope, and purpose of that investigation. The subjects of investigations, if provided an accounting of disclosures would be able to take measures to avoid detection or apprehension by destroying or concealing evidence that would form the basis for detection or apprehension.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation and may enable them to avoid detection or apprehension, enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede or impair TIGTA's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by the informant as well as endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide TIGTA with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair TIGTA's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with TIGTA and thus would restrict its access to information necessary to accomplish its mission.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision could impair TIGTA's ability to collect and disseminate valuable law enforcement information. In the early stages of investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collection of additional information, prove particularly relevant and necessary to the investigation. Compliance with the records maintenance provisions would require TIGTA to periodically up-date the investigatory information it collects and maintains to insure that the records in these systems remain timely, accurate, and complete. Further, TIGTA oftentimes will uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, TIGTA will refer this evidence to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. If required to adhere to the provisions of 5 U.S.C. 552a(e)(1), TIGTA might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the TIGTA's attention during the collection and analysis of information in its records.

(5) U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records would allow individuals to learn whether they have been identified as subjects of investigation. Access to such knowledge would impair TIGTA's ability to carry out its mission, since individuals could take steps to avoid detection and destroy or hide evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources of information could disclose investigative techniques and procedures, result in threats or reprisals against confidential informants by the subjects of investigations, and cause confidential informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

Under 5 U.S.C. 552a(k)(5), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information'' to the extent that the disclosure of such material would reveal the identify of a source who furnished information under an express promise that the identity of the source would be held in confidence. The Department of the Treasury proposes to exempt the DO .306 TIGTA—Recruiting and Placement Records systems of records from provisions 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The following are the reasons why these systems of records maintained by TIGTA are exempt from various provisions pursuant to 5 U.S.C. 552a(k)(5).

(1) The sections of 5 U.S.C. 552a from which the systems of records are exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of TIGTA to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. To fulfill the requirements of 5 U.S.C. 552a(e)(1)

would unduly restrict TIGTA in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a(j)(2) or (k)(2) is hereby claimed.

Under 5 U.S.C. 552a(k)(6), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service.'' The Department of the Treasury proposes to exempt the DO.306—TIGTA Recruiting and Placement systems of records from provisions 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The reason for exempting the system of records from various provisions pursuant to 5 U.S.C. 552a(k)(6) is that disclosure of the material in the system would compromise the objectivity or fairness of the examination process.

Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

The Department of the Treasury has determined that this proposed rule is not a ''significant regulatory action'' under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, for the reasons set forth above, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 Subpart C of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 is amended as follows:

a. Paragraph (c)(1)(i) is amended by adding ''DO .303–TIGTA General Correspondence; DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files; DO .308–TIGTA Data Extracts; DO .309–TIGTA Chief Counsel Case Files; DO .310–TIGTA Chief Counsel Disclosure Section Records'' to the table in numerical order.

b. Paragraph (g)(1)(i) is amended by adding ''DO .303–TIGTA General Correspondence; DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files; DO .308–TIGTA Data Extracts; DO .309–TIGTA Chief Counsel Case Files; DO .310–TIGTA Chief Counsel Disclosure Section Records'' to the table in numerical order.

c. Paragraph (m)(1)(i) is amended by adding ''DO .306–TIGTA Recruiting and Placement'' to the table in numerical order.

d. Paragraph (o)(1) is amended by adding ''DO .306–TIGTA Recruiting and Placement'' to the table in numerical order. The additions to § 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(c) * * *
(1) * * *
(i) * * *

Number	System name
DO .303 ...	TIGTA General Correspondence.
DO .307 ...	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308 ...	TIGTA Data Extracts.
DO .309 ...	TIGTA Chief Counsel Case Files.
DO .310 ...	TIGTA Chief Counsel Disclosure Section Records.

* * * * *

(g) * * *
(1) * * *
(i) * * *

Number	System name
*	* * * *
DO .303 ...	TIGTA General Correspondence.
DO .307 ...	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308 ...	TIGTA Data Extracts.
DO .309 ...	TIGTA Chief Counsel Case Files.
DO .310 ...	TIGTA Chief Counsel Disclosure Section Records.

* * * * *

(m) * * *
(1) * * *
(i) * * *

Number	System name
*	* * * *
DO .306 ...	TIGTA Recruiting and Placement.

* * * * *

(O) * * *
(1) * * *

Number	System name
DO .306 ...	TIGTA Recruiting and Placement.

* * * * *

Dated: September 8, 2003.

W. Earl Wright, Jr.,

Acting Chief, Management and Administrative Programs Officer.

[FR Doc. 03–24055 Filed 9–18–03; 12:01 pm]

BILLING CODE 4810–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–03–005]

RIN 1625–AA09

Drawbridge Operation Regulations; Connection Slough, Stockton, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating requirements of the Reclamation District Drawbridge across Connection Slough, between Mandeville and Bacon Islands, near Stockton, CA, by reducing the periods of time when the drawspan is required to open on signal for the passage of vessels and by increasing the advance notice periods. The bridge owner requests these changes in order to reduce the costs of operating the drawbridge. The proposed action would reduce the number of hours the bridge needs to be manned and, therefore, would reduce costs to the owner.

DATES: Comments and related material must reach the Coast Guard on or before October 22, 2003.

ADDRESSES: You may mail comments and related material to Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100. The Bridge Section maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD11–03–005], 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 proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Coast Guard Bridge Section at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The bridge owner, Central California Redevelopment Company (CCRC Farms), has requested changing the dates and times for manning their Reclamation District drawbridge, crossing Connection Slough between Mandeville and Bacon Islands, near Stockton, CA. The reason for the proposal is to reduce operating costs of the bridge while continuing to meet the reasonable needs of vessel traffic.

The existing regulation, 33 CFR 117.150, requires the bridge, from May 1 through October 31, to open on signal between the hours of 6 a.m. and 10 p.m., and from November 1 through April 30, to open on signal between the hours of 9 a.m. and 5 p.m. All other times the drawbridge must open on signal if notice is given at least 4 hours in advance. The drawbridge must open upon 1-hour notice for emergency vessel operation.

Discussion of Proposed Rule

The proposed changes are as follows: From May 15 through September 15 the bridge would open on signal between the hours of 9 a.m. and 5 p.m., and it would open upon 12 hours notice between the hours of 5 p.m. and 9 a.m. From September 16 through May 14 the bridge would open upon 12 hours notice between the hours of 9 a.m. and 5 p.m., and it would open upon 24 hours notice between the hours of 5 p.m. and 9 a.m. The bridge would continue to open upon 1-hour notice for emergency vessel operation. The above changes would lower the costs of operating the bridge for the bridge owner without significantly impacting waterway users.

Regulatory Evaluation

This proposed 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Vessel counts derived from drawbridge operating logs and land traffic counts were submitted by CCRC Farms in support of their request, showing little demand for bridge openings during the proposed periods of advance notice. The Coast Guard, through individual correspondence, also requested comments regarding the proposed changes from established waterway representatives and known operators. The Coast Guard did not receive any responses from these users of the waterway. The above counts and lack of response from waterway users show that there is little or no requirement for opening the drawbridge during the proposed periods of advance notice, therefore the impact of the proposed regulation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations 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 proposed rule would not have a significant economic impact on a substantial number of small entities. No small entities were identified that would be affected by the proposed rule. Vessel traffic counts indicate the waterway users presently requiring operation of the drawspan would continue to receive the same level of service at the bridge. The proposal is to decrease unnecessary manning of the bridge during times and dates when the bridge historically has not been called for an opening.

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

Collection of Information

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

Federalism

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

Taking of Private Property

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

Civil Justice Reform

This proposed 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 proposed 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 proposed 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 proposed 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 proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation, since promulgation of drawbridge regulations has been determined not to have any effect on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.150 to read as follows:

§ 117.150 Connection Slough.

The draw of the Reclamation District No. 2027 bridge between Mandeville and Bacon Islands, mile 2.5 near Stockton, from May 15 through September 15, shall open on signal between the hours of 9 a.m. and 5 p.m., and it shall open upon 12 hours notice between the hours of 5 p.m. and 9 a.m. From September 16 through May 14 the bridge shall open upon 12 hours notice between the hours of 9 a.m. and 5 p.m., and it shall open upon 24 hours notice between the hours of 5 p.m. and 9 a.m. The bridge shall open on signal if at least one-hour notice is given for emergency operations or vessels in distress.

Dated: September 9, 2003.

J.M. Hass,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 03–24016 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ–094–FOAb; FRL–7561–6]

Determination of Attainment for the Carbon Monoxide National Ambient Air Quality Standard for the Phoenix Metropolitan Area, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the Phoenix metropolitan nonattainment area in Arizona has attained the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO) by its Clean Air Act deadline of December 31, 2000. The Phoenix area has had no exceedances of the CO standard since 1996, and has six years of clean air quality data.

DATES: Any comments on this proposal must arrive by October 22, 2003.

ADDRESSES: Comments should be mailed or emailed to Wienke Tax, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, *tax.wienke@epa.gov,* or submit comments at *http://www.regulations.gov.* We prefer electronic comments.

You can inspect copies of EPA' **Federal Register** notice and TSD at our Region IX office during normal business hours (see address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** notice and TSD are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, phone: (520) 622–1622, e-mail: *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the words ''we,'' ''us,'' and ''our'' mean U.S. EPA.

Based on ambient air quality data recorded on Phoenix area monitors during 1999 and 2000, we are proposing to find that the area has met the CO standard by its statutory deadline of December 31, 2000.

In the Rules and Regulations section of this **Federal Register**, we are making this attainment finding in a direct final action without prior proposal because we believe this action is not

controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 9, 2003.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 03–24003 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142, and 143

[FRL–7563–3]

RIN 2040–AD37, 2040–AD38

Stakeholder Meetings Concerning the Long-Term 2 Enhanced Surface Water Treatment Rule and Stage 2 Disinfectants and Disinfection Byproducts Rule Proposals; Notice of Public Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given of two public stakeholder meetings on the following proposed drinking water regulations: The Long-Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) (68 FR 47639, August 11, 2003) and the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) (68 FR 49547, August 18, 2003). The Environmental Protection Agency (EPA) is developing these regulations under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), to increase protection against risks associated with microbial pathogens and disinfection byproducts (DBPs) in drinking water. The purpose of these meetings is to provide information that will assist stakeholders in evaluating the proposals, which are currently open for public comment.

The meetings will be held as teleconferences and presentation slides will be broadcast using the Internet. EPA will present the same information at both meetings, with the second meeting intended for those unable to participate in the first. The call-in number and Internet address for these meetings will be provided to participants upon registration. See the **SUPPLEMENTARY INFORMATION** section in this notice for information on how to register.

DATES: The first meeting will be held from 1:00 p.m. to 4:00 p.m., Eastern standard time on October 9, 2003. The second meeting will be held at the same time of day on October 16, 2003.

FOR FURTHER INFORMATION CONTACT: For general background information or to obtain a copy of the LT2ESWTR and Stage 2 DBPR proposals, please contact the Safe Drinking Water Hotline, phone: (800) 426–4791 or (703) 285–1093, e-mail: *hotline-sdwa@epa.gov.* For additional information about these meetings, please contact Dan Schmelling, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, phone: (202) 564–5281, e-mail: *schmelling.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: To participate in these meetings, please register at the following Internet site: *http://e1.e2c.com/enc/enc_pc_regPage?rpgid=10633189770192.* Any person needing special accommodations for these meetings should contact Dan Schmelling (see **FOR FURTHER INFORMATION CONTACT** section) at least five business days before the meeting so that appropriate arrangements can be made.

The LT2ESWTR applies to all public water systems that use surface water or ground water under the direct influence of surface water. This proposed regulation would establish additional risk-targeted treatment requirements for *Cryptosporidium.* It also contains provisions to address risks associated with uncovered finished water storage facilities and to ensure systems maintain microbial protection as they take steps to reduce the formation of DBPs.

The Stage 2 DBPR applies to all public water systems that add a disinfectant other than ultraviolet light. This proposed regulation would establish revised procedures for monitoring and determining compliance with the maximum contaminant levels for trihalomethanes (THMs) and haloacetic acids (HAAs). It contains specific provisions for consecutive systems.

During the meetings announced herein, EPA will present summary information on the LT2ESWTR and Stage 2 DBPR. This will include public health concerns, proposed regulatory requirements, implementation schedules, estimated costs and benefits, implementation tools, and other issues. These presentations are designed to aid the public in understanding the proposals and developing comments on them. These meetings are not intended to solicit public comments on the proposals. Anyone seeking to submit comments must follow the procedures specified in section I.C. of the proposals, as published in the **Federal Register** (citations noted previously).

Dated: September 16, 2003.

Nanci E. Gelb,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–24121 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D.081803A]

Environmental Impact Statement for Consideration and Determination Regarding the Application for the Issuance of a Permit for Incidental Take in the Inshore Fisheries of the Main Hawaiian Islands Managed by the State of Hawaii; Public Scoping Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of scoping meetings and supplemental notice of intent to prepare environmental impact statement.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to hold scoping meetings to inform interested parties of the Environmental Impact Statement (EIS) process as it applies to the evaluation of the State of Hawaii's permit application for an Endangered Species Act (ESA) incidental take permit (ITP) and the evaluation of fishery management alternatives, any of which may produce a different effect on impacted ESA-listed species. NMFS also supplements its initial notice of intent to prepare an environmental impact statement to assess the potential impacts on the human environment of the issuance of the ITP to authorize take of Hawaiian monk seals during commercial fishing activities in the state of Hawaii.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and locations of the meetings. Written comments (see **ADDRESSES**) should be received no later than December 31, 2003.

ADDRESSES: Written comments on fisheries interactions with sea turtles and Hawaiian monk seals or other information that NMFS should consider in preparing the EIS and requests to be included on a mailing list of persons interested in the EIS should be sent to Sarah Malloy, Protected Resources Division, Pacific Islands Regional Office, National Marine Fisheries Service, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Sarah Malloy, telephone (808) 973–2937, fax (808) 973–2941

SUPPLEMENTARY INFORMATION:

Endangered Species Act Requirements

The ESA requires the development of a list of species determined to be in danger of extinction throughout all or a significant portion of its range (endangered) or likely to become endangered in the foreseeable future (threatened). Section 9 of the ESA prohibits ''take'' of such endangered species. ''Take'' has been defined as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Section 9 of the ESA prohibits all take of endangered species, regardless of whether the take is directed or incidental. Through section 4(d) of the ESA, NMFS has extended the prohibition of take to threatened sea turtles under 50 CFR 223.205.

One exemption to the ESA take prohibition is provided through an ESA section 10(a)(1)(B) incidental take permit (ITP). Specifically, section 10(a)(1)(B) authorizes NMFS, under some circumstances, to permit the taking of fish and wildlife otherwise prohibited if such taking is incidental to, and not the purpose of carrying out, otherwise lawful activities.

Applicants seeking an ESA section 10(a)(1)(B) permit must include a conservation plan with their application that: (1) identifies the impacts to species and critical habitat; (2) identifies actions to minimize and mitigate any negative impacts; (2) identifies funding for minimization and mitigation efforts; (3) illustrates that there will be no appreciable reduction in the likelihood of survival and recovery of the species; and (4) contains adequate assurances that the plan will be fully implemented.

To determine whether to grant the issuance of a permit, NMFS must conduct a thorough and collaborative review of all data and potential effects on listed species of the activity(ies) identified in the permit. NMFS cannot authorize an ITP unless it can determine that the permit application and related conservation plan establish that (1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicant will ensure that adequate funding for the plan is provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) any other measures or assurances required by NMFS as being necessary or appropriate for purposes of the conservation plan will be met.

Section 7 of the ESA also states that actions taken by Federal agencies must not jeopardize the continued existence of threatened and endangered species and directs these agencies to take affirmative steps to enhance prospects for recovery of such species. In evaluating section 10 permit applications, NMFS must ensure that allowing incidental take as described in the application would not likely jeopardize the continued existence of the listed species or adversely modify critical habitat and that the permit is consistent with recovery requirements identified to date for the species.

ESA-listed species that may be impacted by the interactions with fishing gear associated with State of Hawaii-managed fisheries include five species of sea turtles and monk seals. Therefore, as part of its management of inshore fisheries in the main Hawaiian islands (MHI), the State of Hawaii has applied for a permit for the incidental take of the five species of sea turtles and monk seals. NMFS is now undertaking a review of the permit application, as amended, and the impacts of the State of Hawaii's management of its fisheries on ESA-listed species to determine whether or not a permit should be issued for the incidental take of such species.

NEPA Process

The authorization of an ITP constitutes a Federal action. Under the National Environmental Policy Act (NEPA), Federal agencies must insure that environmental information is available to public officials and citizens before Federal decisions are made and before Federal actions are taken. The purpose is to promote management and policy decisions that will prevent or eliminate damage to the environment, stimulate the health and welfare of the public, and enrich the understanding of the ecological systems and natural resources important to the nation. A key element of the NEPA process is the identification not only of the proposed action but also a set of alternatives to the proposed action. The NEPA process, involving public review of the alternatives, is designed to provide the agency with information that enables identification of the most satisfactory alternative. Therefore, public involvement, including public meetings and other opportunities for public input, in the scoping and selection of alternatives is an important part of the EIS process.

The proposed action now under consideration and the subject of this EIS is the issuance of a permit for the incidental take of sea turtles and monk seals associated with fishing activities in MHI inshore waters under the authority of the State of Hawaii. A no-action alternative and its environmental consequences will be considered and evaluated. Other alternatives that may be considered may include those listed in the conservation plan and other appropriate measures. For instance, alternative actions may call for gear modifications, reporting requirements, and other remedial actions on the part of fishers designed to minimize the number of individual animals affected and mitigate the injuries of animals that are taken.

Public scoping for this EIS commenced with publication of the Notice of Intent on May 9, 2002 (67 FR 31172), which is intended to meet the NEPA scoping guidelines at 40 CFR 1501.7 and 1508.22. This document furthers the scoping process by announcing scoping meetings. In addition to the meetings, NMFS is accepting written comments on the range of actions, alternatives, and impacts it should consider in the EIS. These comments will be part of the public record. In rendering a decision on whether or not an incidental take permit should be issued, NMFS will consider fully the application and its associated conservation plan as well as the alternatives considered.

Issues Associated with Permit Application

A number of issues associated with the State of Hawaii permit application have been identified. These issues include: (1) number of sea turtle and monk seal hookings, entanglements and injuries/ mortalities expected to result from the fisheries; (2) effects of those hookings, entanglements and injury/ mortality levels on sea turtle and monk seal populations; (3) the cumulative effect on sea turtle and monk seal populations resulting from fishing and other activities; (4) how each of the five sea turtle populations and the monk seal population would be affected if the fishing activities would cease; (5) the economic and social impacts of changes

in state inshore fishery management; (6) the likelihood that take minimization techniques would be adopted by the fishing community; and (7) the need for and means of compliance with the Marine Mammal Protection Act. NMFS solicits and invites public comment on these as well as other relevant issues.

Additional Information Available

The 2002 Application for an Incidental Take Permit, as amended, is available from the NMFS Office of Protected Resources, Permits Division, 1315 East West Highway, Silver Spring, MD 20910. The Responsible Program Manager for this EIS is Ms. Laurie Allen, Acting Director, Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910, phone: (301) 713–2332.

Scoping Meetings Dates and Locations

All meetings will be held 7 p.m. to 9 p.m., local time.

1. October 27, 2003: Honolulu, Oahu, HI at Washington Intermediate School, 1633 S. King St., Honolulu, HI.

2. October 28, 2003: Hilo, Island of Hawaii, HI at Waiakea High School, 155 W. Kawili St., Hilo, HI.

3. October 29, 2003: Kailua-Kona, Island of Hawaii, HI at Kealakehe High School, 74–5000 Puohulihuli St., Kailua-Kona, HI.

4. October 30, 2003: Lihue, Kauai, HI at Wilcox Elementary School, 4319 Hardy St., Lihue, HI.

5. November 3, 2003: Kahului, Maui, HI at Maui Waena Intermediate School, 795 Onehee St., Kahului, HI.

6. November 4, 2003: Lanai City, Lanai, HI at Lanai High School, 555 Fraser Ave., Lanai City, HI.

7. November 5, 2003: Hoolehua, Molokai, HI at Molokai High School, 2140 Farrington Ave., Hoolehua, HI.

8. November 6, 2003: Haleiwa, Oahu, HI at Haleiwa Intermediate School, 66–505 Haleiwa Rd., Haleiwa, HI.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah Malloy, telephone 808–973–2937, fax 808–973–2941 at least five days before the scheduled meeting date.

Authority: 16 U.S.C. 1531 *et seq.*, 42 U.S.C. 4371 *et seq.*

Dated: September 15, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–23994 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 183

Monday, September 22, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Notice of Meeting

AGENCY: Joint Board for the Enrollment of Actuaries

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on October 20, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Segal Company, 101 North Wacker Drive, Suite 500, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1891.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Segal Company, 101 North Wacker Drive, Suite 500, Chicago, IL on Monday, October 20, 2003, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 17, 2003.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 03–24131 Filed 9–18–03; 12:01 pm]

BILLING CODE 4830–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development, Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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: Submit comments on or before November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0462.

Form No.: AID 1570–13.

Title: Narrative/Time-Line Report.

Type of Review: Renewal of Information Collection.

Purpose: This collection is a management and monitoring report used by the Bureau for Democracy, Conflict and Humanitarian assistance, Office of American Schools and Hospitals Abroad. The collection will ascertain that grant financed programs meet authorized objectives within the terms of agreements between its office and the recipients, which are United States Organizations that sponsor overseas institutions.

Annual Reporting Burden:

Respondents: 80.

Total annual responses: 380.

Total annual hours requested: 200 hours.

Dated: September 11, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–24049 Filed 9–19–03; 12:01 pm]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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: Submit comments on or before November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0563.

Form No.: AID 1570–14.

Title: Report on Commodities.

Type of Review: Renewal of Information Collection.

Purpose: The purpose of this information collection is to properly respond to the annual competition among applicants who apply on behalf of their sponsored overseas institutions and independent reviewers. ASHA needs to assess the strength and capability of the U.S. organizations, the overseas institutions and the merits of their proposed projects. Easily accessible historical records on past accomplishments and performance by repeat USOs, would speed the grant making process and provide documented reasons for both successful and unsuccessful applications.

Annual Reporting Burden:

Respondents: 45.

Total annual responses: 1,120.

Total annual hours requested: 613 hours.

Dated: September 11, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–24050 Filed 9–18–03; 12:01 pm]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–03–002]

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension of a currently approved information collection in support of customer-focused improvement initiatives for USDA-procured poultry, livestock, fruit, and vegetable products.

DATES: Comments on this notice must be received by November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Contact David Bowden, Jr., Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0259, Washington, DC 20250–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Customer Service Survey for USDA-Donated Food Products.

OMB Number: 0581–0182.

Expiration Date, as approved by OMB: 10/31/2004.

Type of Request: Extension of a currently approved information collection.

Abstract: Starting with a 1996 pilot project by AMS, customers have been able to use the Customer Opinion Postcard, Form AMS–11, a 4- by 6-inch postcard, to voluntarily submit their perceptions of poultry, livestock, fruit, and vegetable products procured by USDA for school lunch and other domestic food programs. These cards have proven to be a quick and inexpensive way for AMS to learn customer perception of USDA commodities thereby helping the Agency make improvements to its products. AMS would like to continue the use of the customer opinion postcards to get voluntary customer feedback on various products each year by reapproval of the Customer Opinion Postcard, Form AMS–11. In this way AMS will be better able to meet the quality expectations of school food service personnel and the 26 million school children who consume these products daily.

Information about customers' perceptions of USDA-procured products is sought as a sound management practice to support AMS activities under 7 CFR part 250, regulations for ''Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction.'' The information collected will be used primarily by authorized representatives of USDA (AMS, and the Food and Nutrition Service) and shared with State government agencies and product suppliers. To enable customers to mail cards directly to the commodity program that is soliciting the information, several versions of Form AMS–11 will be used, each with a different return address. Response information about products produced by a particular supplier may be shared with that supplier. Similarly, response information from customers located in a particular State may be shared with government agencies within that State.

AMS is committed to implementation of the Government Paperwork Elimination Act, which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent possible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours (5 minutes) per response.

Respondents: State, local, and tribal governments, and not-for-profit businesses.

Estimated Number of Respondents: 8,400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 700 hours.

Copies of this information collection can be obtained from David Bowden, Jr., Standardization Branch, at (202) 720–3506.

Send comments regarding, but not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to: David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 0259, Washington, DC 20250–0259.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 17, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–24100 Filed 9–18–03; 12:01 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program—Store Applications, Form FNS–252, Food Stamp Application for Stores

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: On January 2, 2003, USDA's Food and Nutrition Service (FNS) published a 60-day notice in the **Federal Register**, asking for comments from the public on the revised Food Stamp Program Application for Stores, Form FNS–252. We will now actively solicit feedback from approximately 30 retailers on the clarity and significance of questions on the revised application through one-on-one interactions, through small focus groups and/or online. Participants may include new applicant retailers, currently participating retailers and members from national and local retailer associations.

We will incorporate comments from retailers into the final version of the revised Form FNS–252 and then forward it to OMB for approval. We do not intend to use the revised retailer application until the new Store Tracking and Redemption Subsystem (STARS) is operational, around the fourth quarter of fiscal year 2004. We will use the current Form FNS–252 until then.

DATES: Written comments must be submitted on or before November 21, 2003.

ADDRESSES: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and validity of the information to be collected; (d) ways to minimize the burden of the collection of information of those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Karen Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302; FAX number (703) 305–1863; e-mail: *BRDHQ-WEB@fns.usda.gov*. All submitted comments should refer to the title of this proposal and/or the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Karen Walker at (703) 305–2418 or *BRDHQ-WEB@fns.usda.gov*. Information requests submitted through e-mail should refer to the title of this proposal and/or the OMB approval number in the subject line.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program: Food Stamp Program Application for Stores, Form FNS–252 (Soliciting Comments from Retailers on the Revised Application).

OMB Number: 0584–0008.

Expiration Date: May 31, 2004.

Type of Request: Revision of a currently approved collection.

Abstract: Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011–2036) requires retail food stores to submit applications to FNS for approval prior to participating in the Food Stamp Program. Recently, reengineering teams were charged with improving the current food stamp application for stores, Form FNS–252, to make it shorter, easier to understand and more customer- and computer-friendly. We believe the revised Form FNS–252 is an improvement over the current Form FNS–252 because it:

- Utilizes plain language;
- Deletes redundant questions and questions that solicit information that can be collected from other FNS sources such as store visits and databases;
- Improves the accuracy of submitted information through better targeted questions; and
- Supports the Department's efforts to comply with the E-GOV requirements by making the form compatible with current technology. The revised retailer application has been developed in a format that can be scanned and easily converted into an online document.

As part of the reengineering team's efforts, we received feedback on the revised Form FNS–252 from staff from our regional and field offices. Additionally, we published a 60-day notice in the **Federal Register** on January 2, 2003, asking for comments from the public on the revised retailer application. We are now seeking additional input from retailers. Through this feedback, we will gain a more comprehensive evaluation of the revised Form FNS–252 and identify areas that may need to be improved further.

We will solicit comments from approximately 30 retailers on the revised retailer application. We will solicit comments through one-on-one sessions with retailers, or by convening small groups of retailers at the conclusion of training sessions on the Food Stamp Program or at other meetings of retailers. If we convene small groups of retailers, retailers will be asked to give their individual opinions and impressions of the form. We will not elicit a group consensus during this process. We may also ask individual retailers to complete an application to verify that our burden estimates are accurate for the time it takes to complete the form. Headquarters or field office staff who conduct food stamp training sessions will carry out these comment request sessions. The sessions will take place at more than one location throughout the country. The purpose of the discussions is to get feedback on the form's content; readability; overall form design; the clarity of the form's instructions; and to discuss the ease or difficulty in completing the revised application. Finally, we may also solicit comments online from participating retailers in addition to soliciting comments in-person as discussed above.

Burden Estimates: When soliciting comments, we estimate that we will spend at least 40 minutes, or .66 hour, per retailer (20 minutes interacting with the retailer and 20 minutes having the retailer complete the application, if applicable). Comments will be solicited through one-on-one interactions and through small focus groups. Participants may include new applicant retailers, currently participating retailers and representatives from national and local retailer associations. We will consider the comments we receive before making final changes to the revised Form FNS–252. If the results of the evaluation are positive, we will implement the revised Form FNS–252 when the new STARS system is operational some time during the fourth quarter of fiscal year 2004.

The estimated burden computation is provided below:

Affected Public: Currently participating retailers, new applicant retailers and members of national and local retailer associations will participate in comment request sessions and provide feedback on the redesigned form.

Estimated Number of Respondents: 30.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 30.

Estimated Hours Per Respondent: .66.

Estimate of Burden: 19.8.

Estimated Total Annual Burden: 19.8.

Dated: September 10, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–24098 Filed 9–18–03; 12:01 pm]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on October 7, 2003, in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on October 7 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. e-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to finalize the lists of Title II projects for fiscal year 2004. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: September 15, 2003.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 03–24077 Filed 9–18–03; 12:01 pm]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–827]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of antidumping duty changed circumstances review and intent to revoke order in part.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the Department of Commerce's (the Department) regulations, Accoutrements filed a request for a changed circumstances review of the antidumping duty (AD) order on certain cased pencils from the People's Republic of China (PRC). Specifically, Accoutrements requests that the Department revoke the AD order with respect to a large novelty pencil, which is described below. The domestic industry has affirmatively expressed a lack of interest in the continuation of the order with respect to this product. In response to the request, the Department is initiating a changed circumstances review and issuing a notice of preliminary intent to revoke, in part, the AD order on certain cased pencils from the PRC. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Crystal Crittenden or Howard Smith AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0989 and (202) 482–5193, respectively.,

Background

On July 30, 2003, Accoutrements, a U.S. importer, filed a request with the Department to revoke the AD order on certain cased pencils from the PRC with respect to a large novelty pencil. *See* Accoutrements letter to the Secretary, dated July 25, 2003 (Accoutrements Request Letter). Specifically, Accoutrements requests that the Department revoke the AD order with respect to imports meeting the following description: novelty jumbo pencil that is octagonal in shape, approximately fourteen inches long, one-and-one quarter inches in diameter, and three-and-three quarter inches in circumference, composed of turned wood imprinted with the word, ACCOUTREMENTS, and the number 2, on one side, encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end. *See* Accoutrements Request Letter at 1.

On August 11, 2003, the petitioner in the pencils AD proceeding[1] submitted a letter to the Department stating that it ''would not support inclusion in the referenced antidumping duty order of a jumbo novelty pencil (approximately 1 foot long and 1 inch in diameter) that a company called Accoutrements is considering importing.'' On September 8, 2003, the petitioner submitted a letter to the Department clarifying its August 11, 2003 submission. In its September 8, 2003, letter, the petitioner submitted the following proposed scope language with respect to the above-mentioned jumbo novelty pencil: ''Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 14 or more inches; 2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.''

SUPPLEMENTARY INFORMATION:

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this order are classified under item number 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion.

[1] The petitioner is the Pencil Section of the Writing Instrument Manufacturers Association, a trade association composed of domestic pencil producers, and Sanford Corporation, Musgrave Pencil Company, Mood Products, Inc., and General Pencil Company (collectively, the petitioner).

Although the HTSUS item number is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Initiation and Preliminary Results of AD Changed Circumstances Review and Intent to Revoke in Part

Section 751(d)(1) of the Act and section 351.222 (g) of the Department's regulations provide that the Department may revoke an AD or countervailing duty order, in whole or in part, after conducting a changed circumstances review and concluding from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. *See* section 782(h) of the Act and section 351.222 (g)(1) of the Department's regulations. Based on an affirmative statement by domestic producers of the like product, we find that no interest exists in continuing the AD order with respect to large novelty pencils described in the proposed scope language below. Therefore, we are hereby notifying the public of our preliminary intent to revoke, in part, the AD order on certain cased pencils from the PRC with respect to imports of novelty pencils that meet the description below. We intend to modify the scope of the AD order to read as follows:

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. **Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 14 or more inches; 2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.** Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Furthermore, pursuant to section 351.221(c)(3)(ii) of the Department's regulations, because all parties to the proceeding agree to the outcome of the review, we determine that expedited action is warranted and have combined the notices of initiation and preliminary results. If the final partial revocation occurs, we intend to instruct the U.S. Bureau of Customs and Border Protection (BCBP) to liquidate, without regard to applicable antidumping duties, all unliquidated entries of pencils that meet the above-noted specifications, and to refund any estimated antidumping duties collected on such merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001, the day after the most recent period for which the Department issued assessment instructions to BCBP (12/1/2000–11/30/2001), in accordance with 19 CFR 351.222. We will also instruct BCBP to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2001, in accordance with section 778 of the Act. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan,* 68 FR 1436 (January 10, 2003). The current requirement for a cash deposit of estimated antidumping duties on pencils that meet the above-noted specifications will continue unless, and until, we publish a final determination to revoke the order in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Pursuant to section 351.309(d) of the Department's regulations, rebuttals to written comments, limited to the issues raised in the case briefs, may be filed not later than five days after the deadline for submission of case briefs. Also, interested parties may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. All written comments shall be submitted in accordance with section 351.303 of the Department's regulations and shall be served on all interested parties on the Department's service list. The Department will issue the final results of this review within the time limits established in section 351.216(e) of its regulations.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: September 12, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–24127 Filed 9–18–03; 12:01pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-357–815]

Final Notice of Rescission of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On May 16, 2003, the Department of Commerce (the Department) published in the **Federal Register** its notice of intent to rescind the countervailing duty administrative review on certain hot-rolled carbon steel flat products from Argentina (hot-rolled products), covering the period January 1, 2001 through December 31, 2001, and one manufacturer/exporter of the subject merchandise, Siderar Sociedad Anonima Industrial & Commercial (Siderar). *See Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Argentina*, 68 FR 26572 (May 16, 2003) (*Notice of Intent to Rescind*). On May 28, 2003, the Department published in the **Federal Register** a notice of correction to the notice of intent to rescind the countervailing duty administrative

review. *See Notice of Correction to the Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 68 FR 31685 (May 28, 2003).

As noted in the *Scope of the Review* section below, we inadvertently described hot-rolled carbon quality steel as the products subject to review. We have now correctly described subject merchandise as certain hot-rolled steel flat products. Based on our analysis of comments received, the Department has not made any changes to the decision articulated in the *Notice of Intent to Rescind*, except for the scope description. Therefore, in accordance with 19 CFR 351.213(d)(4), the Department has rescinded the review of hot-rolled products from Argentina.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cindy Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2001, the Department published in the **Federal Register** the countervailing duty order on hot-rolled carbon steel flat products from Argentina. *See Notice of Countervailing Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 66 FR 47173 (September 11, 2001).

On September 3, 2002, the Department published the *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 56267 (September 3, 2002).

On September 30, 2002, the Department received a request from Siderar to conduct an administrative review of the countervailing order on hot-rolled products from Argentina. On October 24, 2002, the Department initiated an administrative review of this order for the period January 1, 2001 through December 31, 2001 (period of review). Pursuant to 19 CFR 351.213(b), this review only covers Siderar, the producer/exporter of the subject merchandise for which a review was specifically requested.

On May 16, 2003, the Department published in the **Federal Register** the *Notice of Intent to Rescind*. On May 28, 2003, the Department published in the **Federal Register** a correction to the *Notice of Intent to Rescind* to allow interested parties to comment.

On June 27, 2003, the Department received comments from the Government of Argentina (GOA) and Siderar (collectively, respondents). On July 2, 2003, the Department received rebuttal comments from National Steel Corporation and United States Steel Corporation (petitioners).

Scope of the Review

Note: *In the Notice of Intent to Rescind*, we inadvertently described hot-rolled carbon quality steel as the products subject to review. We have now correctly described subject merchandise below as certain hot-rolled steel flat products.

The merchandise subject to this review is certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this review, regardless of definitions in the *Harmonized Tariff Schedule of the United States* (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon-

quality steel covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) dated concurrently with this notice which is hereby adopted by this notice. A list of issues which parties have raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. 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 in room B-099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://wwwa.ita.doc.gov,* under the heading ''Federal Register Notices.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Rescission of Review

Based on our analysis of comments received, the Department has not made any changes to the decision articulated in the *Notice of Intent to Rescind*, except for the scope description as noted in the *Scope of the Review* section above. In accordance with 19 CFR 351.213(d)(4), the Department has now rescinded the review of hot-rolled products from Argentina covering the period January 1, 2001 through December 31, 2001.

We will instruct the U.S. Bureau of Customs and Borders Protection (BCBP) to assess countervailing duties at the cash deposit or bonding rate required at the time of entry. We will also instruct BCBP to continue to collect cash deposits of estimated countervailing duties for the merchandise at the current rates.

This notice is in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I - Issues Discussed in Decision Memorandum

Analysis of Comments

Comment 1—The Statute and Regulations Provide the Department with the Discretion to Conduct Countervailing Duty (CVD) Reviews in the Absence of Shipments

Comment 2—Department Practice and the Unique Circumstances of This Case Warrant Conducting a Review and Adjusting the Deposit Rate

[FR Doc. 03–24128 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 030910229–3229–01]

Minority Business Financing

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is soliciting comments on the direction of minority business financing. MBDA would like to ensure that it has obtained broad-based feedback on this issue. Once this information has been obtained and there has been a preliminary discussion of this issue at MBDA's 2003 MED Week conference, MBDA will finalize and print a report with any appropriate revisions, and will disseminate it widely to the policy-making and financial communities. In order to be considered, comments must be received by the deadline contained in the Dates section of this Notice.

DATES: All comments must be received or postmarked by October 7, 2003.

ADDRESSES: Completed comments may be mailed to the following address: Ms. Anita Cooke Wells, Chief, Office of Business Development, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; or e-mailed to: *awells@mbda.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Anita Cooke Wells, Chief, Office of Business Development, at (202) 482–1940.

SUPPLEMENTARY INFORMATION: In May, 2002, MBDA began to examine the challenges facing minority firms in obtaining financing and develop proposals to improve financing options. MBDA sought input from persons having expertise in these issues, to assist it in information gathering and review of possible options. Some of the areas identified for discussion were the current disparities in financing minority businesses, the lack of available data, and the importance of management and technical assistance.

The Agency has developed preliminary proposals as a result of this process. These proposals address issues universal to all minority firms, as well as specifically focusing on issues relevant to high growth businesses, emerging companies and microenterprises. These proposals are designed to support the development of minority businesses and result in job creation and other economic outcomes. Much of the Agency's work focuses on suggestions that would affect existing businesses, whether middle-market or larger businesses and those firms with the largest potential for growth. These businesses are most likely to generate employment and revenues, yet often are overlooked by small business financing programs, venture capitalists, and institutional investors.

The lack of information on minority firms reiterates the need for the Federal Government to develop and provide this data to the private sector. In general, the issues focus on the following four categories:

1. Development of Current and Extensive Governmental Data To Support Investment Decision-Making and To Identify Market Opportunities in the MBE Community

- Implement an Annual Survey of Minority Businesses to provide up-to-date and accurate information on the minority business community.
- Organize and fund a national minority financing network and data repository, which would compile information on the loan performance of this sector of the business community.
- Partner with the National Association of Investment Companies to collect data on portfolio performance of minority-focused venture funds and develop institutional investor strategies.

2. Improvement of Capital Availability and Accessibility Through Existing and New Programs

- Continue ongoing federal financing programs, such as the Small Business Administration 7(a), 504 and Community Express programs and the Department of the Treasury's Community Development Financial Institutions Fund that have increased capital accessibility for minority businesses and other under-served communities.
- Implement a National Capital Access program, which allows banks and other financial institutions to make loans to higher-risk borrowers.
- Develop a national mezzanine-financing program.

3. Provision of Expanded Access to Management and Technical Assistance

- Tie existing and new financing vehicles to technical and management assistance appropriate for the type of firm receiving the financing.
- Focus provision of services to businesses with $100,000 or more in annual revenues, as businesses of this size are responsible for approximately 95 percent of all employees retained by minority firms and nearly 92 percent of minority business revenues.
- Develop tiering mechanisms for provision of management and technical assistance services promoting increased efficiency and innovation within the minority business community.
- Create best practices and performance measurements for service providers.

4. Integration of the Investment Community, Minority Entrepreneurs, and the Federal Government

- Coordinate federal programs supporting minority business financing and increase minority business utilization of these programs.
- Support existing mechanisms for integrating entrepreneurs with financial institutions, especially with respect to venture capital.
- Promote increased collaborations between institutions with experience and expertise investing and lending to the minority business community and mainstream institutions.

For additional background on MBDA's proposals, please go to MBDA's Web site at *http://www.mbda.gov.* In particular, the Agency would like to receive any suggestions on additional approaches or options that may be included in a final report. If respondents believe that the identified issues are impractical or present serious difficulties in implementation, please note this in the comments.

The comments received will be reviewed for applicability to the issues addressed. MBDA will consider only those comments that address (1) existing successful models that could be enhanced and replicated, and (2) where there is sufficient interest within MBDA to adopt the comments, or there exists the likelihood of creating such interest. If any comments received meet the criteria, they will be included within the final report.

Dated: September 16, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–24083 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091603D]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Joint Mid-Atlantic Council-New England Council Spiny Dogfish Committee, Research Set-Aside Committee, Demersal Committee, Tilefish Committee, and Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, October 7, through Thursday, October 9, 2003. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Outer Banks Resort & Conference Center/Ramada Inn, 1701 Virginia Dare Trail, Kill Devil Hills, NC; telephone: 252–441–1830.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, October 7, the Joint (Mid-Atlantic Council-New England Council) Spiny Dogfish Committee will meet from 10 a.m. to 3 p.m. The Research Set-Aside (RSA) Committee will meet concurrently from noon until 3 p.m. Council will meet from 3 p.m. to 5:30 p.m. There will be a NMFS Public Hearing on annual landing limits for blue and white marlin from 7 p.m. to 9 p.m. On Wednesday, October 8, the Council will meet from 8 a.m. to 5 p.m. The Council will review and approve the Draft Environmental Impact Statement (DEIS) for Amendment 2 to the Monkfish Fishery Management Plan (FMP); review and comment on the NMFS' Northeast Regional Office's Draft Regional Bycatch Implementation Plan; and, review and comment on the New England Fishery Management Council's (NEFMC) Groundfish Amendment 13 proposals regarding Essential Fishery Habitat (EFH) closures and effort management measures. The Council, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board, will meet from 1 p.m. to 5 p.m. to determine and prioritize management actions for summer flounder, scup and black sea bass. On Thursday, October 9, the Tilefish Committee will meet from 8 a.m. to 9 a.m. The Executive Committee will meet from 9 a.m. to 10 a.m. The Council will meet from 10 a.m. until 4 p.m.

Agenda items for the Council's committees and the Council itself are: The Joint Spiny Dogfish Committee will review the Spiny Dogfish Monitoring Committee's recommendations regarding 2004/05 fishing year quota and associated management measures; develop and adopt recommended quota and management measures for 2004/05 fishing year. The RSA Committee will review, discuss and establish RSA priorities for 2005; review, discuss and establish project selection criteria for the 2005 RSA solicitation. The Council will convene its first meeting session with the swearing-in of new and re-appointed Council members, and by conducting an election of its officers. The Council will then review the Joint Spiny Dogfish Committee's recommendations regarding the 2004/05 fishing year quota and associated management measures; develop and adopt recommended quota and management measures for 2004/05; review and approve the Draft Supplemental Environmental Impact Statement (DSEIS) Public Hearing document for Amendment 2 to the Monkfish FMP; discuss and comment on NMFS' Northeast Regional Office's Draft Regional Bycatch Implementation Plan regarding how to address state waters fisheries, how to address recreational fisheries, and how to create incentives to encourage harvesters to

address National Standard 9; review, discuss and comment on the NEFMC's EFH proposed closures in MAFMC jurisdiction, and review, discuss and comment on effects of its proposed changes to Days-At-Sea (DAS) and general category permits contained in its Groundfish Amendment 13 options. The Council, acting on behalf of the Demersal Committee, together with the ASMFC's Summer Flounder, Scup and Black Sea Bass Board, will determine the management actions to be included in Amendment 14 and/or Framework 5 for summer flounder, scup and black sea bass; develop priorities for action items not included in Amendment 14 and/or Framework 5. The Tilefish Committee will review the most recent court order regarding the FMP's permit system and develop a plan of action to address same. The Executive Committee will review committee structure and committee assignment preferences for the new Council year; review the 2004 annual work plan. The Council will also receive and hear committee and organizational reports, and act on any new and/or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council at least 5 days prior to the meeting date.

Dated: September 16, 2003.

Richard W. Surdi,

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

[FR Doc. 03–24114 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091703A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting to address Snapper Grouper Amendments 13A and 13B. As part of this meeting, a public comment period will be held regarding Snapper Grouper Amendment 13A addressing the Oculina Experimental Closed Area. There will also be a full Council Session. This rescheduled Council meeting is being held in lieu of the regularly scheduled September Council meeting that was cancelled due to Hurricane Isabel.

DATES: The meeting will be held in October 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC, 29407. Telephone: 1–800- 334–6660 or 843–571–1000.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866–SAFMC–10; fax: 843–769–4520; e-mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Full Council: October 6, 2003, 1:30 p.m.–5 p.m

From 1:30 p.m.–1:45 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the June 2003 meeting minutes.

From 1:45 p.m.–2:15 p.m., the Council will conduct an election for Chairman and Vice-Chairman and have a presentation of awards.

From 2:15 p.m.–5 p.m., the Council will be discussing issues relevant to Amendment 13A to the Snapper Grouper Fishery Management Plan (FMP). Beginning at 2:20 p.m., the Council will accept public comment on Snapper Grouper Amendment 13A. Following the public comment period, the Council will receive a summary report on recent changes and an overview of the final version of Amendment 13A, review the proposed rule and take action to approve Amendment 13A to the Snapper Grouper FMP for submission to the Secretary of Commerce.

The full Council will also receive a report on the Southeastern Data, Assessment and Review (SEDAR) process for yellowtail snapper and goliath grouper, and an update on the overall SEDAR process. The Council will take action to approve incorporating SEDAR into the Council's advisory panel process.

2. Full Council: October 7, 2003, 8:30 a.m.–5 p.m

The Council will receive an overview of Amendment 13B to the Snapper Grouper Fishery Management Plan and provide direction to staff regarding various options for the draft document. The schedule regarding the development of Amendment 13B will also be discussed.

3. Full Council: October 8, 2003, 8:30 a.m.–12 noon

From 8:30 a.m.–11 a.m., the Council will continue its review and discussion of Amendment 13B to the Snapper Grouper FMP and provide direction to staff regarding the options for the Amendment. Further discussion will be held regarding scheduling for the document development.

From 11 a.m.–11:30 a.m., the Council will hear status reports from NOAA Fisheries (National Marine Fisheries Service) regarding the Sargassum FMP final rule and the Dolphin Wahoo FMP.

From 11:30 a.m.–12 noon, the Council will discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accomodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 3 , 2003.

Dated: September 17, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–24116 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Macau

September 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

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 Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site 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 import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

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). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	4,485,164 square meters.
225	15,698,072 square meters.
313	11,212,908 square meters.
314	1,868,818 square meters.
315	5,606,454 square meters.
317	11,212,908 square meters.
326	4,485,164 square meters.
333/334/335	536,735 dozen of which not more than 284,666 dozen shall be in Categories 333/335.
336	121,520 dozen.
338	709,323 dozen.
339	2,971,093 dozen.
340	671,372 dozen.
341	433,021 dozen.
342	195,895 dozen.
345	119,787 dozen.
347/348	1,668,946 dozen.
351	156,629 dozen.
359–C/659–C [1]	783,591 kilograms.
359–V [2]	261,199 kilograms.
611	4,485,164 square meters.
625/626/627/628/629	11,212,908 square meters.
633/634/635	1,166,782 dozen.
638/639	3,606,304 dozen.
640	258,337 dozen.
641	310,410 dozen.
642	253,214 dozen.
645/646	605,569 dozen.
647/648	1,221,613 dozen.
659–S [3]	261,199 kilograms.
Group II	
400–414, 433–438, 440–448, 459pt. [4] and 469pt. [5], as a group	1,698,391 square meters equivalent.
Sublevel in Group II	
445/446	91,624 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] 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.

[4] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into

the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–24063 Filed 9–18–03; 12:01 pm]

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 Pakistan

September 16, 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: September 22, 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 Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 369-S is being adjusted for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68572, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 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 Pakistan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 22, 2003. you are directed to adjust the limit for Category 369-S to 1,338,820 kilograms [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–24060 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2002; Category 369-S: only HTS number 6307.10.2005.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

September 17, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 23, 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 U.S. Customs Web site at *http://www.customs.ustreas.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site 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 the undoing of special shift.

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 63632, published on October 15, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 17, 2003.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 23, 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]
Levels in Group I	
347/348	3,596,678 dozen.
647/648	1,891,540 dozen.
Sublevel in Group II	
604	3,751,522 kilograms.

[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,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–24152 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Romania

September 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

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 Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site 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 import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 2004 through December 31, 2004 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 14, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see 49 FR 493, as amended, published on January 4, 1984.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Carryforward used thus far in 2003 is being deducted from the 2004 limits, and will be recredited to 2004 if not used.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

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). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
313	3,643,701 square meters.
314	2,732,776 square meters.
315	6,576,433 square meters.
333	260,401 dozen.
334	629,568 dozen.
335	323,547 dozen.
338/339	1,423,871 dozen.
340	621,513 dozen.
341	252,397 dozen.
347/348	1,111,315 dozen.
352	396,164 dozen.
359pt. [1]	1,421,034 kilograms.
360	3,672,344 numbers.
361	2,448,231 numbers.
369pt. [2]	538,541 kilograms.
410	191,455 square meters.
433/434	10,604 dozen.
435	10,440 dozen.
442	12,090 dozen.
443	99,098 numbers.
444	43,968 numbers.
447/448	24,855 dozen.
604	1,827,607 kilograms.
638/639	1,436,763 dozen.
640	197,602 dozen.
647/648	341,101 dozen.
666pt. [3]	259,559 kilograms.

[1] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[2] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[3] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of

Customs, dated December 8, 1999 (see 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (see 64 FR 69744), shall be denied entry. However, the Government of Romania may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. Also see directive dated December 29, 1983, as amended, (49 FR 493). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–24064 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

September 17, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 23, 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 Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 442 is being increased for special shift from Category 443, reducing the limit for Category 443.

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 57409, published on September 10, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 17, 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 and wool textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 23, 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]
442	17,755 dozen.
443	51,847 numbers.

[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,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–24153 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

September 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site 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 import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish limits for the 2004 period. The 2004 levels for Categories 315 and 361 are zero. Carryforward for Categories 347-T/348-T is being deducted from the 2004 limit.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

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** notices 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	2,307,126 square meters.
226/313	3,945,241 square meters.
315	–0–
317	63,644,754 square meters.
326	3,724,314 square meters.
334/634	470,185 dozen.
335/635	302,888 dozen.
336/636	407,493 dozen.
338/339	1,162,928 dozen of which not more than 775,284 dozen shall be in Categories 338–S/339–S [1].
340/640	720,952 dozen.
341/641	631,305 dozen.
342/642	501,535 dozen.
347/348	863,889 dozen of which not more than 408,824 dozen shall be in Categories 347–T/348–T [2].
351/651	360,476 dozen.
352	664,532 dozen.
361	–0–
363	12,414,377 numbers.
369–O [3]	151,676 kilograms.
369–S [4]	172,809 kilograms.
638/639	470,185 dozen.
647/648	673,934 dozen.

[1] 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.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 9, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–24065 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric

September 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the Second 12-Month Cap on Duty and Quota Free Benefits

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002; Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric

components, or components knit-to-shape.

For the one-year period, beginning on October 1, 2003, and extending through September 30, 2004, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 2.75 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2003. In Presidential Proclamation 7616, (published in the **Federal Register** on November 5, 2002, 67 FR 67283), the President directed CITA to publish in the **Federal Register** the aggregate quantity of imports allowed during each 12-month period.

For the one-year period, beginning on October 1, 2003, and extending through September 30, 2004, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 548,823,093 square meters equivalent. This quantity will be recalculated for each subsequent year, under Section 204(b)(3)(B)(iii). Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–24061 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Regional and Third-Country Fabric

September 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the Fourth 12-Month Cap on Duty- and Quota-Free Benefits

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000, as amended by Section 3108 of the Trade Act of 2002; Presidential Proclamation 7350 of October 4, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Title I of the Trade and Development Act of 2000 (TDA 2000) provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles. This special rule for lesser-developed countries applies through September 30, 2004. TDA 2000 imposed a quantitative limitation on imports eligible for preferential treatment under these two provisions.

The Trade Act of 2002 amended TDA 2000 to extend preferential treatment to apparel assembled in a beneficiary sub-Saharan African country from components knit-to-shape in a beneficiary country from U.S. or beneficiary country yarns and to apparel formed on seamless knitting machines in a beneficiary country from U.S. or beneficiary country yarns, subject to the quantitative limitation. The Trade Act of 2002 also increased the quantitative limitation but provided that this increase would not apply to apparel imported under the special rule for lesser-developed countries. The Trade Act of 2002 provides that the quantitative limitation for the year beginning October 1, 2003 will be an amount not to exceed 4.7931 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 2.3571 percent of apparel imported into the United States in the preceding 12-month period. For the purpose of this notice, the most recent 12-month period for which data are available is the 12-month period ending July 31, 2003.

Presidential Proclamation 7350 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**. Presidential Proclamation 7626, published on November 18, 2002, modified the aggregate quantity of imports allowed during each 12-month period.

For the one-year period, beginning on October 1, 2003, and extending through September 30, 2004, the aggregate quantity of imports eligible for preferential treatment under these provisions is 956,568,715 square meters equivalent. Of this amount, 470,411,241 square meters equivalent is available to apparel imported under the special rule for lesser-developed countries. These quantities will be recalculated for each subsequent year. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–24062 Filed 9–18–03; 12:01 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information 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 October 22, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs,

Attention: Karen Lee, 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 *Karen_F._Lee@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 Information 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: September 16, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Reinstatement.

Title: Presidential Scholars Program Application.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 2,600.

Burden Hours: 41,600.

Abstract: The United States Presidential Scholars Program is a national recognition program to honor outstanding graduating high school seniors. Candidates are invited to apply based on academic achievements on the Scholastic Assessment Test (SAT) or American College Testing (ACT) assessments, or on artistic merits based on participation in a national arts talent search. This program was established by Presidential Executive Orders 11155 and 12158.

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 2303. 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 Katrina Ingalls at her e-mail address *Katrina.Ingalls@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. 03–24084 Filed 9–18–03; 12:01 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–100–000, et al.]

AmerGen Energy Company, LLC, et al.; Electric Rate and Corporate Filings

September 12, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AmerGen Energy Company, LLC

[Docket No. EG03–100–000]

Take notice that on September 9, 2003, AmerGen Energy Company, LLC (AmerGen) submitted an application for Redetermination of Exemption Wholesale Generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935.

Comment Date: September 24, 2003.

2. Lowell Cogeneration Company Limited Partnership

[Docket No.ER97–2414–005]

Take notice that on August 29, 2003, Lowell Cogeneration Company Limited Partnership (LCCP), in response to a request from the Commission's Staff, has filed an amendment to its July 1, 2003, triennial market power update to include an update analysis of transmission market power and barriers to entry issues.

Comment Date: September 18, 2003.

3. Michigan Electric Transmission Company, LLC

[Docket No. ER03–692–002]

Take notice that on September 5, 2003, Michigan Electric Transmission Company, LLC (METC) submitted for filing a revised Facilities Agreement with City of Hart, Michigan in compliance with the July 10 Order of the Federal Energy Regulatory Commission in the above-captioned proceeding. The agreement is being submitted as a service agreement under the Midwest Independent Transmission System Operator, Inc. open access transmission tariff in compliance with that order.

METC states that a copy was served on all parties compiled on the official service list.

Comment Date: September 26, 2003.

4. New England Power Pool

[Docket No. ER03–1287–000]

Take notice that on September 3, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance changes to NEPOOL Market Rule 1 and its Appendix F. The Participants Committee request that these changes be made effective simultaneously with changes filed to the Emergency Energy Agreement between New England Participants and New York Independent System Operator. The effective date requested for that agreement is September 4, 2003.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: September 24, 2003.

5. Rocky Mountain Energy Center, LLC

[Docket No. ER03–1288–000]

Take notice that on September 3, 2003, Rocky Mountain Energy Center, LLC (the Applicant) tendered for filing, under Section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a nominally-rated 601 megawatt gas-fired, combined cycle electric generating facility in Weld County, Colorado.

Comment Date: September 24, 2003.

6. Superior Electric Power Corporation

[Docket No. ER03–1289–000]

Take notice that on September 4, 2003, Superior Electric Power Corporation (SEPC) tendered for filing pursuant to 18 CFR 35.15 a Notice of Cancellation of its Market-Based Rate Schedule, designated as FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1. The Rate Schedule was originally accepted for filing by the Commission on October 23, 1995 in Docket No. ER95–1747–000. SEPC further requests an effective date of October 1, 2003, for the Notice of Cancellation.

Comment Date: September 25, 2003.

7. New England Power Pool

[Docket No. ER03–1290–000]

Take notice that on September 3, 2003, the New England Power Pool (NEPOOL) Participants and the New York Independent System Operator, Inc. (NYISO) filed for approval their Emergency Energy Transactions Agreement (Agreement). The NEPOOL Participants and NYISO request that the Agreement be made effective on September 4, 2003.

The NEPOOL Participants state that copies of these materials were sent to the governors and the electric utility regulatory agencies for New York and the six New England states which comprise the NEPOOL Control Area, and the New England Conference of Public Utilities Commissioners, Inc.

Comment Date: September 25, 2003.

8. Southern California Edison Company

[Docket No. ER03–1291–000]

Take notice that on September 4, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the Wintec Energy, Ltd. (Wintec). SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, and procurement of material and equipment for interconnection facilities and distribution system facilities required to provide interconnection of and Distribution Service to the Wintec III Project, an 11.57 MW wind generating project proposed to be developed by Wintec near SCE's Palm and Dillon Substations.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Wintec.

Comment Date: September 25, 2003.

9. Florida Power & Light Company

[Docket No. ER03–1292–000

Take notice that on September 4, 2003, Florida Power & Light Company (FPL) filed amendments to its FERC Electric Rate Schedule, Original Volume No. 7 (Tariff) and Code of Conduct providing for sales of ancillary services in markets outside of peninsular Florida and resale of firm transmission rights under the Commission's standard terms applicable to parties authorized to sell power at market-based rates. The proposed amendments maintain the existing Tariff prohibition against the sale of power at market-based rates within peninsular Florida. A copy of this filing has been served on the Florida Public Service Commission.

Comment Date: September 25, 2003.

10. NEO Toledo-Gen LLC

[Docket No. ER03–1293–000]

Take notice that on September 5, 2003, NEO Toledo-Gen LLC tendered for filing pursuant to Section 35.15 of the Commission's regulations, 18 CFR 35.15, notices canceling NEO Toledo-Gen LLC's FERC Electric Tariff, Original Volume No. 1 and Service Agreement No. 1 under the tariff. NEO Toledo-Gen LLC requests that the cancellations be made effective September 5, 2003.

Comment Date: September 26, 2003.

11. Niagara Mohawk Power Corporation, a National Grid Company

[Docket No. ER03–1295–000]

Take notice that on September 5, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing pursuant to Section 35.15 of the Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Rate Schedule No. 312 under Niagara Mohawk's FERC Electric Tariff, Original Vol. No. 1. Niagara Mohawk requests that the Notice of Cancellation be deemed effective as of November 1, 2003.

Niagara Mohawk states it has served copies of the Notice of Cancellation upon the customer receiving service under Rate Schedule No. 312, the Power Authority of the State of New York and its customer, Oneida-Madison Electric Cooperative, Inc., as well as upon the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: September 26, 2003.

12. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1297–000]

Take notice that on September 5, 2003 Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 57, The Rate Schedule was filed in Docket No. ER80–471–000with an effective date of July 1, 1980.

Central Hudson states that the contract was terminated in accordance with its terms as a result of the sale, on January 30, 2001, of the Central Hudson electric generation units designated in the contract. Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the regulations to permit the notice of cancellation to be effective February 1, 2001.

Central Hudson states that a copy of its filing was served on Consolidated Edison Company of New York, Inc., and the State of New York Public Service Commission.

Comment Date: September 26, 2003.

13. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1298–000]

Take notice that on September 5, 2003 Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 58. This Rate Schedule was filed in Docket No. ER80–477–000 with an effective date of July 1, 1980.

Central Hudson states that the contract was terminated in accordance with its terms as a result of the sale, on January 30, 2001, of the Central Hudson electric generation units designated in the contract. Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the regulations to permit the notice of cancellation to be effective February 1, 2001.

Central Hudson states that a copy of its filing was served on PSEG Energy Resources & Trade LLC and the State of New York Public Service Commission.

Comment Date: September 26, 2003.

14. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1299–000]

Take notice that on September 5, 2003 Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 59. This Reate Schedule was filed in Docket No. ER80–496–000 with an date of effective July 1, 1980.

Central Hudson states that the contract was terminated in accordance with its terms as a result of the sale, on January 30, 2001, of the Central Hudson electric generation units designated in the contract. Central Hudson requests waiver on the notice requirements set

forth in 18 CFR 35.11 of the regulations to permit the notice of cancellation to be effective February 1, 2001.

Central Hudson states that a copy of its filing was served on Philadelphia Electric Company and the State of New York Public Service Commission.

Comment Date: September 26, 2003.

15. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1300–000]

Take notice that on September 5, 2003 Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 60. This Rate Schedule was filed in Docket No. ER80–548–000, with an effective date of July 1, 1980.

Central Hudson states that the contract was terminated in accordance with its terms as a result of the sale, on January 30, 2001, of the Central Hudson electric generation units designated in the contract. Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the regulations to permit the notice of cancellation to be effective February 1, 2001.

Central Hudson states that a copy of its filing was served on Northeast Utilities Service Co. and the State of New York Public Service Commission.

Comment Date: September 26, 2003.

16. Reliant Energy Desert Basin, LLC

[Docket No.ER03–1301–000]

Take notice that on September 5, 2003, Reliant Energy Desert Basin, LLC (Desert Basin) tendered for filing pursuant to Section 35.15 of the Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreement No. 2 under FERC Electric Tariff No. 1 between Desert Basin and Salt River Project Agricultural Improvement and Power District.

Comment Date: September 26, 2003.

17. Cinergy Services, Inc.

[Docket No. ER03–1302–000]

Take notice that on September 5, 2003, Cinergy Services, Inc.(Cinergy), on behalf of PSI Energy, Inc., a Cinergy Corp. utility operating company, tendered for filing a Notice of Termination of an Interconnection Agreement (IA) and Facility Construction Agreement (FCA) between Cinergy and Duke Energy Knox, LLC. Cinergy states that termination of the IA and FCA has been mutually agreed to by Cinergy and Duke Energy Knox, LLC.

Comment Date: September 26, 2003.

18. Cinergy Services, Inc.

[Docket No. ER03–1303–000]

Take notice that on September 5, 2003, Cinergy Services, Inc.(Cinergy), on behalf of PSI Energy, Inc., a Cinergy Corp. utility operating company, tendered for filing a Notice of Termination of an Interconnection Agreement (IA) and Facility Construction Agreement (FCA) between Cinergy and Cogentrix Lawrence County, LLC. Cinergy states that termination of the IA and FCA has been mutually agreed to by Cinergy and Cogentrix Lawrence County, LLC.

Comment Date: September 26, 2003.

19. Niagara Mohawk Power Corporation

[Docket No. ER03–1304–000]

Take notice that on September 5, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk), tendered for filing Service Agreement No. 325 (Service Agreement) between Niagara Mohawk and The Village of Solvay, New York (Solvay) under the New York Independent System Operator's FERC Electric Tariff, Original Volume No.1. Niagara Mohawk states that under the Service Agreement, it will provide interconnection service to Solvay for the planned Lakeland substation.

Comment Date: September 26, 2003.

20. Calpine Energy Services, L.P.

[Docket No. ER03–1305–000]

Take notice that on September 5, 2003, Calpine Energy Services, L.P. (the Applicant) tendered for filing, under Section 205 of the Federal Power Act, a rate schedule for reactive power from the Ontelaunee Energy Center. Applicant states that it proposes to sell reactive power to PJM Interconnection, L.L.C. from the Ontelaunee Energy Center at the same rate as has previously been accepted by the Commission.

Comment Date: September 26, 2003.

21. Tampa Electric Company

[Docket No. ER03–1306–000]

Take notice that on September 5, 2003, Tampa Electric Company (Tampa Electric) tendered for filing a notice of cancellation of a rate schedule of an agreement to provide non-firm transmission service between Tampa Electric and Seminole Electric Cooperative, Inc. (Seminole). Tampa Electric proposes that the cancellation be made effective on November 1, 2003.

Tampa Electric states that copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment Date: September 26, 2003.

22. Central Maine Power Company

[Docket No. ER03–1307–000] Please take notice that on September 5, 2003, Central Maine Power Company (CMP) tendered for filing an unexecuted Interconnection Agreement entered into with Androscoggin Reservoir Company, and an Agreement for Lease of Transmission Line. Service under the interconnection agreement will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Fifth Revised Volume No. 3, Original Service Agreement Number 193. The transmission line lease is designated by CMP as FERC Original Rate Schedule No. 202.

Comment Date: September 26, 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 filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24149 Filed 9–18–03; 12:01 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. EL02–121–006, et al.]

Federal Energy Regulatory Commission Occidental Chemical Corporation, et al.; Electric Rate and Corporate Filings

September 11, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company

[Docket No. EL02–121–006]

Take notice that on September 5, 2003, PJM Interconnection, L.L.C. tendered for filing a Refund Report.

Comment Date: October 6, 2003.

2. TransAlta Energy Marketing (U.S.) Inc. v. Bonneville Power Administration

[Docket No. EL03–125–001]

Take notice that on August 22, 2003, Bonneville Power Administration (Bonneville) submitted for filing a report pursuant to the Commission's request for information.

Comment Date: September 22, 2003.

3. The Public Service Commission of Maryland; Maryland Office of People's Counsel v. Mirant Americas Energy Marketing, LP

[Docket No. EL03–226–000]

Take notice that on September 8, 2003, the Public Service Commission of Maryland and the Maryland Office of People's Counsel filed a petition for declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207. Petitioners seek a declaratory order from the Federal Energy Regulatory Commission declaring that Mirant Americas Energy Marketing, LP must continue to perform pursuant to a wholesale power agreement between Mirant and The Potomac Electric Power Company.

The Petitioners states that copies of the filing were served on Mirant and other potentially affected entities by electronic mail.

Comment Date: September 18, 2003.

4. Aquila, Inc.

[Docket Nos. ES03–43–001 and ES03–43–002]

Take notice that: (1) on August 8, 2003, in Docket No. ES03–43–001, Aquila, Inc. (Aquila) supplemented its July 25, 2003 filing in Docket No. ES03–43–000; and (2) on August 27, 28 and 29 and September 9, 2003, in Docket No. ES03–43–002, Aquila tendered filings in response to a data request issued on August 21, 2003, by the Director of the Division of Tariffs and Market Development-Central, in the above-referenced docket.

Comment Date: September 29, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ES03–56–000]

Take notice that on September 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue up to $125 million in unsecured senior notes.

Midwest ISO also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: October 1, 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 filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24150 Filed 9–18–03; 12:01 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–087]

Appalachian Power Company; Notice of Availability of Environmental Assessment

September 15, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the staff of the Office of Energy Projects has prepared an Environmental Assessment (EA) for an application requesting Commission approval to permit Willard Construction of Roanoke Valley, Inc. (permittee) to install and operate four stationary docks with 12 covered boat slips and two floating docks each for a total of forty-eight boat slips and eight floating slips at South Pointe Condominiums at The Waterfront. No dredging is planned as part of this proposal. The Smith Mountain Project is located on the Roanoke and Blackwater Rivers in Bedford, Campbell, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

For further information, contact Heather Campbell at 202–502–6182.

Magalie R. Salas,

Secretary.

[FR Doc. 03–24151 Filed 9–18–03; 12:01 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0097; FRL–7561–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Mobile Air Conditioner Retrofitting Program, EPA ICR Number 1774.03, OMB Control Number 2060–0350

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 22, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0097, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dave Godwin, Global Programs Division, Office of Atmospheric Programs, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–3517; fax number: (202) 565–2155; e-mail address: *Godwin.Dave@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 27, 2003 (68 FR 38322), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment (two are shown on the EDOCKET site; however, one is an exact duplicate of the other). The comment requested clarification on five points; these are addressed individually in the supporting statement.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0097, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Title: Mobile Air Conditioner Retrofitting Program.

Abstract: Section 612 of the Clean Air Act (CAA) requires EPA to promulgate rules making it unlawful to replace any ozone-depleting substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available. In 1994, the Significant New Alternatives Policy (SNAP) Program was enacted, enabling the Agency to review available substitutes for ozone-depleting substances and determine their acceptability. The SNAP program includes review of potential alternatives to ozone-depleting refrigerants used for air conditioning motor vehicles. EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. In addition, continuing the smooth transition to the use of substitutes strongly depends on the continued purity of the recovered, recycled and/or reclaimed R–12 supply. The purpose of this Information Collection Request (ICR) is to estimate the burden associated with the 40 Code of Federal Regulations (CFR) part 82 requirement that service technicians label mobile air conditioners with information about new refrigerants when they retrofit a system. These labels acknowledge that the retrofitting has been completed and that the mobile air conditioner should no longer use chlorofluorocarbon (CFC) refrigerant. In addition, the labels provide essential information to technicians about the specific refrigerant used in the air conditioning system. The following information is required on the label:

- The name and address of the technician and the company performing the retrofit.
- The date of the retrofit.
- The trade name, charge amount, and, when applicable, the numerical designation of the refrigerant as determined under the latest version of Standard 34 of the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Inc.
- The type, manufacturer, and amount of lubricant used.
- If the refrigerant is or contains an ozone-depleting substance, the phrase ''ozone depleter''.
- If the refrigerant displays flammability limits as measured according to latest version of Standard E681 of the American Society for Testing and Materials (ASTM) International, the statement ''This

refrigerant is FLAMMABLE. Take appropriate precautions.''

This information assists the technician in avoiding service practices that might result in cross-contamination, system failure and/or system performance degradation. Responses to the collection information are mandatory (section 612 of the CAA and 40 CFR part 82).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: New and used car dealers, Gas service stations, Top and body repair shops, General automotive repair shops, and Automotive repair shops not elsewhere classified, including air conditioning and radiator specialty shops.

Estimated Number of Respondents: 87,000.

Frequency of Response: Once per and upon retrofit of a motor vehicle air conditioner.

Estimated Total Annual Hour Burden: 83,333 hours.

Estimated Total Annual Cost: $5,933,333, which includes $100,000 annualized capital or O&M costs and $5,833,333 labor costs.

Changes in the Estimates: There is a decrease of 333,334 hours per year in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The decrease is because the EPA estimates fewer CFC–12 motor vehicle air conditioners will be retrofitted in the next three years than the previous three years.

Dated: September 11, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–24008 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0073; FRL–7561–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Distribution of Offsite Consequence Analysis Information Under Section 112(r)(7)(H) of the Clean Air Act (CAA), EPA ICR Number 1981.02, OMB Control Number 2050–0172

AGENCY: Environmental Protection Agency; (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 22, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0073, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Mailcode 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–8233; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 12, 2003, (68 FR 25367), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0073, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Distribution of Offsite Consequence Analysis Information under Section 112(r)(7)(H) of the Clean Air Act (CAA).

Abstract: This ICR is the renewal of the ICR developed for the final rule, *Accidental Release Prevention*

Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information. CAA section 112(r)(7) required EPA to promulgate reasonable regulations and appropriate guidance to provide for the prevention and detection of accidental releases and for responses to such releases. The regulations include requirements for submittal of a risk management plan (RMP) to EPA. The RMP includes information on offsite consequence analyses (OCA) as well as other elements of the risk management program.

On August 5, 1999, the President signed the Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act (CSISSFRRA). The Act required the President to promulgate regulations on the distribution of OCA information (CAA section 112(r)(7)(H)(ii)). The President delegated to EPA and the Department of Justice (DOJ) the responsibility to promulgate regulations to govern the dissemination of OCA information to the public. The final rule was published on August 4, 2000 (65 FR 48108). The regulations imposed minimal requirements on the public, state and local agencies that request OCA data from EPA. The state and local agencies who decide to obtain OCA information must send a written request on their official letterhead to EPA certifying that they are covered persons under Public Law 106–40, and that they will use the information for official use only. EPA will then provide paper copies of OCA data to those agencies as requested. The rule authorizes and encourages state and local agencies to set up reading rooms. The local reading rooms would provide read-only access to OCA information for all the sources in the LEPC's jurisdiction and for any source where the vulnerable zone extends into the LEPC's jurisdiction.

Members of the public requesting to view OCA information at federal reading rooms would be required to sign in and self certify. If asking for OCA information from federal reading rooms for the facilities in the area where they live or work, they would be required to provide proof that they live or work in that area. Members of the public are required to give their names, telephone number, and the names of the facilities for which OCA information is being requested, when they contact the central office to schedule an appointment to view OCA information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: For this ICR period, EPA estimates a total of 3,270 hours (annually) for local agencies requesting OCA data from EPA and providing read-only access to the public. For the state agencies, the total annual burden for requesting OCA data from EPA and providing read-only access to the public, is 3,816 hours. For the public to display photo identification, sign a sign-in sheet, certify that the individual has not received access to OCA information for more than 10 stationary sources for that calendar month, and to request information from the vulnerable zone indicator system (VZIS), EPA estimates a total of 8,754 hours annually. The total burden for the members of the public, state and local agencies is 15,840 hours and $413,380 annually.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals, and State, Local, or Tribal Government.

Estimated Number of Respondents: 4,417.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 15,840 hours.

Estimated Total Annual Cost: $414,380, which includes $1,000 of operations and maintenance costs.

Changes in the Estimates: A decrease in burden of 83,678 hours from the previous ICR. This is due to using actual data of the state and local officials requesting OCA data. The previous ICR estimated that all 50 states plus U.S. territories and D.C. and at least 1,000 of the 1,500 active LEPCs will be requesting OCA data. However, only 9 LEPCs and 18 states have requested OCA data, therefore, EPA only assumed that 1% of the 1500 LEPCs (15 LEPCs) may request OCA data in the next three years covered by the ICR. Also, in this ICR, EPA assumed that only 18 more states may request OCA data from EPA. The public burden and costs have also decreased from the previous ICR, due to the actual number of people that have visited the federal reading rooms or made inquiries in the VZIS. The previous ICR estimated capital costs for 50 state agencies and 1500 LEPCs to be $125,000 for purchasing computer equipment to operate the VZIS. The cost was annualized assuming the equipment is depreciated over five years. Although we estimated that 50 states will take on the responsibility of making the OCA data available to the public, only 18 states and 9 LEPCs have requested OCA data from EPA. So, in this ICR, EPA made a conservative estimate that 18 more states and 15 more LEPCs may request OCA data. Since EPA did estimate capital cost for 50 states and 1,500 LEPCs in the previous ICR, this ICR does not include any additional capital cost. Therefore, the capital cost has decreased from previous ICR ($125,000) to zero.

Dated: September 11, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–24009 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7563–2]

Guidance on Selecting the Appropriate Age Groups for Assessing Childhood Exposures to Environmental Contaminants (External Review Draft); Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the draft document entitled *Guidance on Selecting the Appropriate Age Groups for Assessing Childhood Exposures to Environmental Contaminants.* The document is intended to provide guidance to EPA scientists on the appropriate age groups to consider when assessing childhood exposure and potential dose to environmental contaminants.

DATES: Comments must be received by November 21, 2003.

ADDRESSES: The draft is available via the Internet at *http://cfpub2.epa.gov/ncea/raf/recordisplay.cfm?deid=55887.* Comments may be submitted electronically, by mail, or in person, as described in the instructions under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Marilyn Brower, Risk Assessment Forum Staff (8601D), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: 202–564–3363; fax: 202–565–0061; e-mail: *brower.marilyn@epa.gov*

SUPPLEMENTARY INFORMATION:

I. Submission of Comments

Electronic comments are preferred and may be sent by e-mail to: *risk.forum@epa.gov.* Alternatively, comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, N.W., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. In the case of paper comments, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Please note that all comments received in response to this notice will be placed in a public record. For that reason, comments should not contain personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright.

II. Background

EPA has been investigating ways to improve Agency risk assessments for children in response to recent reports and regulatory initiatives including the 1993 National Academy of Sciences (NAS) report ''Pesticides in the Diets of Infants and Children'', the Food Quality Protection Act of 1996 (FQPA) and Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risk''. One effort undertaken by a Risk Assessment Forum workgroup has been exploring children's exposure assessment issues. Children's behavior changes over time in ways that can have an important impact on exposure and potential dose. Further, children's physiology changes over time in ways that can affect potential dose, internal dose, and susceptibility to certain health effects. The workgroup has concluded that a major issue facing the Agency is how to consistently consider age-related changes in behavior and physiology when assessing early lifestage exposure and potential dose. A key issue is how to capture these changes in an assessment of risks from exposure to environmental contaminants. This issue is critical for scientists involved in preparing exposure assessments applicable to children and for use in evaluating integrated lifetime exposures.

The workgroup's draft guidance provides a recommended set of childhood age groups to promote cross-program consistency in Agency risk assessments for children. In addition, these age groups will guide future analyses of exposure factors data as well as new research and data collection efforts. The recommendations presented are based on discussions held during a July 2000 technical workshop on considering developmental changes when assessing exposures to children and a subsequent expert analysis of existing exposure factors data.

The document is undergoing peer review concurrent with the public comment period described in this notice. This guidance is not a regulation nor is it intended to substitute for federal regulations. It does not establish any substantive ''rules'' under the Administrative Procedure Act or any other law and will have no binding effect on EPA or any regulated entity.

Dated: September 10, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–24122 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0302; FRL–7327–2]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day consultation meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review issues concerned with ensuring data quality for *in vitro* tests used as alternatives to animal studies for regulatory purposes.

DATES: The meeting will be held on October 28–29, 2003, from 8:30 a.m. to approximately 5 p.m.

Comments. For the deadline for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before October 2, 2003.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn Hotel, 1900 North Fort Myer Drive, Arlington, VA. The telephone number for the Holiday Inn Hotel is (703) 807–2000.

Comments. Written comments may be submitted electronically or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special seating: To submit nominations to serve as an ad hoc member of the FIFRA SAP for this meeting, or requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2003–0302 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses:*christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0302. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EPA's position paper, charge/questions to the FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than early October, 2003. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

Public commenters should note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0302. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0302. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0302. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1. For questions about delivery options, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Make sure to submit your comments by the deadline in this document.
6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0302 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Each individual or group wishing to make brief oral comments to the FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, October 21, 2003, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. To the extent that time permits, interested persons may be permitted by the Chair of the FIFRA SAP to present oral comments at the meeting. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I.C., no later than noon, eastern time, October 21, 2003, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by the FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except EPA). Individuals nominated should have expertise in one or more of the following areas: toxicology, *in vitro* test methods, and biostatistics. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 2, 2003.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short-time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as a Special Government Employee. The Agency will review all nominations. FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness

and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA Scientific Advisory Panel will meet to consider and review issues concerned with processes for regulatory acceptance of and ensuring the quality of data from *in vitro* tests used as alternatives to animal studies for regulatory purposes. A number of such *in vitro* methods have been developed or are under development that use *ex vivo* tissues, cell cultures, or biological constructs as target tissues. Some *in vitro* methods are being developed and marketed as proprietary test methods. Consistent with its goal of obtaining scientifically sound test data for hazard and risk assessment of pesticides and toxic chemicals, EPA is exploring what changes in current policies and procedures may be needed to facilitate the acceptance of data developed using *in vitro* alternatives.

In vitro alternatives to animal testing pose some new issues regarding assurance of the reliability and quality of test data. To ensure their ability to detect the adverse effect of concern, new *in vitro* methods typically undergo substantial validation testing before being accepted for regulatory use. However, subsequent changes in the ingredients or processes used to prepare the test system or shifts in the methods or criteria used to interpret the test outcome could lead to failure of the test to perform as it did during the validation. Therefore, a process is needed to ensure consistency and reliability of test performance. In addition, EPA wishes to establish a process and criteria under which additional methods that are mechanistically and functionally similar to an already validated method can seek to qualify for regulatory acceptance without repeating the full range of validation studies initially conducted to qualify that testing approach.

EPA will consult with the Panel regarding these issues, including performance standards, essential test method components, and quality control of test methods, in the context of three new *in vitro* assays for dermal corrosivity which will be incorporated into its OPPTS 870.2500 test guideline for Acute Dermal Irritation. These assays are: Corrositex®, the rat skin Transcutaneous Electrical Resistance (TER) assay, and EpiDerm™/EPISKIN™.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes serve as the Panel's report and is the formal summary of its findings. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 16, 2003.

J. Thomas McClintock,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 03–24124 Filed 9–18–03; 12:01 p.m.]

BILLING CODE 6560–50–S

Environmental Protection Agency

[FRL–7562–2]

CSFII Analysis of Food Intake Distributions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final document.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of a final document, *CSFII Analysis of Food Intake Distributions* (EPA/600/R–03/029, March 2003), prepared by the National Center for Environmental Assessment–Washington (NCEA–W), within EPA's Office of Research and Development. The report was compiled by the Exposure Assessment Division of Versar, Inc., in Springfield, Virginia under an EPA contract. NCEA published the *Exposure Factors Handbook* (EFH) in 1997 (EPA/600/P–95/002Fa–c). The handbook provides a summary of the available statistical data on various factors used in assessing human exposure. The primary source of information on consumption rates of food presented in the handbook is the U.S. Department of Agriculture's (USDA's) Continuing Survey of Food Intakes by Individuals (CSFII). It was recommended by the Science Advisory Board that the EFH be kept up-to-date and that food consumption from USDA's most recent national survey be analyzed for an update to the Handbook. The purpose of this report is to present the analysis of the CSFII 1994–96 data for food consumption and to update chapters 9, 11, and 12 of the EFH data.

ADDRESSES: The document is available electronically from the NCEA Web site (*http://www.epa.gov/ncea*). A limited number of copies will be available from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198, or 513–489–8190; facsimile 513–489–8695). Please provide the title and EPA number when ordering from NSCEP. Documents also may be ordered via the internet at *http://www.epa.gov/NCEPIhome/orderpub.html.* Paper copies may be purchased from the National Technical Information Service (NTIS) in Springfield, VA (1–800–553–NTIS[6847] or 703–605–6000; facsimile 703–321–8547). Please provide the number, PB2003–103268, for this document when ordering from NTIS.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Jacqueline Moya (202–564–3245); mailing address: National Center for Environmental Assessment, (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; facsimile: 202–565–0076; e-mail: *moya.jackie@epa.gov.*

Dated: September 10, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–24007 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7562–4; OAR–2003–0192]

Papers Addressing Scientific Issues in the Risk Assessment of Metals

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability and Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public comment period ending

November 7, 2003 for the draft documents titled: Issue Paper on the Environmental Chemistry of Metals; Issue Paper on Metal Exposure Assessment; Issue Paper on the Ecological Effects of Metals; Issue Paper on the Human Health Effects of Metals; and Issue Paper on the Bioavailability and Bioaccumulation of Metals. These draft papers are being made available for public comment consistent with EPA's commitment to provide opportunities for external input. Scientific comments received on these papers will be made available to authors for final disposition. The material contained in these papers may be used in total, or in part, as source material for the Agency's framework for metals risk assessment and EPA's evaluation of this material will therefore include consideration of the Assessment Factors recently published by EPA for use in evaluating the quality of scientific and technical information. In addition to written comments, a public meeting will be held during the public comment period for stakeholders to provide additional input to EPA. Meeting logistics, to include registration information, will be announced in a subsequent **Federal Register** Notice. The meeting will be held in the Washington D.C. area.

DATES: The public comment period begins September 22, 2003, and ends November 7, 2003. Technical comments should be in writing and must be postmarked by November 7, 2003.

ADDRESSES: The draft issue papers are available primarily via the Internet on the Risk Assessment Forum's web page at *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=59052.* A limited number of paper copies are available from EDOCKET. The EPA Office of Environmental Information (OEI) Docket (Docket I.D. No. OAR–2003–0192); telephone: (202) 566–1742; facsimile: (202) 566–1741; e-mail: *a-and-r-Docket@epa.gov.* Comments may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: (202) 566–1742; facsimile: (202) 566–1741; e-mail: *a-and-r-Docket@epa.gov.*

For technical information, contact Dr. William P. Wood, Executive Director, Risk Assessment Forum, National Center for Environmental Assessment, Office of Research and Development; telephone: (202) 564–3361; facsimile: (202) 565–0062; or e-mail: *risk.forum@epa.gov@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established an official public docket for this action under Docket ID No. OAR–2003–0192. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1742.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' Late comments may be considered if time permits.

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,''

''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID Number. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2003–0192. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the OEI Docket mailing address. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Background

Many EPA programs are faced with deciding whether and how to regulate metals. These decisions range from site-specific assessments performed to determine, for example, whether a site needs remediation and, if so, to what degree; to national-scale assessments where, for example, national air and water quality standards are being developed; to national hazard or risk ranking conducted for purposes of setting priorities for future analysis, action, or information gathering. In recognition of the unique assessment issues raised by metals and the complexity of addressing these issues consistently across the Agency's various programs, an Agency workgroup, under the auspices of the Science Policy Council, is working to develop an integrated framework for metals risk assessment that will (1) foster consistent application of scientific principles for assessing the hazard and risk for metals, (2) reflect state-of-the-science application of methods and data, (3) incorporate a transparent process (*i.e.* articulating assumptions and uncertainties), and (4) provide the flexibility to address program-specific issues. Issues discussed in these papers are focused on the inorganic species of metals and metal compounds.

Role of the Issue Papers

In September 2002, EPA discussed plans for the development of the metals assessment framework and associated guidance with the Agency's Science Advisory Board (SAB). That discussion included the context and key issues the Agency believed should be addressed in a metals assessment guidance and also identified the anticipated process for development of such guidance. In their review, the SAB expanded and condensed key technical areas into those represented by the five issue papers identified above. The SAB also emphasized the importance of engaging the outside community so as to contribute to the knowledge base the Agency would draw from in developing the subsequent guidance. As part of the effort to engage stakeholders and the scientific community and to build on existing experience, the Agency has commissioned external experts to lead the development of scientific papers on issues and state-of-the-art approaches to metals risk assessment. (Some individual EPA experts contributed specific discussions on topic(s) for which he or she has scientific expertise or knowledge of current Agency practice). Although Agency technical staff, as well as representatives from other Federal agencies reviewed and commented on previous drafts, the comments were addressed at the discretion of each respective author or group of authors. Therefore, the views expressed are those of the authors and do not necessarily reflect the views or policies of the EPA and should not be construed as implying EPA consent or endorsement. Comments of a technical nature received during the public comment period will be provided to Eastern Research Group for disposition by the authors.

Organizing Questions

For the purpose of organizing comments on the issue papers, the Agency suggests that commenters address the following questions:

1. For the purpose of deriving general principles that can be applied in the assessment of metals, do the issue papers provide an appropriate level of detail?

2. Are there additional chemical, biological and physical processes that should be considered for metals assessment? If so, please describe and provide references.

3. Are you aware of any models, approaches or methods not considered in the reports that if implemented, would substantially reduce uncertainty in the Agency's metal assessments? If so, which ones are ready for application now (or in the next few years), and which types of assessments would benefit most from their application (*e.g.*, hazard ranking/characterization, national, or site-specific assessments)?

4. What other suggestions do you have to improve the utility of these papers as the Agency develops a metals assessment framework?

Dated: September 12, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–24006 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7562–3]

Notice of Extension of Public Comment Period on the Framework for Application of the Toxicity Equivalence Methodology for Polychlorinated Dioxins, Furans and Biphenyls in Ecological Risk Assessment (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends the comment period for the Framework for Application of the Toxicity Equivalence Methodology for Polychlorinated Dioxins, Furans and Biphenyls in Ecological Risk Assessment (External Review Draft). The availability of this document was originally announced in the **Federal Register** on July 30, 2003 (68 FR 44784).

DATES: Comments must be received by Wednesday, October 29, 2003.

ADDRESSES: The document is available via the Internet from *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=55669.* Instructions for submitting comments are provided in the July 30, 2003 **Federal Register** notice, which is accessible from this Web site.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum (mail code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone 202–

564–3361, or send electronic mail inquiries to *risk.forum@epa.gov.*

SUPPLEMENTARY INFORMATION: In the July 30, 2003 **Federal Register** (68 FR 44784), EPA announced the availability of, and opportunity to comment on, the Framework for Application of the Toxicity Equivalence Methodology for Polychlorinated Dioxins, Furans, and Biphenyls in Ecological Risk Assessment (External Review Draft, June, 2003, EPA/630/R–03/002A). The comment period was scheduled to close on September 29, 2003. This notice extends the comment period until October 29, 2003. EPA will consider all comments received by this date in finalizing the document.

As announced in the **Federal Register** July 30, 2003, a panel of external experts, organized by Versar, Inc., a contractor to EPA, will review this document concurrent to the public comment period described in this notice.

Dated: September 10, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–24005 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0064, FRL–7562–5]

National Clean Water Act Recognition Awards; Presentation of Awards at the Water Environment Federation's Technical Exposition and Conference (WEFTEC), and Announcement of 2003 National Awards Winners.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency will recognize municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs at the annual National Clean Water Act Recognition Awards Ceremony. An inscribed plaque will be presented at the Ceremony during the Water Environment Federation's Technical Exposition and Conference (WEFTEC) in Los Angeles, California. We are recognizing projects and programs for excellence in five awards categories including operations and maintenance at wastewater treatment facilities, biosolids management, pretreatment, storm water management, and combined sewer overflow controls. This action also announces the 2003 national awards winners.

DATES: Monday, October 13, 2003, 11:30 a.m. to 1 p.m.

ADDRESSES: The national awards presentation ceremony will be held at the Los Angeles Convention Center, 1201 S. Figueroa Street, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell, Telephone: (202) 564–0628. Facsimile Number: (202) 501–2396, or e-mail: *campbell.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: The National Clean Water Act Recognition Awards program is authorized under Clean Water Act section 501 (a) and (e), 33 U.S.C. 1361(a) and (e). The awards program provides national recognition and heightens overall public awareness of programs developed to protect the public's health and safety and the nation's water quality. A regulation at 40 CFR part 105 establishes a framework for the annual recognition awards program. EPA announced the availability of application and nomination information for this year's awards (68 FR 11858, March 12, 2003). State water pollution control agencies and EPA regional offices make recommendations to headquarters for the national awards. Programs being recognized are in compliance with applicable water quality requirements and have a satisfactory record with respect to environmental quality. Recognition is made for their demonstrated achievements in the awards program categories as follows:

(1) Excellent operations and maintenance practices at wastewater treatment facilities;

(2) Biosolids management through operating projects, and special biosolids management achievements;

(3) Municipal implementation and enforcement of local pretreatment programs;

(4) Storm Water Management excellence; and

(5) Combined Sewer Overflow Control programs. The EPA's 2003 National Clean Water Act Recognition Awards winners are listed below by category.

	Sub-category
Operations and Maintenance Excellence Awards	
First Place:	
South Cobb Water Reclamation Facility, Mableton, Georgia	Large Advanced Plant.
Kalispell Advanced Wastewater Treatment Plant, Kalispell, Montana	Medium Advanced Plant.
Saginaw Chippewa Indian Tribe Wastewater Treatment Plant, Isabella Reservation, Mount Pleasant, Michigan	Small Advanced Plant.
Buckman Wastewater Treatment Facility, Jacksonville Electric Authority Jacksonville, Florida	Large Secondary Plant—tie.
Central Contra Costa Sanitary District, Martinez, California	Large Secondary Plant—tie.
Logan Township Municipal Utilities Authority, Bridgeport, New Jersey	Medium Secondary Plant.
Antrim Wastewater Treatment Facility, Antrim, New Hampshire	Small Secondary Plant.
Eielson Air Force Base Wastewater Treatment Facility, Eielson Air Force Base, Alaska	Large Non-discharging Plant.
Etowah Water and Sewer Authority, Dawsonville, Georgia	Small Non-discharging Plant.
Lisbon Wastewater Treatment Facility, Lisbon, New Hampshire	Most Improved Plant.
Second Place:	
Rockaway Valley Regional Sewerage Authority, Boonton, New Jersey	Large Advanced Plant.
New Canaan Water Pollution Control Facility, New Canaan, Connecticut	Medium Advanced Plant.
Village of Johnson Wastewater Treatment Facility, Johnson, Vermont	Small Advanced Plant.
Atlantic County Utilities Authority, Atlantic City, New Jersey	Large Secondary Plant.
South Kingstown Regional Wastewater Treatment Facility, Narragansett, Rhode Island	Medium Secondary Plant.
Town on Pine Bluffs Sewer, Pine Bluffs, Wyoming	Small Secondary Plant.
St. Joe-Spencerville Regional Sewer District, Saint Joe, Indiana	Most Improved Plant.

	Sub-category
Biosolids Management Excellence Awards	
First Place:	
Littleton/Englewood Wastewater Treatment Facility, Englewood, Colorado	Large Operating Projects.
Second Place:	
City of Twin Falls Wastewater Treatment Facility, Twin Falls, Idaho	Large Operating Projects.
Special Recognition:	
City of Los Angeles Department of Public Works, Bureau of Sanitation and Engineering & the Exceptional Quality Biosolids Task Force, Los Angeles, California	
Pretreatment Program Excellence Awards	
First Place:	
South Adams County Water and Sanitation District, Commerce City, Colorado	0–25 SIUs.
Metro Wastewater Reclamation District, Denver, Colorado	26–100 SIUs.
Passaic Valley Sewerage Commissioners Industrial and Pollution Control Department, Newark, New Jersey	Greater than 100 SIUs.
Second Place:	
Sunnyvale Water Pollution Control Plant, Sunnyvale, California	26–100 SIUs.
King County Department of Natural Resources and Parks, Wastewater Treatment Division, Seattle, Washington.	Greater than 100 SIUs.
Storm Water Management Excellence Awards	
First Place:	
Ventura County Watershed Protection Division, Ventura County, California	Municipal.
UTC Fuel Cells, South Windsor, Connecticut	Industrial.
Second Place:	
San Antonio Water System Storm Water Program, San Antonio, Texas	Municipal.
Combined Sewer Overflow (CSO) Control Awards	
First Place:	
City of Bangor, Maine	Municipal.
Second Place:	
Philadelphia Water Department, Philadelphia, Pennsylvania	Municipal.

Dated: September 12, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–24010 Filed 9–18–03; 12:01 pm]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension of the existing collection requirements under 29 CFR part 1602, Recordkeeping and Reporting Requirements under Title VII and the ADA. The Commission has requested an extension of an existing collection as listed below.

DATES: Written comments on this final notice must be submitted on or before October 22, 2003.

ADDRESSES: The Request for Clearance (SF 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Sherman McDaniel, Jr., EEOC Clearance Officer, 1801 L Street, NW., Washington, DC 20507. Comments on this final notice must be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Klee@OMB.EOP.GOV.* Comments should also be sent to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number). Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers).

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel at (202) 663–4669 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: A notice that EEOC would be submitting this request was published in the **Federal Register** on June 11, 2003, allowing for a 60-day public comment period. No comments were received.

Overview of This Information Collection

Type of Review: Extension—No change.

Collection Title: Recordkeeping and Reporting under Title VII and the ADA.

Form No.: None.

Frequency of Report: Other.

Type of Respondent: Employers with 15 or more employees.

Description of Affected Public: Employers with 15 or more employees are subject to Title VII and the ADA.

Responses: 627,000.

Reporting Hours: One.

Federal Cost: None.

Abstract: Section 709 of Title VII, 42 U.S.C. 2000e and section 107(a) of the ADA, 42 U.S.C. 12117 require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination requirements in employment. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII, which are also incorporated by reference into the ADA at section 107(a).

Burden Statement: The estimated number of respondents is approximately 627,000 employers. The recordkeeping obligation does not require reports or the creation of new documents; it merely requires retention of documents that the employer has made or kept. Thus, the burden imposed by these regulations is minimal. The burden is estimated to be less than one hour per employer.

Dated: September 15, 2003.

For the Commission.

Cari M. Dominguez,

Chair .

[FR Doc. 03–24046 Filed 9–18–03; 12:01 pm]

BILLING CODE 6570–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–7]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled ''Capital Requirements for the Federal Home Loan Banks.''

DATES: Interested persons may submit comments on or before November 21, 2003.

ADDRESSES: Send comments by e-mail to *comments@fhfb.gov*, by facsimile to 202/408–2530, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, ATTN: Public Comments. For copies of the information collection or public comments, contact Karen Rogers, Executive Secretary, by e-mail at *rogersk@fhfb.gov*, by facsimile at (202) 408–2530, or by telephone at (202) 408–2910.

FOR FURTHER INFORMATION CONTACT: Jonathon F. Curtis, Senior Financial Analyst, Regulations & Research Division, Office of Supervision, by e-mail at *curtisj@fhfb.gov*, by telephone at (202) 408–2866, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 6 of the Federal Home Loan Bank Act (Bank Act) establishes the capital structure for the Federal Home Loan Banks (Banks) and requires the Finance Board to issue regulations prescribing uniform capital standards applicable to each Bank. 12 U.S.C. 1426. In compliance with the requirements of section 6, the Finance Board added parts 930, 931, 932 and 933 to its regulations to implement the statutory capital structure for the Banks. 12 CFR parts 930, 931, 932 and 933. Part 930 establishes definitions applicable to risk management and the capital regulations; part 931 concerns Bank capital stock; part 932 establishes Bank capital requirements; and part 933 sets forth the requirements for Bank capital structure plans. The implementing regulations also include conforming changes to parts 917, 925 and 956, which concern, respectively, the powers and responsibilities of Bank boards of directors and senior management, Bank members, and Bank investments. 12 CFR parts 917, 925 and 956.

The Banks use the information collection contained in the rules implementing section 6 of the Bank Act to determine the amount of capital stock a member must purchase to maintain membership in and to obtain services from a Bank. More specifically, sections 931.3 and 933.2(a) authorize a Bank to offer its members several options to satisfy a membership investment in capital stock and an activity-based stock purchase requirement. 12 CFR 931.3 and 933.2(a). The information collection is necessary to provide the Banks with the flexibility to meet the statutory and regulatory capital structure requirements while allowing Bank members to choose the option best suited to their business requirements.

The OMB number for the information collection is 3069–0059. The OMB clearance for the information collection expires on November 30, 2003. The likely respondents include Banks and Bank members.

B. Burden Estimate

The Finance Board estimates the total annual average number of activity-based stock purchase requirement respondents at 4,000, with 4 responses per respondent. The estimate for the average hours per response is 20 hours. The estimate for the annual hour burden for activity-based stock purchase requirement respondents is 320,000 hours (4,000 activity-based respondents × 4 responses per respondent × 20 hours per response).

The Finance Board estimates the total annual average number of membership investment in capital stock respondents at 8,000, with 4 responses per respondent. The estimate for the average hours per response is 10 hours. The estimate for the annual hour burden for membership investment in capital stock respondents is 320,000 hours (8,000 membership investment respondents × 4 responses per respondent × 10 hours per response).

The estimate for the total annual hour burden for all respondents is 640,000 hours.

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

By the Federal Housing Finance Board.

Donald Demitros,

Chief Information Officer.

[FR Doc. 03–24101 Filed 9–18–03; 12:01 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 October 17, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. ESB Acquisition Corp., New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Emigrant Bancorp, Inc., New York, New York, and thereby acquire Emigrant Savings Bank, New York, New York.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. The PNC Financial Services Group, Inc., Pittsburgh, Pennsylvania, and PNC Bancorp, Inc., Wilmington, Delaware; to merge with United National Bancorp, Bridgewater, New Jersey, and thereby indirectly acquire United Trust Bank, Bridgewater, New Jersey.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Convenant Financial Corporation, Clarksdale, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Convenant Bank, Clarksdale, Mississippi.

Board of Governors of the Federal Reserve System, September 17, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–24156 Filed 9–18–03; 12:01 pm]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Colonial Banc Corp., Eaton, Ohio; to engage *de novo* through its subsidiary, The Oculina Bank, Fort Pierce, Florida, and thereby operate a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, September 17, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–24155 Filed 9–18–03; 12:01 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–116]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: 2003 Connecticut Partners Project: Health Plan Member Survey on Smoking Cessation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Tobacco use is a leading cause of death and disability in the United States. It is also a considerable expense for managed care organizations in the form of tobacco related disease. In Connecticut, the smoking prevalence is

22.8% and tobacco use results in $1,273,000,000 in excess health care expenditures or $389 per capita.

The Connecticut Partners Project will be developed by the Centers for Disease Control and Prevention (CDC), the American Association of Health Plans (AAHP), and four health plans in Connecticut. The four health plans are Anthem Blue Cross/Blue Shield, ConnectiCare, Health Net of the Northeast, Inc., and the Oxford Health Plan.

The objectives of the Project are as follows:

- Determine the feasibility of providing tobacco cessation counseling through case management programs within managed care.
- Assess the feasibility and costs of delivering cessation counseling in a local setting that allows evaluation.
- Determine whether counselor training through a standardized web based initiative impacts the quality of counseling.
- Evaluate the delivery and impact of the interventions as well as their cost.

The Project will provide an opportunity to assess the value and cost of providing tobacco cessation counseling through health plan case management strategies. At present there are only a handful of health plans that provide comprehensive tobacco control interventions. The proposed project will determine if there is a value to a smaller targeted approach with high-risk individuals. This could improve the reach of tobacco control efforts within managed care for a smaller, but important target population.

A major component of this project will be a survey of health plan members. The goal of the member survey will be to evaluate the success and relative effectiveness of the smoking cessation interventions implemented within each of the health plan's disease management programs. The survey will contain approximately 35 questions and will include questions that assess patients' smoking status, readiness to quit, knowledge of adverse health effects of smoking, and use of smoking cessation resources. The survey will be sent to members identified as smokers in the commercial population within the health plans' disease management programs. The survey will be conducted on approximately 300 participants per health plan, for a total of 1,200 participants.

An independent evaluation vendor will be hired to field the survey. To achieve the highest possible response rate, the survey will be implemented in a mixed mode design, using both a self-administered mail survey followed by a telephone interview of non-respondents. Aggregated data will be reported to CDC and the health plans participating in the study. In addition, the reported results will be blinded as to the plans, but each plan will have access to its own data. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Anthem	300	1	20/60	100
ConnectiCare	300	1	20/60	100
Health Net	300	1	20/60	100
Oxford	300	1	20/60	100
Total				400

Dated: September 15, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–24076 Filed 9–18–03; 12:01 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Community Anti-Drug Coalition Institute Annual Coalition Survey and Database—New—The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention has established the National Community Anti-Drug Coalition Institute through a grant to the Community Anti-Drug Coalitions of America (CADCA). The purpose of the Annual Coalition Survey and Database project is to collect and report on data which identify and describe the types of community coalitions across our nation, and the activities in which they are involved. This information will help SAMHSA encourage and assist in the development of effective community coalitions and strategies designed to prevent illicit drug and underage alcohol and tobacco use. These data will also permit SAMHSA to address its responsibilities and measure performance as delineated in the HP2010 objective 26–23: to increase the number of communities using partnerships or coalition models to conduct comprehensive substance abuse prevention efforts.

To track progress in achieving this objective, SAMHSA will use these data to develop a national inventory of anti-drug coalitions and partnerships that can be updated annually in order to determine the number of community anti-drug coalitions in operation. Based on the coalition literature and input from the field, the inventory will include information on important characteristics, such as operational status, organizational type, target population served, funding sources, geographic location, and major community sector involvement, including faith, business, school,

service, and law sectors. The ''snowball'' method will be employed to obtain lists of local anti-drug coalitions who will be asked to complete the web based survey. The proposed project will yield an electronic directory, developed by experts, to describe the range of operational definitions of ''community anti-drug coalitions.'' The inventory will be based on a variety of typologies of coalitions and partnerships (including the coalitions who receive grants from the Drug Free Communities Support Program that will encompass the breadth of coalition activities. It is anticipated that the resulting electronic directory will be made available to the field through a web-based database that will be managed, maintained, and updated by the Institute.

The annual burden associated with this survey is summarized in the following table.

Number of respondents	Responses/respondent	Burden/response (hrs.)	Total burden hours
4,000	1	.75	3,000

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 15, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–24072 Filed 9–18–03; 12:01 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the sale of mobile homes to eligible disaster applicants at prices that are fair and equitable.

SUPPLEMENTARY INFORMATION: Public Law 93–288, as amended by Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 100–707), authorizes the FEMA to provide temporary housing assistance to victims of federally declared disasters. This type of assistance could be in the form of mobile homes, travel trailers, or other readily fabricated dwelling. In the event this assistance is used, and other alternate housing is not available; the law provides for the sale of mobile homes to eligible disaster applicants at prices that are fair and equitable. A provision has been made which includes a formula for adjustments in the sale price when there is a need to purchase the unit as a primary residence because all other housing resources have been exhausted. This provision also takes into account that in addition to the purchaser's own resources, he/she cannot obtain sufficient funds through insurance proceeds, disaster loans, grants, and commercial lending institutions to cover the sales price.

Collection of Information

Title: Request for Loan Information Verification.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0012.

Form Numbers: FEMA Form 90–68, Request for Loan Information Verification.

Abstract: FEMA uses FEMA Form 90–68 to obtain information from disaster victims who want to purchase a mobile home and lending institutions to determine a fair and equitable sales price of a mobile home to a disaster victim. The ability to borrow money commercially is an important factor in determining the final sales price.

Affected Public: Individuals or Households and Business or Other For Profit.

Number of Respondents: 375. (Applicants—125 + Lenders—250).

Frequency of Response: On Occasion. (Applicants—2 forms per submission; lenders—one form per submission).

Hours Per Response: 10 minutes. (Applicants—5 minutes; Lenders—5 minutes).

Estimated Total Annual Burden Hours: 42 hours.

Estimated Cost: The cost estimated for respondents is approximately $0.88 to complete and mail the form back to FEMA. The annual cost to respondents is estimated to be $0.88 × 500 responses = $440 annual cost.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, or e-mail address: *InformationCollections@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Contact David L. Porter, Program Specialist, Recovery Division at (202) 646–3883 or Carl Hallstead at (202) 646–3654 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or at the above e-mail address.

Dated: September 15, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–24125 Filed 9–18–03; 12:01 pm]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed extension of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the certification of flood proof residential basements in Special Flood Hazard Areas.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA), regulation 44 CFR 60.3, Floodplain Management Criteria for Flood-Prone Areas, ensures that communities participating in the NFIP, in Special Flood Hazard Areas (SFHAs), have basement construction at the lowest flood elevation or above the 100 year flood elevation, or Base Flood Elevation (BFE). This requirement reduces the risks of flood hazards to new buildings in SFHAs and reduces insurance rates. However, FEMA regulation 44 CFR 60.6(c) allows communities to apply for an exception to permit and certify the construction of flood proof residential basements in SFHAs. This certification must ensure that the community has demonstrated that the areas of special flood hazard, in which residential basements will be permitted, are subject to shallow and low velocity flooding and adequate flood warning time to notify residents of impending floods. This allows the community to ensure that local floodplain management ordinances are met as well as a certificate that allows homeowners to receive a ''discounted'' flood insurance rate applicable to flood proof basements.

Collection of Information

Title: Residential Basement Floodproofing Certificate.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0033.

Form Numbers. FEMA Form 81–78.

Abstract: FEMA Form 81–78 is only used in communities that have been granted an exception by FEMA to allow the construction of flood proof residential basements in Special Flood Hazard Areas (SFHAs). Homeowners must have a registered professional engineer or architect complete FEMA Form 81–78 for development or inspection of structural design basements and certify that the basement design and methods of construction are in accordance with floodplain management ordinances. In any case homeowners are responsible for the fees involved with these services. Homeowners also provide FEMA Form 81–78 to their insurance agent to receive discounted flood insurance under the National Flood Insurance Program (NFIP).

Affected Public: Individuals or Households.

Number of Respondents: 50.

Frequency of Response: On occasions.

Hour Burden Per Response: 3.25 hrs. There are three inspections during the construction for a flood proof basement. Each inspection is estimated to be 45 minutes, plus one hour for the review of basement design documentation and recordkeeping by insurance agents and community officials. Therefore, 45 minutes times three inspections plus one hour for review and recordkeeping = 3.25 hours per response.

Estimated Total Annual Burden Hours: 163 hours.

Estimated Cost: $16,250. FEMA Form 81–78 has a one time cost when used to certify the design of a flood proof basement by an engineer or architect. The estimated cost of professional engineering services is $100 per hour. This rate is based on $65 per hour of a certified engineer or architect and an overhead cost of approximately $35. Therefore, $100 per hour times 3.25 burden hours = $325 total cost to respondent. There are 50 respondents times $325 per respondent = $16,250 total annual cost to respondents.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, or e-mail address: *InformationCollections@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Tertell, PE, Civil Engineer, Program Policy and Assessment Branch, Mitigation Division, 202–646–3935 for additional information regarding this information collection. You may contact Ms. Anderson for copies of the proposed information collection at the e-mail address above.

Dated: September 15, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–24126 Filed 9–18–03; 12:01 pm]

BILLING CODE 6718–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Approved Recovery Plan for the Tumbling Creek Cavesnail (Antrobia culveri).

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the approved recovery plan for the Tumbling Creek cavesnail (Antrobia culveri), a species that is

federally listed as threatened under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This species is restricted to a single cave stream in Tumbling Creek Cave in Taney County, southwestern Missouri. Actions identified for recovery of the Tumbling Creek cavesnail include stabilizing and augmenting the existing population, properly managing and protecting surface habitat in the cave's recharge area, and ensuring long-term good water quality in Tumbling Creek.

ADDRESSES: This approved recovery plan is available from the following addresses:

1. Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (the fee for the plan varies depending on the number of pages).

2. Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 608 E. Cherry St., Room 200, Columbia, Missouri 65201–7712.

3. The World Wide Web at *http://endangered.fws.gov/RECOVERY/index.html#plans*

FOR FURTHER INFORMATION CONTACT: Dr. Paul McKenzie, Columbia, Missouri, Ecological Services Field Office (see **ADDRESSES** section No. 2 above), telephone (573) 876–1911, ext. 107. The Fish and Wildlife Reference Service may be reached at (301) 492–6403 or (800) 582–3421. TTY users may contact Dr. McKenzie and the Fish and Wildlife Reference Service through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification to threatened status or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended, requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the approved recovery plan, and is summarized in an appendix to the recovery plan.

The Tumbling Creek cavesnail was listed as endangered on August 14, 2002. The number of cavesnails has significantly decreased over the past few decades, to the point where only one individual was found within survey areas between January 11, 2001, and April 22, 2003. A population containing approximately 40 individuals exists in a small area upstream of the area that is regularly surveyed. This species lives on the underside of rocks in areas of Tumbling Creek that have little or no silt. Little is known about the species and its life history, but it is believed to feed on microscopic animals in the stream. Although the exact reason for this species' precipitous decline is unknown, it is believed to be linked to diminished water quality due to habitat degradation in upstream locations within the cave's delineated recharge zone.

The objective of this plan is to provide a framework for the recovery of the Tumbling Creek cavesnail so that protection by the Act is no longer necessary. As recovery criteria are met the status of the species will be reviewed and it will be considered for removal from the list of Endangered and Threatened Wildlife (50 CFR part 17). The Tumbling Creek cavesnail will be considered for reclassification from endangered to threatened when the following criteria have been met: (1) The population is stable or increasing for 10 consecutive years with at least 1,500 individuals; (2) a minimum of 80% of the surface habitat within the recharge area of Tumbling Creek Cave, including a minimum of 75% of all riparian corridors, sinkholes and losing streams, is appropriately managed; and (3) water quality monitoring fails to detect levels of any water pollutant that exceed U.S. Environmental Protection Agency recommended water quality or exceed known toxicity thresholds for the species for 10 consecutive years. The Tumbling Creek cavesnail will be considered for delisting when the above reclassification criteria have been met and the following additional criteria have been achieved: (1) The population is stable or increasing for 10 consecutive years with at least 5,000 individuals; (2) a minimum of 90% of the surface habitat within the recharge area of Tumbling Creek Cave, including a minimum of 85% of all riparian corridors, sinkholes and losing streams, is appropriately managed; and (3) water quality monitoring fails to detect levels of any water pollutant that exceed U.S. Environmental Protection Agency recommended water quality or exceed known toxicity thresholds for this species for 10 consecutive years.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: August 21, 2003.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–24073 Filed 9–18–03; 12:01 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Approved Recovery Plan for the Mead's Milkweed (*Asclepias meadii*).

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the approved recovery plan for the Mead's milkweed (*Asclepias meadii*), a species that is federally listed as threatened under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This species occurs primarily in tallgrass prairie, but also occurs in hay meadows and in thin soil glades or barrens. Actions needed for recovery of the Mead's milkweed include protecting and managing extant populations and potential recovery habitat.

ADDRESSES: This recovery plan is available from the following addresses:

1. Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (the fee for the plan varies depending on the number of pages).

2. Field Supervisor, U.S. Fish and Wildlife Service, Chicago Ecological Services Field Office, 1250 S. Grove Avenue, Suite 103, Barrington, Illinois 60010.

3. The World Wide Web at *http://endangered.fws.gov/RECOVERY/index.html#plans*

FOR FURTHER INFORMATION CONTACT: Mr. Kristopher Lah, Chicago Ecological Services Field Office (see **ADDRESSES** section No. 2 above), telephone (847) 381–2253 ext. 215. The Fish and Wildlife Reference Service may be reached at (301) 492–6403 or (800) 582–3421. TTY users may contact Mr. Lah and the Fish and Wildlife Reference Service through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended, requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the approved recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal agencies and other entities so that they can take these comments into account during the course of implementing recovery actions.

The Mead's milkweed was listed as a threatened species under the Act on September 1, 1988 (53 FR 33982). The Mead's milkweed is currently known to persist in eastern Kansas, Missouri, south-central Iowa, and southern Illinois. Populations no longer occur in Wisconsin and Indiana. Seventy-five percent of the Mead's milkweed populations are in the Osage Plains Physiographic Region in Kansas and Missouri. The remainder of the populations occur in the Shawnee Hills of Illinois; the Southern Iowa Drift Plain in Iowa; the Glaciated Plains, Ozark Border, Ozark Springfield Plateau, the Ozark-St. Francois Mountains, Missouri; and the Glaciated Physiographic Region of Kansas. Mead's milkweed populations have been eliminated by wide-scale agriculture in the eastern part of the species' range. Many large populations occur in private hay meadows where a century of annual mowing has severely reduced genetic diversity by preventing sexual reproduction. Among the surviving populations in eastern Missouri, Illinois, and Iowa, most consist of a few genetically invariant clones that are incapable of reproduction. Population restoration efforts are being made in Illinois, Indiana, and Wisconsin by introducing Mead's milkweed into suitable habitat.

The objective of this plan is to provide a framework for the recovery of the Mead's milkweed so that protection by the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the list of Endangered and Threatened Plants (50 CFR part 17). The Mead's milkweed will be considered for delisting when 21 populations are distributed across plant communities and physiographic regions within the historic range of the species, each of these 21 populations is highly viable, and monitoring indicates that these populations have had a stable or increasing trend for 15 years. A highly viable population has the following characteristics: more than 50 mature plants; seed production; increase in size and maturity; genetically diverse with more than 50 genotypes; 125 acres (50 hectares) or more of late-successional habitat; habitat protection through long-term conservation easements, legal dedication as a nature preserve, or other means; and habitat management by fire in order to maintain a late-successional graminoid vegetation structure that is free of woody vegetation.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: August 21, 2003.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–24075 Filed 9–18–03; 12:01 pm]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1048–1053 (Preliminary)]

Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Australia, Greece, Ireland, Japan, and South Africa of electrolytic manganese dioxide, provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The Commission has determined that U.S. imports from China are negligible.

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On July 31, 2003, a petition was filed with the Commission and Commerce by Kerr-McGee Chemical, LLC, Oklahoma City, OK, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of electrolytic manganese dioxide from Australia, China, Greece, Ireland, Japan, and South Africa. Accordingly, effective July 31, 2003, the Commission instituted antidumping duty investigations Nos. 731–TA–1048–1053 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 11, 2003 (68 FR 47607). The conference was held in Washington, DC, on August 21, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 15, 2003. The views of the Commission are contained in USITC Publication 3633 (September 2003), entitled Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa: Investigations Nos. 731–TA–1048–1053 (Preliminary).

By order of the Commission.

Issued: September 15, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–24095 Filed 9–18–03; 12:01 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Chief Financial Officer; Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts as 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 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data could be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Chief Financial Officer is soliciting comments concerning the proposed *extension* of Department of Labor regulations implementing various provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), including Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest, Penalties and Administrative Costs.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 21, 2003.

ADDRESSES: Address all comments concerning this notice to Thomas Stein, Department of Labor, Room S–4214 Frances Perkins Building, 200 Constitution Ave. NW., Washington, D.C. 20210: 202–693–6832 (phone); 202–693–6964 (fax); *stein.thomas@dol.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), and the Federal Claims Collections Standards, as implemented in the Department of Labor by 29 CFR Part 20, require Federal agencies to afford debtors the opportunity to exercise certain rights before the agency reports a debt to a credit bureau or makes an administrative offset. In the exercise of these rights, the debtor may be asked to provide a written explanation of the basis for disputing the amount of existence of a debt alleged owned the agency. A debtor may also be required to provide asset, income, liability, or other information necessary for the agency to determine the debtor's ability to repay the debt, including any interest, penalties and administrative costs assessed.

Information provided by the debtor will be evaluated by the agency official responsible for collection of the debt in order to reconsider his/her initial decision with regard to the existence or amount of the debt. Information concerning the debtor's assets, income, liabilities, etc., will be used by the agency official responsible for collection of the debt to determine whether the agency's action with regard to administrative offset or the assessment of interest, administrative costs or penalties would create undue financial hardship for the debtor, or to determine whether the agency should accept the debtor's proposed repayment schedule.

If a debtor disputes or asks for reconsideration of the agency's determination concerning the debt, the debtor will be required to provide the information or documentation necessary to state his/her case. Presumably, the agency's initial determination would not change without the submission of new information.

Information such as the debtor's assets, income, and liabilities would typically not be available to the agency unless submitted by the debtor.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Failure of the agency to request the information described would either violate the debtor's rights under the Debt Collection Act of 1982 or limit the agency's ability to collect outstanding debts.

If a debtor wishes to appeal an agency action based on undue financial hardship, he/she may be asked to submit information on his/her assets, income, liabilities, or other information considered necessary by the agency official for evaluating the appeal. Use of the information will be explained to the debtor when it is requested; consent to use the information for the specified purpose will be implied from the debtor's submission of the information.

IV. *Type of Review:* Extension without change.

V. *Agency:* Office of the Chief Financial Officer.

VI. *Title:* Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest penalties and Administrative Costs.

VII. *OMB Number:* 1225–0030.

VIII. *Affected Public:* Individuals or households; businesses or other for-profit; not-for-profit institutions; small businesses or organizations; farms; Federal employees.

IX. *Cite/Reference/Form/etc:* It is estimated that 10% of the individuals and organizations indebted to the Department will contest the proposed collection action and will request an administrative review and/or appeal an action based on undue financial hardship. In some cases the debtor will make one request, but not the other. However, in most cases, it is expected that the debtor will request both actions—first, administrative review of

the determination of indebtnesses, and second, relief because of undue financial hardship.

Annual burden was estimated based on a review of debtor responses to similar requests for information. Debtors typically respond in 1–2 page letters, supplemented by copies of documents. Letters are most often typewritten. Annual burden is based on a 1¾ hour time allotment to prepare and type a letter. Debtors will not be asked to respond on a form.

X. *Estimated Total Burden Hours:* 12,250.

XI. *Estimated Total Burden Cost:*

Estimated annual cost to the Federal Government: $969,080.

Estimated annual cost to the respondents: $293,370.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a part of public record.

Dated: September 15, 2003.

H. Greg James,

Associate Deputy Chief Financial Officer.

[FR Doc. 03–24078 Filed 9–18–03; 12:01 pm]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Notice of Issuance of Insurance Policy (CM–921). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 21, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

Section 423 of the Black Lung Benefits Act, as amended, specifies that a responsible coal mine operator must be insured for payment of black lung benefits and outlines the items each contract of insurance must contain. It enumerates the civil penalties to which a responsible coal mine operator is subject, should these procedures not be followed. Further, 20 CFR Ch. VI, Subpart C, § 726.208–213 requires that each insurance carrier report to the Division of Coal Mine Workers' Compensation (DCMWC) each policy and endorsement issued, cancelled, or reviewed with respect to responsible operators, on such a form as DCMWC may require. The CM–921 is the form completed by the insurance carrier and forwarded to DCMWC for review. This information collection is currently approved for use through March 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to identify operators who have secured insurance for payment of black lung benefits as required by the Act.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Notice of Issuance of Insurance Policy.

OMB Number: 1215–0059

Agency Number: CM–921

Affected Public: Business or other for profit and State, Local or Tribal Government.

Total Respondents: 60

Total Responses: 4,000

Time per Response: 10 minutes

Frequency: Annually

Estimated Total Burden Hours: 667

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $1,800.00

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: September 16, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–24051 Filed 9–18–03; 12:01 pm]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection

requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Request for Employment Information (CA–1027). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 21, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

Payment of compensation for partial disability to injured Federal workers is required by 5 U.S.C. 8106. That section also requires the Office of Workers' Compensation Programs (OWCP) to obtain information regarding a claimant's earnings during a period of eligibility to compensation. The CA–1027, Request for Employment Information, is the form used to obtain information for an individual who is employed by a private employer. The information is used to determine the claimant's entitlement to compensation benefits. This information collection is currently approved for use through March 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information in order to determine a claimant's eligibility for compensation benefits.

Type of Review: Extension
Agency: Employment Standards Administration
Title: Request for Employment Information
OMB Number: 1215–0105
Agency Number: CA–1027
Affected Public: Business or other for-profit.
Frequency: On occasion.
Total Respondents: 500
Total Responses: 500
Time Per Response: 15 minutes
Estimated Total Burden Hours: 125
Total Burden Cost (capital/startup): $0
Total Burden Cost (operating/maintenance): $0

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: September 15, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–24052 Filed 9–18–03; 12:01 pm]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Provider Enrollment Form (OWCP–1168). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 21, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.*, and the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.* These statutes require OWCP to pay for medical and vocational rehabilitation services provided to beneficiaries. In order for OWCP's billing contractor to pay providers of these services with its automated bill processing system, providers must ''enroll'' with one or more of the OWCP programs that administer the statutes by submitting certain profile information, including identifying information, tax I.D. information, and whether they possess specialty or sub-specialty training. Form OWCP–1168 is used to obtain this information from each provider. If this information is not obtained before the provider submits his or her first bill, the bill payment process is prolonged and increases the burden on providers. This information collection is currently approved for use through March 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out a wide range of automated medical bill ''edits'', such as, the identification of duplicate billings, the application of pertinent fee schedules that apply to the programs, utilization review, and fraud and abuse detection. This information is also used to furnish timely and detailed reports to providers on the status of previously submitted bills.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Provider Enrollment Form.

OMB Number: 1215–0137

Agency Number: OWCP–1168

Affected Public: Business or other for-profit.

Total Respondents: 12,600

Total Responses: 12,600

Time per Response: 8 minutes.

Frequency: On Occassion.

Estimated Total Burden Hours: 1,676

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $5,040

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: September 15, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–24053 Filed 9–18–03; 12:01 pm]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed collection; comment request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Representative Fee Request. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 21, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax: (202) 693–1451, e-mail: *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION: *I. Background:* Individuals filing for compensation benefits with the office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act (FECA) and under the Longshore and Harbor Workers' Compensation Act (LHWCA). The fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection request sets forth the criteria for the information, which must be presented by the respondent in order to have the fee approved by the OWCP. The information collection does not have a particular form or format; the respondent must present the information in any format which is convenient and which meets all the required information criteria. This information collection is currently approved for use through March 31, 2004.

II. Review Focus: The Department of Labor is particularly interested in comments which:

• evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to approve representative fees under the two Acts.

Type of Review: Extension.

Agency: Employment Standards Administration

Title: Representative Fee Requests.

OMB Number: 1215–0078.

Affected Public: Business or other for-profit; individuals or households.

Total Respondents: 12,700.

Total Responses: 12,700.

Frequency: On occasion.

Estimated Total Burden Hours: 7,850.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $17,215.

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: September 16, 2003..
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Bruce Bohannon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–24079 Filed 9–18–03; 12:01 pm]

BILLING CODE 4510–CH–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; 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 Computer and Information Science and Engineering—(1115).

Date and Time: October 24, 2003, 8:00 a.m. to 3:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of Information Technology Research. CISE Research Education Themes and Cyber Infrastructure.

Dated: September 17, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–24107 Filed 9–18–03; 12:01 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education (#9487); 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 Environmental Research and Education (9487).

Dates: October 22, 2003, 8:00 a.m.–4:30 p.m. and October 23, 2003, 9:00 a.m.–2:30 p.m.

Place: National Center for Ecological Analysis and Synthesis, 735 State Street, Suite 300, Santa Barbara, CA.

Type of Meeting: Open.

Contact Person: Dr. Margaret Cavanaugh, Office of the Director, National Director Foundation, Suite 1205, 4201 Wilson Blvd, Arlington, Virginia 22230. Phone 703–292–8002.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

October 22 Update on recent NSF environmental activities and programs Discussion of potential ACERE workshops and occasional papers Planning for COV on Biocomplexity in the Environment Program Panel presentations and discussion of ''Synthesis: Challenges of Interdisciplinary Research and Education.''

October 23 Presentation on informatics Committee organization AC–ERE Task Group Meetings and Reports

Dated: September 17, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–24106 Filed 9–18–03; 12:01 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time:

October 7, 2003, 9 a.m.–5:30 p.m. and October 8, 2003, 8:30 a.m.–1:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Room 1235S.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8040.

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

Tuesday, October 7, 2003

- Presentation and Discussion of the Supreme Court Decision on Affirmative Action: Implications for Minority Federal Programs and Educational Institutions
- Discussion of the NSF Criterion 2
- Discussion of the CEOSE Response to the National Science Board Workforce Policy Draft
- Discussion of the CEOSE Response to the Draft 2004 Report on Women, Minorities, and Persons with Disabilities
- Presentation and Discussion of Initiative for Persons with Disabilities
- Discussion with NSF Director
- Reports by CEOSE Liaisons on NSF Advisory Committees
- Reports by CEOSE Ad Hoc Subcommittees Chairs

Wednesday, October 8, 2003

- Discussion of Overarching Questions to Set the Future Agenda for CEOSE
- Presentation and Discussion of Pipeline Issues as Cultural Issues
- Special Reports
- Discussion of Plans for the CEOSE 2004 Biennial Report to Congress
- Refinement of Recommendations Resulting from the Meeting

Dated: September 17, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–24105 Filed 9–18–03; 12:01 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 171, ''Duplication Request''.

3. *The form number if applicable:* NRC Form 171.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Individuals or companies requesting document duplication.

6. *An estimate of the number of annual responses:* 15,800.

7. *The estimated number of annual respondents:* 15,800.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,883 hours for 15,800 requests.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* This form is utilized by individual members of the public

requesting reproduction of publicly available documents in NRC's Headquarters Public Document Room. Copies of the form are utilized by the reproduction contractor to accompany the orders and are then discarded.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 22, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0066), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 12th day of September, 2003.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–24090 Filed 9–18–03; 12:01 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc., et al., Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern Nuclear Operating Company, Inc. (the licensee) to withdraw its July 11, 2002, as supplemented by letter dated August 19, 2003, application for proposed amendment to Renewed Facility Operating License DPR–57 and to Renewed Facility Operating License NPF–5 for the Edwin I. Hatch (Hatch) Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The proposed amendment would have revised the Technical Specifications (TSs) to delete TS 3.3.1.1.I.2, which requires returning the Oscillating Power Range Monitor to operable status within 120 days of discovering its inoperability.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 6, 2002 (67 FR 50959). However, by letter dated September 12, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 11, 2002, as supplemented by letter dated August 19, 2003, and the licensee's letter dated September 12, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of September 2003.

For the Nuclear Regulatory Commission.

Steve Bloom,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–24092 Filed 9–18–03; 12:01 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–06583]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U.S. Nuclear Regulatory Commission Byproduct Material License No. 45–09347–01 Commonwealth of Virginia; Division of Consolidated Laboratory Services

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering terminating Byproduct Material License No. 45–09347–01 to authorize the release of the licensee's facilities in Richmond, Virginia for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

The NRC has reviewed the results of the final survey of the Commonwealth of Virginia, Division of Consolidated Laboratory Services facility in Richmond, Virginia. The Commonwealth of Virginia was authorized by the NRC from June 7, 1972, until the present to use Nickel 63 and Hydrogen 3 in gas chromatographs for sample analysis. In 1996, 1997, 1998, and 1999, routine leak tests disclosed minor contamination of Nickel 63 chromatograph inlets and exits. Each time the device was removed from service and returned to the manufacturer for repair. There was no evidence of contamination beyond the device. In July 2003, the Commonwealth of Virginia ceased operations with licensed materials at the One North Fourteenth Street location in Richmond, Virginia, and requested that the NRC amend the license to remove this place of use. The Commonwealth of Virginia has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has evaluated the Commonwealth of Virginia's request and the results of the surveys, and has developed an EA in accordance with the requirements of 10 CFR part 51. Based on the staff evaluation, the conclusion of the EA is a FONSI on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

The Commonwealth of Virginia has requested release, for unrestricted use, of their building located at One North Fourteenth Street, in Richmond, Virginia, as authorized for use by NRC License No. 45–09347–01. This license was issued on June 13,1963, and later amended to authorize the Fourteenth Street location as a place of use on June 7, 1972, and amended periodically since that time. NRC-licensed activities performed at the Fourteenth Street location in Richmond, Virginia were limited to sample analysis. These activities were typically performed on bench tops. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased completely in July 2003, and the licensee requested release of the facility for unrestricted

use. Based on the licensee's historical knowledge of the site and the condition of the facility, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in subpart E of 10 CFR part 20, ''Radiological Criteria for License Termination.''

The Proposed Action

The proposed action is to amend NRC Radioactive Materials License Number 45–09347–01 to release the licensee's facility located at One Fourteenth Street in Richmond, Virginia, for unrestricted use. By letters dated July 1, 2003 and August 6, 2003, the Commonwealth of Virginia provided survey results which demonstrate that the Fourteenth Street location in Richmond, Virginia is in compliance with the radiological criteria for license termination in subpart E of 10 CFR part 20, ''Radiological Criteria for License Termination.'' No further actions will be required on the part of the licensee to remediate the facility.

Need for the Proposed Action

The purpose of the proposed action is to verify that residual radioactivity at the licensee's One Fourteenth Street building in Richmond, Virginia, permits release of the property for unrestricted use and termination of the license. The need for the proposed action is to comply with NRC regulations and the Timeliness Rule. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of a facility for unrestricted use that ensures protection of the public health and safety and environment.

Alternative to the Proposed Action

The only alternative to the proposed action of amending the license to release the Richmond, Virginia facility will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any further activities with licensed materials at this location. Maintaining the areas under a license would reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The Fourteenth Street facility in Richmond, Virginia is a four story pre-cast stone and concrete building. Work with radioactive materials was done on work benches located within laboratories in the building. The building is located within the central office district of downtown Richmond. This area consists primarily of corporate and professional offices located in three and four story buildings.

The NRC staff has reviewed the surveys performed by the Commonwealth of Virginia to demonstrate compliance with the 10 CFR 20.1402 license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the decommissioning of the Commonwealth of Virginia facility are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Commonwealth of Virginia facility is in compliance with 10 CFR 201402, ''Radiological Criteria for Unrestricted Use.'' The NRC has found no other activities in the area that could result in cumulative impacts.

Additionally, no other non-radiological impacts have been identified. The Virginia State Historic Preservation Officer was contacted and responded by letter dated February 24, 2003, with no objection. Also, the Nuclear Regulatory Commission (NRC) staff has determined that Section 7 consultation under the Endangered Species Act is not required because the proposed action is administrative/procedural in nature and will not affect listed species or critical habitat.

Agencies and Persons Contacted and Sources Used

This EA was prepared entirely by the NRC staff. The Virginia Department of Game and Inland Fisheries Information Services (VFWIS) was contacted by the licensee and had no objection. The Commonwealth of Virginia's Department of Historical Resources was contacted and responded by letter dated February 24, 2003, with no objection.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license termination to release the Commonwealth of Virginia facility located at One North Fourteenth Street, in Richmond, Virginia, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined that preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey—Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, Health Physicist.

List of References

1. NRC License No. 45–09347–01 inspection and licensing records.
2. Commonwealth of Virginia Amendment Request Letter from James L. Pearson, to NRC dated July 1, 2003. (ML031910443)
3. Commonwealth of Virginia Letter from Edwin F. Shaw, Jr. to NRC dated August 6, 2003. (ML032230412)
4. The Environmental Company, Inc. ''Environmental Impact Report, Proposed Demolition of DCLS Laboratory & Motor Fuels Testing Laboratory & Construction of Parking Garage'' dated November 2002.
5. Title 10 Code of Federal Regulations Part 20, Subpart E, ''Radiological Criteria for License Termination.''
6. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, ''Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination.''
7. NRC. NUREG–1757 ''Consolidated NMSS Decommissioning Guidance,'' Final Report dated September 2002.
8. NRC. NUREG 1496 ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' Final Report dated July 1997.
9. Commonwealth of Virginia Department of Historical Resources ''Demolition of DCLS Laboratories and Construction of Parking Garage Richmond, Virginia DHR File # 2002–1618'' To Mr. Chinh T. Vu, Department of General Services dated February 24, 2003.

III. Finding of No Significant Impact

Based upon the EA, the staff concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One

White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.* Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. Telephone 404–562–4739.

Dated at Atlanta, Georgia the 9th day of September, 2003.

For the Nuclear Regulatory Commission.

Douglas M. Collins,

Director, Division of Nuclear Materials Safety, Region II.

[FR Doc. 03–24091 Filed 9–18–03; 12:01 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) §§ 50.44 and 50.46, and 10 CFR part 50, appendix K, for Renewed Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia. Pursuant to 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, as these requirements only allow the use of either Zircaloy or ZIRLO as fuel rod cladding material. The design of the Framatome Advanced Mark-BW fuel planned for use at North Anna, Units 1 and 2, utilizes the advanced zirconium-based alloy M5 for the fuel assembly structural tubing and grids, and fuel rod cladding.

By letter dated March 28, 2002, as supplemented by letters dated May 13, June 19, and November 15, 2002, and May 6, May 9, May 27, June 11 (2 letters), July 18, August 26, September 4, and September 5, 2003, the licensee requested an exemption from the requirements of 10 CFR 50.44 and 10 CFR 50.46. During the review of this exemption request, the NRC staff determined that an exemption from the requirements of 10 CFR part 50, appendix K, was also needed. As a result, the NRC staff has initiated the proposed exemption to 10 CFR part 50, appendix K on its own initiative.

The Need for the Proposed Action

The Commission's regulations in 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, appendix K, specifically refer to light-water reactors containing fuel consisting of uranium oxide pellets enclosed in Zircaloy or ZIRLO cladding. The proposed advanced zirconium-based cladding (designated as M5) is not the same chemical composition as Zircaloy or ZIRLO, and the licensee proposes to use Framatome Advanced Mark-BW fuel, which contains M5 cladding. Accordingly, the proposed exemption is needed for the licensee to use the Framatome Advanced Mark-BW fuel containing M5 material.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with regard to radiological impacts to the general public, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. The use of M5 fuel cladding will not result in a change in the operation or configuration of the facility. There will be no change in the level of controls or methodology used for processing radioactive effluents or handling solid radioactive waste. The NRC staff has also determined that the M5 fuel cladding will perform in service similarly to the current resident fuel. Accordingly, the proposed exemption will not impact the previously analyzed radiological consequences of design-basis accidents. In addition, the proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement (FES) related to the operation of North Anna, Units 1 and 2, issued by the Commission in April 1973, and the associated addenda to the FES issued in November 1976 and August 1980.

Agencies and Persons Consulted

On June 20, 2003, the staff consulted with Mr. Les Foldesi of the Virginia Department of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 28, 2002, and supplements dated May 13, June 19, and November 15, 2002, and May 6, May 9, May 27, June 11 (2 letters), July 18, August 26, September 4, and September 5, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have

access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of September 2003.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation

[FR Doc. 03–24093 Filed 9–18–03; 12:01 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on November 12–13, 2003. The meeting will take place at the address provided below.

DATES: All sessions of the meeting will be open to the public with the exception of the first session, which will be closed to conduct administrative business related to internal personnel rules and/or practices of ACMUI members, and to provide safeguards training to ACMUI members. A sample of agenda items include: (1) The NRC method of dose reconstruction; (2) Update: Listing Sources by Model/Serial Number on Licenses; (3) Update: National Materials Program Pilot Project on Operating Experience Evaluation; and, (4) Update: Emerging Technologies.

ADDRESS FOR PUBLIC MEETING: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Conference Room T2B3, 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

CONDUCT OF THE MEETING: Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, MD 20852–2738. Submittals must be postmarked by October 17, 2003, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about December 1, 2003. Minutes of the meeting will be available on or about January 15, 2004.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

Dated: September 16, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–24089 Filed 9–18–03; 12:01 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rules 17h–1T and 17h–2T, SEC File No. 270–359, OMB Control No. 3235–0410

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below. The Code of Federal Regulation citations to this collection of information are the following rules: 17 CFR 240.17h–1T and 17 CFR 240.17h–2T.

Rule 17h–1T requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires a broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T is necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities is reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 166 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 166 respondents require approximately 10 hours per year, or 2.5 hours per quarter, to maintain the records required under Rule 17h–1T, for an aggregate annual burden of 1,660 hours (166 respondents × 10 hours). In addition, each of these 166 respondents must make five annual responses under Rule 17h–2T. These five responses require approximately 14 hours per respondent per year, or 3.5 hours per quarter, for an aggregate annual burden of 2,324 hours (166 respondents X 14 hours). In addition, there are approximately seven new respondents per year that must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the Rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the Rules requires three hours, thus requiring an aggregate of 28 hours (7 new respondents × 4 hours). Thus, the total compliance burden per year is approximately 4,012 burden hours (1,660 + 2,324 + 28).

Rule 17h–1T specifies that the records required to be maintained under the Rule must be preserved for a period of not less than three years. There is no specific retention period or record keeping requirement for Rule 17h–2T. The collection of information is mandatory and the information required to be provided to the Commission pursuant to these Rules are deemed confidential, notwithstanding any other provision of law under section 17(h)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(h)(5)) and section 552(b)(3)(B) of the Freedom of Information Act (5 U.S.C. 552(b)(3)(B)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 15, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24087 Filed 9–18–03; 12:01 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48494; File No. SR–Amex–2003–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Make Permanent Procedures on the Amex in Nasdaq National Market Securities

September 16, 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 September 5, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to implement on a permanent basis crossing procedures on the Amex in Nasdaq National Market securities under Commentary .06 to Amex Rule 126(g). These procedures are currently implemented on a pilot basis, and are set to expire on September 30, 2003. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex has implemented crossing procedures under Amex Rule 126(g), Commentary .06 on a pilot basis extending until September 30, 2003.[6] The Exchange initially filed the pilot program on July 18, 2002[7] and subsequently extended the program until March 31, 2003.[8] The Exchange proposes that the procedures under Amex Rule 126(g), Commentary .06 become permanently effective.

Amex Rule 126(g), Commentary .06 provides that a floor broker is permitted to effect cross transactions in Nasdaq National Market securities involving 5,000 shares or more without interference by the specialist or market makers if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security. These requests place the specialist and market makers on notice that the floor broker intends to cross within the bid-offer spread. This arrangement ensures that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but precludes the specialist or market maker from breaking up a cross transaction after the cross transaction is presented. The floor broker retains the ability to present both sides of the order at the post if the customers so desire.

The Exchange is making no change to Amex Rule 126(g), Commentary .06 as filed with the Commission in SR–Amex–2002–58, other than to implement Commentary .06 on a permanent basis. The Exchange is making no change to the manner in which crossing procedures under the pilot program currently operate.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided the Commission with notice of its intention to file this proposed rule change on August 29, 2003. The Commission reviewed the pre-filing notice and advised the Amex to file the proposed rule change. *See* August 29, 2003 email letter to Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, from Joseph P. Morra, Special Counsel, Division of Market Regulation (''Division''), Commission. The Amex asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 47622 (April 2, 2003), 68 FR 17416 (April 9, 2003(SR–Amex–2003–20).

[7] *See* Securities Exchange Act Release No. 46309 (August 5, 2002), 67 FR 59102 (August 9, 2002)(SR–Amex–2002–58).

[8] *See* Securities Exchange Act Release No. 46635 (October 10, 2002), 67 FR 64424 (October 18, 2002)(SR–Amex–2002–74).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will make the pilot permanent without requiring the Amex to file another proposed rule change to extend the pilot long enough to allow the 30-day operative period to expire. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–79 and should be submitted by October 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24088 Filed 9–18–03; 12:01 pm]

BILLING CODE 8010–01–U

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Supplemental Security Income (SSI) for the Aged, Blind and Disabled; Extension of the SSI Work Incentives Demonstration Project

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the extension of the SSI Work Incentives Demonstration Project.

SUMMARY: We are announcing an extension of the period for testing the use of certain modifications of the SSI program rules for participants in the SSI Work Incentives Demonstration Project. We are conducting this demonstration project under the authority of section 1110(b) of the Social Security Act (the Act). Under this project, the Social Security Administration (SSA) is testing the effectiveness of altering certain provisions of the SSI program under title XVI of the Act as an incentive to encourage SSI recipients with disabilities or blindness to work for the first time, return to work, or increase their work activity and earnings. We are conducting this demonstration project in selected States which we are assisting under our State Partnership Initiative to develop innovative and enhanced systems for the coordination and delivery of services to assist persons with disabilities to obtain employment and reduce their dependence on government benefit programs.

We are extending the period during which the modifications of the SSI program rules will apply to participants in the SSI Work Incentives Demonstration Project in order to obtain sufficient data to permit a thorough evaluation of the effects that the altered SSI program rules and enhanced service delivery systems in the selected States have on encouraging SSI recipients to enter and remain in the workforce and reduce their dependence on SSI benefits and benefits under other government programs. We are publishing this notice in accordance with 20 CFR 416.250(e).

DATES: We are extending the date on which the alternative SSI program rules generally end for project participants from September 30, 2003 to September 30, 2004. We are extending the starting date of the 24-month spend-down period for the Independence Account, which is a feature of the alternative rules that apply to project participants, from October 1, 2003 to October 1, 2004. If we decide to extend the period for testing the alternative SSI program rules beyond these dates, we will publish a notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: B. J. Olson, Social Security Administration, Office of Program Development and Research, 6401 Security Boulevard, 3531 Annex Building, Baltimore, Maryland 21235–6401; phone (410) 965–9990 or through e-mail to *b.j.olson@ssa.gov*.

SUPPLEMENTARY INFORMATION:

The SSI Work Incentives Demonstration Project

On January 25, 2001, we published a notice in the **Federal Register** (66 FR 7826) announcing and describing the SSI Work Incentives Demonstration Project. Under this project, we are testing, on a demonstration basis, the effectiveness of certain modifications of the SSI program rules as incentives for SSI recipients with disabilities or blindness to attempt work activity or increase their level of work and earnings. For SSI recipients who are participating in the demonstration project, we are waiving certain provisions of title XVI of the Act and the implementing regulations and applying alternative rules for SSI program purposes. The alternative rules which apply to project participants involve modifications of the SSI program rules relating to the counting of a recipient's income and resources for SSI program purposes, and to the initiation of certain continuing disability reviews for recipients of SSI benefits based on disability or blindness.

We are conducting the SSI Work Incentives Demonstration Project under the authority of section 1110(b) of the Act. Section 1110(b) of the Act authorizes the Commissioner of Social Security to waive any of the requirements, conditions, or limitations of title XVI of the Act to the extent necessary to carry out experimental, pilot, or demonstration projects which, in the Commissioner's judgment, are likely to assist in promoting the objectives or facilitate the administration of the SSI program.

We are conducting the SSI Work Incentives Demonstration Project in connection with certain return-to-work projects for which we awarded

cooperative agreement funds to certain States under our State Partnership Initiative (SPI) program. In 1998, under the SPI program, SSA awarded five-year cooperative agreements to a number of States to develop innovative and enhanced systems for the coordination and delivery of rehabilitation, employment, and other support services to assist adults who are recipients of SSI benefits based on disability or blindness, or who are Social Security Disability Insurance (SSDI) beneficiaries, to enter and remain in the workforce and reduce their dependence on SSI and SSDI benefits.

We are conducting the SSI Work Incentives Demonstration Project, which consists of two models, in conjunction with the testing of the enhanced service delivery systems employed in the SPI projects in the States of California, New York, Vermont and Wisconsin. Our overall objective in conducting this project is to demonstrate whether certain modifications of the SSI program rules, in combination with the enhanced service delivery systems employed in the SPI projects in these States, are effective in promoting the return-to-work efforts of disabled or blind SSI recipients. The four States are collecting data for each project participant regarding identifying information, educational and vocational background, services provided, work attempts and outcomes, and use of the alternative SSI program rules. Each State will use the data to evaluate the effectiveness of the alternative SSI program rules and enhanced service delivery systems under the project in that State. The data will also be used by evaluators under contract with SSA to perform a process evaluation and a net outcomes evaluation.

Participants in the SSI Work Incentives Demonstration Project

To be a participant in the SSI Work Incentives Demonstration Project, an individual must be a disabled or blind SSI recipient or concurrent SSI/SSDI beneficiary who is enrolled as a participant in the SPI cooperative agreement project in California, New York, Vermont or Wisconsin. An enrollee in one of the SPI projects becomes a participant in the SSI Work Incentives Demonstration Project by providing a voluntary written consent to be a participant in the SSI demonstration project. The individual's consent to participate in the SSI Work Incentives Demonstration Project may be revoked by the individual at any time. In addition, an individual's status as a participant in the SSI Work Incentives Demonstration Project will end if his or her participation in the SPI project ends.

Alternative SSI Program Rules That Apply to Participants in the SSI Work Incentives Demonstration Project

The alternative SSI program rules that we are testing under the demonstration project consist of the following four elements. Elements 1 through 3 apply to participants in the project who are SSI-only recipients or concurrent SSI/SSDI beneficiaries. Element 4 only applies to participants who are SSI-only recipients; it does not apply to concurrent SSI/SSDI beneficiaries.

1. ''Three-for-Four''—Increase Earned Income Exclusion

SSA is testing the effectiveness, as a work incentive, of using a modified earned income exclusion in determining an SSI recipient's countable income for SSI program purposes. Under this alternative rule, SSA will exclude the first $65 of a project participant's monthly earned income plus an additional 75 percent of any remaining gross monthly earned income, or an additional $3 for every $4 earned. This differs from the current rules under which SSA excludes the first $65 of monthly earned income plus an additional 50 percent of any remaining gross monthly earned income, or an additional $1 for every $2 earned.

2. ''Unearned Income Related to Work Activity''—Treat as Earned Income

SSA is testing, as an additional work incentive, treating certain types of temporary unearned income related to work activity in the same manner as earned income is treated under element 1 above for purposes of determining an SSI recipient's countable income. That is, for a project participant, SSA will exclude the first $65 per month of certain types of unearned income that result from work activity plus 75 percent of the remainder of such unearned income in a month. This differs from current SSI rules under which SSA excludes the first $20 of unearned income in a month. The only types of temporary unearned income that result from work activity that are subject to this alternative rule are: unemployment insurance benefits, worker's compensation benefits, State disability benefits, and disability-related benefits paid through private insurance plans. Other types of benefits, such as Social Security benefits or veterans benefits from the Department of Veterans Affairs, will continue to be treated as unearned income based on current rules.

3. ''Independence Account''—Create New Resource Exclusion

SSA is testing the use of an additional resource exclusion as a work incentive. Under this alternative rule, SSA allows a project participant to maintain an ''Independence Account'' as a resource, beyond the current $2,000 resource limit. For purposes of determining an SSI recipient's countable resources, SSA will exclude monies conserved (including any accrued interest) in one separate account for saved wages, not to be commingled with other monies, and with deposits limited to 50 percent of gross earnings, not to exceed $8,000 per year. The account may be a checking or savings account, certificate of deposit, money market or mutual fund account. It cannot be any type of retirement plan such as an IRA, Roth IRA, 401(k) plan, or 403(b) plan. The period during which a participant is permitted to deposit a portion of his or her wages into an ''Independence Account'' will end when this altered SSI program rule terminates or, if earlier, when he or she ceases to be a project participant. Following the close of the period for making deposits, SSA will provide the individual a 24-month spend-down period during which the resource exclusion under this alternative rule will continue to apply to monies in the account.

4. ''Medical Continuing Disability Reviews''—Suspend for Certain Participants

SSA is testing suspending medical continuing disability reviews (CDRs) as a work incentive for certain individuals. SSA is suspending medical CDRs for participants in the demonstration project who are SSI-only recipients with ''medical improvement possible'' or ''medical improvement not expected'' diaries. For a project participant meeting these criteria, SSA will not initiate a medical CDR during the period this alternative rule is in effect, so long as the individual remains a project participant. The suspension of CDRs does not apply to redeterminations of disability that are required for childhood disability recipients who attain age 18.

The Two Models of the SSI Work Incentives Demonstration Project

Model one of the demonstration project uses the alternative SSI program rules described in items 1 through 4 above, and is being carried out in conjunction with the SPI projects in California, New York, and Wisconsin. Model two of the demonstration project uses the alternative SSI program rules

described in items 2 through 4 above, and is being carried out in conjunction with the SPI project in Vermont.

Extension of the Period for Testing the Alternative SSI Program Rules

In the notice announcing the implementation of the SSI Work Incentives Demonstration Project, published at 66 FR 7826 (January 25, 2001), we indicated that, with the exception of the spend-down period for the ''Independence Account,'' the alternative SSI program rules would cease to apply to project participants after September 30, 2003. For an individual who is a participant on September 30, 2003, we indicated that the 24-month spend-down period for the ''Independence Account'' would begin on October 1, 2003.

We are extending the period during which the alternative SSI program rules will be in effect for participants in the SSI Work Incentives Demonstration Project for one year. We are extending the period for testing in order to produce sufficient data to permit a thorough evaluation of the effects that the altered SSI program rules and enhanced service delivery systems in the selected States have on encouraging SSI recipients to enter and remain in the workforce and reduce their dependence on SSI benefits and benefits under other government programs. To enable additional testing for one year of the combined effects of the altered SSI program rules and enhanced service delivery systems in the selected States, we are providing a 12-month extension of the cooperative agreement project period and the necessary additional funding to the SPI projects in the four States to enable them to continue to provide services for the extended period to SSI recipients (including concurrent SSI/SSDI beneficiaries) who are enrolled in the SPI projects as of September 30, 2003, and to collect and evaluate data for this period.

Except for the spend-down period for the ''Independence Account,'' we are extending the ending date of the period during which the alternative SSI program rules apply to a participant in the SSI Work Incentives Demonstration Project from September 30, 2003 to September 30, 2004. With the exception of the spend-down period, the alternative SSI program rules will cease to be effective after September 30, 2004.

We are extending the starting date of the 24-month spend-down period for the ''Independence Account'' for a project participant from October 1, 2003 to October 1, 2004. The spend-down period will begin on October 1, 2004 (or, if earlier, when an individual ceases to be a participant in the SSI demonstration project) and will end after a period of 24 months.

Additional information about the SSI Work Incentives Demonstration Project, a description of the specific statutory and regulatory provisions being waived to conduct the project, and a description of the SPI projects in California, New York, Vermont and Wisconsin can be found in the notice announcing the implementation of the SSI Work Incentives Demonstration Project which we published in the **Federal Register** on January 25, 2001 (66 FR 7826).

Dated: September 16, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–24045 Filed 9–18–03; 12:01 pm]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4498]

Culturally Significant Objects Imported for Exhibition Determinations: ''Russian Odyssey: Riches of the State Russian Museum''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Russian Odyssey: Riches of the State Russian Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Florida International Museum, St.

Petersburg, FL, from on or about November 2, 2003 until on or about April 4, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 16, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–24104 Filed 9–19–03; 12:01 pm]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of the National Parks Overflights Advisory Group.

ACTION: Notice of meeting.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA), in accordance with the National Parks Air Tour Management Act of 2000, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG). The meeting will take place October 21, 2003, in Jackson Hole, Wyoming. This notice informs the public of the dates, location, and agenda for the meeting.

DATES: The NPOAG will meet October 2003, at the Wort Hotel, 50 N. Glenwood Street, Jackson, Wyoming, 83001 (telephone 1–800–250–1623).

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Manager, Executive Resource Staff, Western Pacific Region, Federal Aviation Administration, 1500 Aviation Blvd., Hawthorne, CA 90250, telephone: (310) 725–3800 or *Barry.Brayer@faa.gov,* or Howie Thompson, National Park Service, Natural Sounds Program, 12795 W. Alameda Parkway, Denver, CO 80225, telephone: (303) 969–2461, or *Howie_Thompson@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000, enacted on April 5, 2000, as Public Law 106–181 (Pub. L. 106–181), required the establishment of a National Parks Overflights Advisory Group within 1 year after its enactment. The NPOAG was to be a balanced group representative of general aviation, commercial air tour operations, environmental concerns, and Indian tribes. The duties of the NPOAG included providing advice, information,

and recommendations to the Director, NPS, and to the Administrator, FAA, on the implementation of Public Law 106–181, on quiet aircraft technology, on other measures that might accommodate interests to visitors to national parks, and, at the request of the Director and Administrator, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

On March 12, 2001, the FAA and NPS announced the establishment of the NPOAG (48 FR 14429). Current members of the NPOAG are Heidi Williams (general aviation), David Kennedy, Richard Larew, and Alan Stephens (commercial air tour operations), Chip Dennerlein, Charles Maynard, Steve Bosak, and Susan Gunn (environmental interests), and Germaine White and Richard Deertrack (Indian tribes).

The first meeting of the advisory group was held August 28–29, 2001, in Las Vegas, Nevada; the second meeting was held October 4–5, 2002, in Tusayan, Arizona.

Agenda for the October 2003 Meeting

As a tentative agenda, the NPOAG will review the status of the AMTP process to date, the data acquisition and analysis process (Hawaii Volcanoes National Park and Zion studies), receive an update on quiet technology, and discuss the status of interim operating authority for air tour operators. A final agenda will be available the day of the meeting.

Attendance at the Meeting

Although this is not a public meeting, interested persons may attend. Because seating is limited, if you plan to attend, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT** so that meeting space may accommodate your attendance.

Record of the Meeting

If you cannot attend the meeting, a summary record of the meeting will be made available by the Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591. Contact is Linda Williams (202) 267–9683, or *linda.l.williams@faa.gov.*

Issued in Washington, DC, on September 16, 2003.

David E. Cann,

Acting Director, Flight Standards Service.

[FR Doc. 03–24139 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–31–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–YNG To Impose and Use Excess Revenue From a Passenger Facility Charge (PFC) at Youngstown-Warren Regional Airport, Youngstown, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the excess revenue from a PFC at Younstown-Warren Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 22, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Bower of the Western Reserve Port Authority at the following address: 1453 Youngstown-Kingsville Road, NE., Vienna, OH 44473–9797.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Western Reserve Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jason K. Watt, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan, (734) 229–2906. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the excess revenue from a PFC at Youngstown-Warren Regional Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 3, 2003, the FAA determined that the application to impose and uses the excess revenue from a PFC submitted by Western Reserve Port Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 3, 2003.

The following is a brief overview of the application.

Total excess PFC revenue: $36,163

Brief description of proposed projects: Runway safety area modifications and terminal sanitary sewer, passenger facility charge administration.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Western Reserve Port Authority.

Issued in Des Plains, Illinois, on September 11, 2003.

Barbara J. Jordan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–24144 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP03–003

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice describes the reasons for denying a petition (DP03–003) submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency conduct a ''Petition Analysis * * * specific to problems of Vehicle Speed Control linkages which results [sic] in sudden, unexpected excessive acceleration even though there is no pressure applied to the accelerator pedal.''

FOR FURTHER INFORMATION CONTACT: Bob Young, Office of Defects Investigation (ODI), NHTSA; 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4806.

SUPPLEMENTARY INFORMATION: In a petition dated April 25, 2003, Mr. Peter Boddaert requested NHTSA to conduct a Petition Analysis ''covering Lexus cars, model years 1997 to 2000, model series 300 & 400.'' Mr. Boddaert, made this request after experiencing at least three events involving alleged unintended engine speed increase in his model year (MY) 1999 Lexus LS 400. The third of these resulted in a crash when his vehicle rear-ended another stopped at a traffic light. According to the petitioner, his Lexus was inspected by multiple dealers, and no mechanical

cause was ever identified that would explain what happened in any of the three incidents.

In support of his petition, Mr. Boddaert cites a number of consumer complaints in NHTSA's database concerning ''vehicle speed control'' in the subject vehicles. Included among the thirty-six reports he cites is one involving a Lexus that ''collided with five other cars in the space of one half mile before it could be stopped.''

NHTSA has reviewed the material cited by the petitioner. The results of this review and our analysis of the petition's merit is set forth in the DP03–003 Petition Analysis Report, published in its entirety as an appendix to this notice.

For the reasons presented in the petition analysis report, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued as a result of granting Mr. Boddaert's petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: September 15, 2003.

Kathleen C. DeMeter,

Acting Associate Administrator for Enforcement.

Appendix—Petition Analysis—DP03–003

1.0 Introduction

On May 13, 2003 the National Highway Traffic Safety Administration (NHTSA) received an April 25, 2003 letter from Mr. Peter Boddaert asking the agency to conduct a ''petition analysis'' of 1997 through 2000 model year (MY) Lexus 300 and 400 series vehicles (subject vehicles) for ''problems of Vehicle Speed Control linkages which results [sic] in sudden, unexpected excessive [vehicle] acceleration even though there is no pressure applied to the accelerator pedal.'' In support of his petition, Mr. Boddaert cites consumer complaints he found on NHTSA's Web site concerning ''vehicle speed control'' in the subject vehicles. Included among these reports is one involving a Lexus that ''collided with five other cars in the space of one half mile before it could be stopped.''

The petitioner contends that, of the 271 Lexus-related complaints in NHTSA's consumer complaint database, 36 (13%) have been coded by the agency as relating to ''vehicle speed control.'' According to the petitioner, this report frequency indicates there is a ''significant'' safety concern with the subject Lexus vehicles.

To buttress his claim, the petitioner relates his own experience as follows:

In my own case, I own [owned, he has since traded for another vehicle] a 1999 Lexus LS400 and have experienced this problem at least three times. The first time was reported to NHTSA on ODI [complaint] #760680. The most recent occurrence was on Friday April 17th in the state of Virginia when, without warning and without me touching the accelerator pedal the car accelerated forward rear ending the car ahead of me. For this I received a police citation. On the previous occasions when this has happened the car has been to the Lexus dealer for inspection. Each time the dealer says they cannot replicate the problem and can find nothing wrong. From all the other ODI reports, the response from the dealer is the same.

In analyzing the petitioner's allegations and preparing a response, we:

- Reviewed the petitioner's April 25, 2003 letter and two other complaints he filed with the agency on April 14, 2003 and April 28, 2003, both concerning unintended engine speed increase in his MY 1999 LS 400.[1]
- Reviewed a report documenting NHTSA's study of sudden acceleration. ''An Examination of Sudden Acceleration'' was published in January 1989 and is available from the National Technical Information Service; Springfield, VA 22161, as report number DOT–HS–807–367.
- Reviewed two NHTSA reports (MF99–002 and MF99–002–Supplemental) concerning a fatal sudden acceleration crash occurring in Minneapolis, MN on December 4, 1998.
- Reviewed information gathered and analyzed during NHTSA's assessment of petition DP99–004 (Sudden Acceleration, MY 1988 Lincoln Town Car).
- Reviewed information gathered and analyzed during NHTSA's assessment of petition DP02–005 (Sudden Acceleration, MY 1991–95 Jeep Cherokee/Grand Cherokee).
- Reviewed information gathered and analyzed during NHTSA's Preliminary Evaluation, PE02–035 (Brake/Acceleration Pedal Separation— Ford Taurus/Sable MY 2000–2001).
- Reviewed our consumer complaint database for ''sudden acceleration'' and/or ''vehicle speed control'' related reports received through July 9, 2003 concerning Lexus, Cadillac, and Lincoln vehicles.
- Reviewed vehicle manufacturer information provided to us during various sudden acceleration investigations.
- Inspected a MY 1999 Lexus LS 400 to assess the operation of its various engine and brake control systems and their interface with the driver.
- Obtained vehicle production quantity information from Wards.
- Reviewed various Lexus vehicle service manuals.
- Reviewed various Lexus vehicle owner manuals.

2.0 The Issue of Sudden Acceleration

2.1 ''Sudden Acceleration (SA)''

The term ''sudden acceleration'' (SA) has been used (and misused) to describe vehicle events involving any unintended speed increase. However, the term properly refers to an ''unintended, unexpected, high-power acceleration from a stationary position or a very low initial speed accompanied by an apparent loss of braking effectiveness.''[2] The definition includes ''braking effectiveness'' because operators experiencing a SA incident typically allege they were pressing on the brake pedal and the vehicle would not stop. ''Sudden acceleration'' does not describe unintended events that begin after vehicles have reached intended roadway speeds.

2.2 The NHTSA Study

On March 7, 1989, NHTSA released a report, authored by John Pollard and E. Donald Sussman, titled ''An Examination of Sudden Acceleration,'' documenting the agency's efforts (the ''Study'') to determine what was causing a relatively large number of crashes in certain model vehicles due to apparent unintended (and substantial) engine power increase and alleged simultaneous loss of braking effectiveness. Typically, these events began while the vehicle was stationary, shortly after the driver had first entered it. They frequently ended in a crash. While the phenomenon affected all automatic transmission-equipped cars sold in the U.S., some had notably higher occurrence rates, with the Audi 5000 eclipsing them all.[3] The issue of ''runaway'' Audi 5000s had been the subject of NHTSA defect investigations and safety recalls, class action lawsuits, considerable media coverage, and public controversy. Internationally, other governments investigated the phenomenon during roughly the same time period.[4]

To help resolve the issue and thoroughly explore topics not fully investigated previously, NHTSA Administrator Diane Steed ordered an independent review of SA in October 1987 (the ''Study''). The Transportation Systems Center (TSC) of Cambridge, Massachusetts was commissioned by NHTSA to study SA and identify the factors that cause and/or contribute to its occurrence. Ten different make/model/year vehicles—all with cruise control—were selected for particular scrutiny. Not all of the vehicles had unusually high SA incident rates; some were chosen based on their use of certain design approaches seen throughout the industry. In this way, the Study's sample was reasonably representative of the United States' automatic transmission-equipped vehicle population as a whole.

TSC collected literature, individual case documentation, and data for each of the selected vehicles. Many drivers involved in an alleged sudden acceleration incident were

[1] In the first complaint (ODI #760680), he alleges ''Engine revs to extremely high rpm (–5000) with no throttle input from driver.'' In the second complaint (ODI #10017631), he simply reports ''The vehicle experienced sudden acceleration.''

[2] John Pollard and E. Donald Sussman, *An Examination of Sudden Acceleration* (Cambridge, MA.: NHTSA, 1989, DOT–HS–807–367), v.

[3] The sudden acceleration report rate for 1978 through 1987 Audi 5000's was 586/100,000.

[4] Transport Canada issued a report entitled ''Investigation of Sudden Acceleration Incidents'' in December 1988, concluding driver error caused the phenomenon. The Japanese Ministry of Transport released a report, ''An Investigation on Sudden Starting and/or Acceleration of Vehicles with Automatic Transmissions,'' in April 1989, which concluded that there was no common mechanical cause for sudden acceleration.

interviewed. TSC studied and tested the vehicles' fuel, cruise control, and braking systems.[5] The vehicles' driving controls were evaluated for both location within the cabin and operation. After gathering the information, TSC convened a panel (the ''Panel'') of independent experts in various disciplines[6] to review the data and make recommendations.

At the conclusion of TSC's effort, comprising thousands of person-hours gathering data, comprehensively testing vehicles including their systems and equipment, interviewing owners and drivers, and inspecting crash scenes and the vehicles involved, a report was released with the following conclusion: ''For a sudden acceleration incident in which there is no evidence of throttle sticking or cruise control malfunction, the inescapable conclusion is that these definitely involve the driver inadvertently pressing the accelerator instead of, or in addition to, the brake pedal.''[7]

3.0 The ODI Consumer Complaint Database

3.1 ''Vehicle Speed Control''

With NHTSA's recent roll-out of the ARTEMIS consumer complaint repository, all owner complaints that may involve a sudden acceleration event are coded (or in the case of reports pre-dating the roll-out, re-coded) as ''Vehicle Speed Control'' related (component code 180). These complaints form a subset of all complaints where a problem related to vehicle (*i.e.*, engine) speed control was alleged (including, for example, some stalling complaints). Where a specific component is identified, the complaint is more descriptively coded as either: a. the accelerator pedal (component code 181); b. throttle linkages (component code 182); c. throttle cable(s) (component code 183); d. throttle return springs (component code 184); or e. the cruise control system (component code 185). In his petition, Mr. Boddaert requested that we conduct a petition analysis related to ''Vehicle Speed Control-linkages,'' component code 182. Our review of the NHTSA consumer complaints database found seven linkage-related complaints for MY 1997–2000 Lexus vehicles and sixty complaints if all six Vehicle Speed Control coding categories are included. On July 10, 2003, we discussed this issue with the petitioner and advised him that we planned to expand the petition's scope to include all six Vehicle Speed Control categories.

3.2 Lexus and its Peers

To determine whether incidents involving alleged sudden acceleration and/or vehicle speed control malfunctions are more frequently reported to NHTSA by Lexus owners, we compared the reporting frequency for Lexus, Cadillac, and Lincoln vehicles, as these represent a significant portion of the luxury car and SUV market. In each instance, we searched the NHTSA complaint database for all reports filed under component code 180 through 185 for vehicles where the ''make'' is Lexus, Cadillac, or Lincoln and the model year is 1997 through 2000. This search revealed a total of 182 reports.

3.3 Report Frequency

Of the 182 reports found in the search described above, 60 relate to Lexus vehicles, 57 involve Cadillacs, and 65 concern Lincolns. We then normalized this data to account for differences in vehicle production quantities. Here are the results:

TABLE 1.—VEHICLE SPEED CONTROL REPORT RATE/100K FOR LEXUS AND PEERS

Make	No. of complaints	Production	Rate/100K
Lexus	60	599,983	10.0
Cadillac	57	650,449	8.7
Lincoln	65	610,340	10.6

Based on this analysis, there is no evidence that Lexus vehicles are experiencing vehicle speed control-related problems more frequently than their peers. However, to further assess the Lexus field experience, we conducted the analysis originally requested by the petitioner; *i.e.*, we limited the complaint count to only those complaints related to Vehicle Speed Control-linkages. Here are those results:

TABLE 2.—VEHICLE SPEED CONTROL-LINKAGES REPORT RATE/100K FOR LEXUS AND PEERS

Make	No. of complaints	Production	Rate/100K
Lexus	7	599,983	1.2
Cadillac	5	650,449	.76
Lincoln	11	610,340	1.8

Again, the results fail to establish the existence of a defect trend related to Lexus vehicle speed control problems and/or sudden acceleration incidents reported to NHTSA.

4.0 Conclusion

The information gathered does not indicate that Lexus vehicles are over-represented in the NHTSA database for consumer complaints concerning sudden acceleration and/or problems with vehicle speed control.

Based on the foregoing analysis, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued as a result of granting Mr. Boddaert's petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

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[5] In some instances, the testing was performed by NHTSA's Vehicle Research and Test Center (VRTC).

[6] The curriculum vitae of all the panelists is included in Appendix A to the Report. The panel was highly credentialed, including Dr. John B. Haywood, professor of Mechanical Engineering at M.I.T. and Director of its Sloan Automotive Laboratory, and Dr. Phillip B. Sampson, Hunt Professor of Psychology, Tufts University.

[7] Pollard and Sussman, 49.

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[FR Doc. 03–23959 Filed 9–18–03; 12:01 pm]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–16170]

Grant of Application of Motive Power Industry Co., Ltd. for Temporary Exemption from Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Motive Power Industry Co., Ltd., (''Motive Power'') of Chang-Hwa Hsien, Taiwan, R.O.C., for a temporary exemption from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard (FMVSS) No. 123 *Motorcycle Controls and Displays.* Motive Power asserted that Acompliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. Sec. 30113(b)(3)(iv).

Given that NHTSA has provided the opportunity for public comment on a number of petitions by manufacturers of similar vehicles in the years 1998–2002 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues as those earlier petitions is not likely to result in any substantive submissions, and that we may proceed to a decision on this petition. See, *e.g.*, the grant of applications by five motorcycle manufacturers (67 FR 62850).

The Reason Why the Applicant Needs a Temporary Exemption

Through its designated agent and United States Distributor, Cosmopolitan Motors Inc. of Hatboro, Pa., Motive Power has applied for an exemption for three models ''of scooter configuration,'' identified as the My BuBu 100: P100DA; My BuBu 125: PA125DA; and T-Rex 150: CP 150D. These motor vehicles are defined as ''motorcycles'' (49 CFR 571.3(b)) and must comply with all FMVSS that apply to motorcycles, including FMVSS No. 123.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of FMVSS No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Motive Power petitioned to use the left handlebar as the control for the rear brakes of three of its motorcycles whose engines produce more than 5 brake horsepower. It describes the vehicles as incorporating ''a typical step-through ''scooter'' floorboard platform without the conventional stationary frame mounted motorcycle foot pegs.'' This configuration does not incorporate ''and would not support a brake pedal, the pedal pivot, hydraulic components or cable linkage and stresses associated with a foot actuated rear brake control.'' Redesigning the scooters to comply with the rear brake control location requirement would destroy their appeal, in Motive Power's opinion, ''making them non-competitive in any market.'' Absent an exemption from FMVSS No. 123, therefore, Motive Power asserted that it will be unable to sell in the United States the scooter models named above.

Arguments Why the Overall Level of Safety of the Vehicles To Be Exempted Equals or Exceeds That of Non-Exempted Vehicles.

As required by statute, Motive Power has argued that the overall level of safety of the motorcycles covered by its petition is at least equal to that of a non-exempted motor vehicle for the following reasons. The three scooter models covered by the petition are equipped with automatic transmissions and have the rear brake control located on the left handlebar, ''as is typical for scooters extensively used throughout the world.'' According to Motive Power, the location of all controls is identifiable and accessible, and eliminating the left hand operated clutch lever, the left foot operated gearshift lever and the right foot operated rear brake control ''results in greatly simplified operation.''

In addition, Motive Power represented that these models meet the brake stopping distance requirements of FMVSS No. 122, Motorcycle Brake Systems, and enclosed copies of tests, which have been placed in the docket with the petition.

Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety.

Motive Power argued that ''scooters like these are of significant and growing interest to the public,'' as evidenced by the number of exemption petitions NHTSA has received and granted for this type of vehicle.

NHTSA's Decision on the Application.

It is evident that, unless FMVSS No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, Motive Power will be unable to sell its motor scooters in the United States if it does not receive a temporary exemption from

the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of FMVSS No. 123 have an overall level of safety at least equal to that of nonexempted motorcycles.

In consideration of the foregoing, we hereby find that the petitioner has met its burden of persuasion that to require compliance with FMVSS No. 123 would prevent it from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore, Motive Power Industry Co., Ltd. is hereby granted NHTSA Temporary Exemption No. EX03–4 from the requirements of item 11,column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear brakes be operable through the right foot control. This exemption applies only to the following Motive Power models: My BuBu 100: P100DA; My BuBu 125: PA125DA; and T-Rex 150: CP 150D. The exemption will expire on August 1, 2005.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on September 17, 2003.

Jeffrey W. Runge,

Administrator.

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DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

[Docket No. RSPA–00–7092 (PD–22(R))]

New Mexico Requirements for the Transportation of Liquefied Petroleum Gas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

Petitioner: Attorney General of New Mexico (New Mexico) on behalf of the New Mexico Regulation and Licensing Department, Construction Industries Division (CID), and the New Mexico Construction Industries Commission.

Local Laws Affected: New Mexico Statutes Annotated (NMSA), Chapter 70, Article 5 (LNG and CNG Act), and New Mexico Annotated Code (NMAC), Title 19, Chapter 15, Part 4 (LP Gas Standards).

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180.

Mode Affected: Highway.

SUMMARY: RSPA is modifying its September 20, 2002 determination with respect to the fees specified in New Mexico's LNG and CNG Act and LP Gas Standards for vehicle inspections, employee examinations, and identification cards. Based on additional information in New Mexico's petition for reconsideration about the collection and application of these fees, together with the prior finding that these fees appear to bear some approximation to the work involved in inspecting vehicles and administering examinations and issuing identification cards, RSPA finds that Federal hazardous material transportation law does not preempt: (1) NMAC 19.15.4.14.3(C), with respect to the fees charged for inspecting or reinspecting the cargo container and safety equipment on vehicles based within New Mexico that are used for the transportation of LP gas in bulk quantities, or (2) NMSA 70–5–7(C) and NMAC 19.15.4.15.12 through 19.15.4.15.14 with respect to the fees charged for administering examinations and issuing identification cards to motor vehicle drivers domiciled in New Mexico or non-drivers who dispense liquefied petroleum (LP) gas.

In all other respects, RSPA affirms its prior determination that Federal hazardous material transportation law preempts New Mexico's requirements in:

—NMAC 19.15.4.10.1 for an annual inspection of the cargo container and safety equipment on vehicles used for transportation of LP gas in bulk, as that requirement is applied to vehicles based outside New Mexico;

—NMSA 70–5–7(A) and NMAC 19.15.4.9.1 through 19.15.4.9.5 for examination of, and issuance of an identification card to each person who transports or delivers LP gas, as those requirements are applied to motor vehicle drivers domiciled outside of New Mexico; and

—NMAC 19.15.4.15.1 for payment of an annual license fee to ''wholesale, transport and/or deliver'' LP gas in vehicles (other than to an ultimate consumer).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

In Preemption Determination (PD) No. 22(R), published in the **Federal Register** on September 20, 2002 (67 FR 59396), RSPA considered certain requirements in New Mexico's LPG and CNG Act and CID's implementing LP Gas Standards with respect to companies, their vehicles, and their employees that transport and deliver propane and other liquefied petroleum (LP) gases. These statutory and regulatory requirements, set forth in full in Part II of RSPA's determination (67 FR at 59397), govern:

Licensing: A company must pay an annual fee of $125 for each of its business locations within New Mexico in order to obtain a license to ''wholesale, transport and/or deliver [LP] gas in vehicular units into or out of any location except that of an ultimate consumer.'' NMAC 19.15.4.15.1. The LPG and CNG Act authorizes the CID's Liquefied and Petroleum Gas Bureau (LPG Bureau) to collect ''reasonable license fees,'' NMSA 70–5–9(A), and provides that ''[a]ll fees and money collected under the provisions of [that] Act * * * shall be * * * deposited in the general fund of the state.'' NMSA 70–5–10.

Vehicle inspections: The ''cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities'' must pass an annual safety inspection by the LPG Bureau. NMAC 19.15.4.10.1. The fee for the annual inspection (or a reinspection) is $37.50 per vehicle. NMAC 19.15.4.14.3(C).

Driver testing and identification: Any person who ''transports or dispenses LP gas'' must pass an ''appropriate examination.'' NMSA 70–5–7(A). The applicant must show that he or she is ''familiar with minimum safety standards and practices with regard to handling of LP Gas. LP Gas may not be dispensed by any person who has not passed the examination.'' NMAC 19.15.4.9.1. An individual who passes the examination is issued an ''identification card,'' renewable annually, and valid only ''while employed by a licensee.'' NMAC 19.15.4.9.2–9.4. If an individual holding an identification card is not employed by a licensee for two years, the individual must take a new examination. NMAC 19.15.4.9.5. There is a fee of $25.00 for an examination (or a re-examination) and $10.00 for

renewal of an identification card (without taking the examination). NMAC 19.15.4.15.12–15.14.

In PD–22(R), RSPA found that Federal hazardous material transportation law preempts:

1. The annual inspection requirement with respect to vehicles based outside the State because ''non-Federal vehicle inspection requirements have an inherent potential to cause unnecessary delay in the transportation of hazardous materials when the requirement is applied to vehicles based outside of the inspecting jurisdiction.'' 67 FR at 59400.

2. The examination and identification card requirements with respect to motor vehicle drivers domiciled outside of New Mexico that transport and dispense LP gas, because these ''New Mexico training requirements go beyond the HMR training requirements.'' 67 FR at 59401.

3. The fees for a license, vehicle inspection, and employee examination and identification card. RSPA found that the annual license fee is not ''fair'' because it is not based on some approximation of a carrier's use of State facilities and discriminates against interstate commerce, and that the licensing fees ''deposited into New Mexico's general fund are not earmarked or actually used for hazardous materials transportation purposes as required.'' 67 FR at 59403, 59404. RSPA also found that the vehicle inspection fee and the employee examination and identification card fees are also not ''earmarked'' or ''actually used for hazardous materials transportation purposes.'' 67 FR at 59404, 59405.

RSPA found that Federal hazardous materials transportation law does not preempt requirements for an annual safety inspection of vehicles based within New Mexico; the examination and identification card requirements for drivers domiciled within the State; and provisions in the LPG and CNG Act and LP Gas Standards authorizing ''reasonable'' fees for licensing, vehicle inspection, driver examination, and identification cards. 67 FR at 59400, 59402, 59403, 59404, 59405.

In PD–22(R), RSPA addressed the application submitted by the American Trucking Associations, Inc. (ATA) pursuant to 49 U.S.C. 5125(d) and 49 CFR 107.203 and the comments on that application submitted by CID, the National Propane Gas Association (NPGA), the New Mexico Propane Gas Association, the National Tank Truck Carriers, Inc., and the Hazardous Materials Advisory Counsel (now known as the Dangerous Goods Advisory Council). In Part III of its determination, RSPA discussed the standards for making determinations of preemption under the Federal hazardous material transportation law. 67 FR at 59397–98. As amended by Section 1711 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2319), 49 U.S.C. 5125(a) & (b) preempt a State (or other non-Federal) requirement (unless DOT grants a waiver or there is specific authority in another Federal law) if:

—It is not possible to comply with both the State requirement and a requirement in the Federal hazardous material transportation law, a regulation issued under that law, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security;

—The State requirement, as applied or enforced, is an ''obstacle'' to accomplishing and carrying out the Federal hazardous material transportation law, a regulation issued under that law, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security; or

—The State requirement concerns any of five specific subjects and is not ''substantively the same as'' a provision in the Federal hazardous material transportation law, a regulation issued under that law, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

In addition, 49 U.S.C. 5125(g)(1) provides that a State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material ''only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.''

These preemption provisions stem from congressional findings that State, local, or Indian tribe requirements that vary from Federal hazardous material transportation law and regulations can create ''the potential for unreasonable hazards in other jurisdictions and confound[ ] shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements,'' and that safety is advanced by ''consistency in laws and regulations governing the transportation of hazardous materials.'' Pub. L. 101–615 sections 2(3) & 2(4), 104 Stat. 3244 (Nov. 16, 1990). RSPA also explained that its

Preemption determinations do not address issues arising under the Commerce Clause of the Constitution, except that * * * RSPA considers that Commerce Clause standards are relevant to a determination whether a fee related to the transportation of hazardous material is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). Preemption determinations also do not address statutes other than the Federal hazmat law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law.''

67 FR at 59398.

Within the 20-day time period provided in 49 CFR 107.211(a), the Attorney General of New Mexico submitted a petition for reconsideration of RSPA's decision in PD–22(R) on behalf of the New Mexico Regulation and Licensing Department, Construction Industries Division, and the New Mexico Construction Industries Commission. New Mexico sent a copy of its petition and its October 30, 2002 supporting brief (submitted pursuant to the extension granted by RSPA) to each person who had previously submitted comments in this proceeding. ATA and NPGA submitted comments in response to New Mexico's petition for reconsideration.

II. Discussion

A. Vehicle Inspection Requirements

With its petition for reconsideration, New Mexico included an affidavit by the Chief of the LPG Bureau in which he stated that he is ''responsible for designing, implementing and supervising the vehicle inspection system in New Mexico.'' He stated that his ''inspectors exercise a policy of maximum convenience for the transporter'' and ''arrange with the transporter to meet the vehicle to be inspected at a time and place most convenient and least disruptive to the transporter's scheduling.'' He also stated that the inspection is limited to ''vehicle safety equipment related to the storage and loading or unloading of LP Gas. We do not inspect any other part of the vehicle, including its motor, drive train, chassis, wheels and tires or exterior.'' The LPG Bureau Chief also stated that his office ''sends by regular mail a renewal and inspection notice within the first week of the quarter in which the vehicle must be inspected [so that the] inspectors and transporter then have well over two months within which to arrange for this inspection, again at the convenience of the transporter.''

New Mexico refers to this affidavit as showing that its vehicle inspection system is not one where ''the inspectors 'call and demand' an inspection at a

time and place.'' It states that the ''inspectors do all they reasonably can to avoid disrupting schedules and deliveries,'' and that because the inspectors are ''willing to travel anywhere in the state to inspect vehicles at any time and any location, any reasonable transporter should be able to have all of its New Mexico licensed vehicles inspected in a timely fashion.'' It asserts that ''the LP Gas Bureau [did not cause] the scheduling problem, and thus the delay,'' when Basin Western, Inc. (a carrier based in Utah) was not able to obtain inspections in time to make deliveries. (In PD–22(R), RSPA discussed the information provided by Basin Western's vice president that his company had been unable to have vehicles inspected ''in time to meet scheduled deliveries.'' 67 FR at 59398–99.)

Separately, New Mexico indicates that its annual vehicle inspection, and the inspection fee it charges, ''are associated only tangentially, if at all, with the transportation of hazardous materials.'' It states that it inspects only the ''safety equipment and devices on the trucks that transport LP gas *for transfer* in New Mexico,'' and that the inspection requirement ''is not triggered until gas is transferred in or out of the vehicle that transported it.'' Thus, it argues that its inspection requirement ''only concerns safe transfer,'' after transportation is over and ''federal regulation ceases.'' At the same time, New Mexico also asserts that the fees it collects for vehicle inspections are ''earmarked for hazardous materials transportation purposes,'' because the LP gas ''must be transported to be transferred, and the transfer process is the subject of the vehicle inspection process.''

ATA responds that New Mexico's ''write and request system'' is unsatisfactory because ''[o]ften carriers do not know when they will be required to deliver LPG to New Mexico.'' According to ATA, a carrier may receive a request to ''dispatch an available vehicle the same day,'' and ''contacting the state to schedule an appointment for an inspection is operationally unrealistic.'' ATA states that it is not practical to ''dedicate'' one or more vehicles for deliveries to New Mexico. It also urges RSPA to look at the ''cumulative burden'' if multiple jurisdictions impose similar requirements, stating that ''hazardous materials transportation would be frustrated if every jurisdiction in which a truck operated required that a truck undergo a separate, duplicative fee-supported inspection. To ignore the cumulative burden of these requirements is tantamount to RSPA's sanctioning of an unconstitutional burden upon interstate commerce.''

NPGA states that New Mexico's asserted ''flexibility'' in scheduling inspections ''miss[es] the mark'' because of the ''inherent potential for unnecessary delay,'' and that ''even with a flexible inspection program, the transportation of propane is based on customer needs and, as such, a propane marketer outside New Mexico will likely not know when a shipment is needed in New Mexico until the last minute.''

In PD–22(R), RSPA reviewed its prior consideration of annual vehicle inspection requirements of California (PD–4(R), 58 FR 48933 (Sept. 20, 1993), decision on petition for reconsideration, 60 FR 8800 (Feb. 15, 1995)); Nassau County, New York (PD–13(R), 63 FR 45283 (Aug. 25, 1998), decision on petition for reconsideration, 65 FR 60238 (Oct. 10, 2000), judicial review dismissed, *The Office of the Fire Marshal of the County of Nassau* v. *U.S. Dept. of Transportation,* No. CV–00–7200 (E.D.N.Y. Mar. 18, 2002)); and Smithtown, New York (PD–28(R), 67 FR 15276 (Mar. 29, 2002)). RSPA found that the information submitted in this proceeding confirmed that

> any State or local periodic inspection requirement has an inherent potential to cause unnecessary delays in the transportation of hazardous materials when that requirement is applied to vehicles based outside of the inspecting jurisdiction. * * * [T]he ''call and demand'' nature of common carriage makes it (1) impossible to predict in advance which vehicles may be needed for a pick-up or delivery within a particular jurisdiction and (2) impractical to have all vehicles inspected every year or, alternatively, have a few vehicles inspected in order to be ''dedicated'' to the inspecting jurisdiction. * * *
>
> The inherent potential for unnecessary delay, when a periodic inspection applies to a vehicle based outside the inspecting jurisdiction, is not eliminated by a ''flexible'' scheduling policy. The impracticability of scheduling an inspection in advance of knowing whether a particular truck will be needed to make a delivery within the inspecting jurisdiction creates unnecessary delay—not the time that the inspection takes place. As discussed in PD–4(R) and PD–13(R), that unnecessary delay would be eliminated if the Town performed the equivalent of a spot or roadside inspection, upon the unannounced arrival of a truck carrying LPG.

PD–28(R), 67 FR at 15279 (quoted in part in PD–22(R), 67 FR at 59400).

RSPA cannot accept New Mexico's argument that its vehicle inspection requirement applies only to the ''transfer'' (or delivery) of LPG after transportation has ended. By its very terms, this requirement applies to ''each vehicular unit used for *transportation* of LP gas in bulk quantities.'' NMAC 19.15.4.10.1 (emphasis supplied). Moreover, RSPA has long considered that the act of unloading hazardous material from a vehicle is within the scope of ''transportation,'' and subject to regulation under the HMR, when it is ''performed by a person employed by or under contract to a for-hire carrier or, in the case of a private carrier, when performed by the driver of the motor vehicle from which the hazardous material is being unloaded immediately after movement in commerce is completed.'' Notice of Proposed Rulemaking in Docket No. RSPA–98–4952 (HM–223), 66 FR 32420, 32433 (June 14, 2001); *see also* the loading and unloading requirements for Class 2 materials (gases) in 49 CFR 177.834, 177.840.

New Mexico's petition for reconsideration does not directly address (much less provide any basis for reconsidering) the finding in PD–22(R) that a periodic inspection requirement has an ''inherent potential for unnecessary delay'' when applied to a vehicle based outside of the inspecting jurisdiction. It is the ''call and demand'' nature of deliveries of LPG and other hazardous material (not a ''call and demand'' inspection system) that makes it impossible to always schedule an inspection of any particular vehicle (or the safety equipment on the vehicle) before the carrier knows that the vehicle is needed to make a delivery in another jurisdiction. New Mexico's ''write and request'' system of scheduling inspections will unnecessarily delay or frustrate some deliveries of hazardous materials from outside the State, no matter how accommodating its inspection force, unless the State ''can actually conduct an 'on the spot' inspection upon the truck's arrival within the jurisdiction.'' PD–22(R), 67 FR at 59400. Because New Mexico cannot meet this standard for vehicles based outside of the State, its annual inspection requirement is an obstacle to accomplishing and carrying out the requirement in 49 CFR 177.800(d) for the transportation of hazardous materials ''without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.'' RSPA reaffirms its determination that NMAC 19.15.4.10.1 is preempted with respect to vehicles based outside New Mexico.

B. Employee Examination and Identification Card Requirements

New Mexico acknowledges in its petition for reconsideration that its

employee examination and identification card requirements are ''more stringent'' than the HMR, but it asserts that these requirements are not preempted unless there is ''an actual conflict with federal law.'' It states that, ''[i]f a matter is not clearly addressed in the HMR,'' then RSPA should not find preemption of ''local regulations related to but nonetheless distinct from what the HMR specifically covers.'' New Mexico adds that a ''driver may learn what the federal government expects and, absent an inability or refusal to understand New Mexico's safety requirements, may learn what this state expects as well.'' According to the LPG Bureau Chief, the examination is based on Standard 58 issued by the National Fire Protection Association (NFPA). New Mexico states that this promotes uniformity because the State ''is testing prospective drivers from the uniform National Fire Protection Association document 58,'' which is ''nothing more than what any local jurisdiction uniformly requires by ascribing to the NFPA protocols.''

ATA contends that New Mexico has misread 49 CFR 172.701, which provides that a State may not impose ''more stringent training requirements'' on an out-of-state driver. It states that ''test taking itself would become an obstacle to the safe and efficient transportation of hazardous materials, as few drivers could devote the time necessary to master the subtle regulatory differences between jurisdictions and sit for examinations in each of those jurisdictions.''

NPGA agrees with ATA that imposing examination and licensing on drivers domiciled outside of New Mexico ''is in conflict with § 172.701 and, therefore, preempted by the HMTA and HMR.'' NPGA also states that it supports ''adoption of NFPA Standard 58 as part of State's regulation of LPG,'' but that the NFPA Standard 58 explicitly states that it is intended to apply ''to areas not subject to DOT regulation.''

In PD–22(R), RSPA discussed the specific provision in 49 CFR 172.701 that allows a State to impose more stringent training requirements on a motor vehicle driver only when the driver is domiciled within the State. 67 FR at 59401, citing PD–7(R), Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, 59 FR 28913, 28919 (June 3, 1994), decision on petition for reconsideration, 60 FR 10419 (Feb. 24, 1995). RSPA has also specifically found that these additional requirements for drivers of motor vehicles are ''more stringent training requirements.'' PD–7(R), 59 FR at 28919; PD–13(R), 63 FR at 45287; PD–28(R), 67 FR at 15280. New Mexico acknowledges that its employee examination and identification card requirements are more stringent than the training requirements in the HMR, and there is no basis to reconsider the finding in PD–22(R) that these requirements are an obstacle to accomplishing and carrying out the HMR. Accordingly, RSPA reaffirms its determination that Federal hazardous material transportation law preempts the State's employee examination and identification card requirements in NMSA 70–5–7(A) and NMAC 19.15.4.9.1 through 19.15.4.9.5.

C. Fees

New Mexico asserts that all the fees it imposes on the transportation and delivery of LPG are ''based on a fair approximation of use, do not discriminate, and are not excessive. * * * [T]hey are a deminimus charge assessed to ensure the safe handling of LP gas in the transfer of it from one container to another.'' According to New Mexico, its ''licensing process is a means of ensuring safe transfer of LP gas in the State, and each license authorizes unlimited transfer privileges.'' It states that the annual license

> has no logical relationship to the use of roads or other State infrastructure. It does not authorize movement of LP gas within or through the State, or authorize a carrier to enter the State; therefore, there are no border checks. The license relates only to material transfers, not movement, and it is the State's sole means of ensuring that the human beings who engage in the inherently dangerous activity of handling LP gas are qualified to do so.

New Mexico also contends that it would not be practical to construct a graduated fee schedule ''based on the number of transfers of gas made by a carrier,'' because the LPG Bureau lacks sufficient resources to verify the number of transfers, and fees based ''on transfer activity * * * would not be collectable by the vendors.'' New Mexico also raises the possibility that an out-of-state carrier might actually pay ''more for a license than an in-state carrier,'' if it made more deliveries within New Mexico.

According to the affidavit submitted by the LPG Bureau Chief, that office has ten full-time employees, including himself, and the total budget for the LPG Bureau in fiscal year 2001–2002 was approximately $625,000. New Mexico states that besides ''regulating the transfer of LP gas, the program [of the LP Gas Bureau] also investigates accidents and is responsible for inspecting LP activities related to residential and commercial use, bulk plants, and special events such as the International Balloon Festival, and the State Fair.'' During fiscal year 2001–2002, the LPG Bureau investigated 18 accidents, but ''[n]one of the accidents was related to the transfer of LP gas,'' according to the affidavit of the LPG Bureau Chief.

The LPG Bureau Chief stated that his Bureau collected approximately $184,000 in fees during fiscal year 2001–2002 and ''[t]hese revenues were deposited in the State's general fund.'' New Mexico asserts that the fees that it collects for vehicle inspections ''are returned 100% to the LP gas regulatory program,'' because the annual budget far exceeds the revenue generated by vehicle inspections. ''Therefore, all vehicle inspection fees were entirely recovered for use in the regulation of LP gas.'' The vehicle inspection fees represented approximately $25,000 of the total $184,000 collected by the LPG Bureau in fiscal year 2001–2002, according to the affidavit of the LPG Bureau Chief. However, he also stated that the LPG Bureau did not directly collect fees for administering examinations and issuing identification cards. ''The fees associated with licensure, exams and identification cards are collected by private vendors under contract with [CID] and are the only funding source for the licensing and examination process. These fees are not collected by the Bureau, and are not deposited by the Bureau into the State's general fund.''

Both ATA and NPGA state that all of New Mexico's fees are preempted because they are not ''fair'' and because they are not used for a purpose related to transporting hazardous material. They argue that these ''flat fees'' discriminate against interstate commerce because they are not apportioned to the motor carrier's presence or level of activity within the State. They also state that it is not possible to determine whether these fees are used for purposes relating to hazardous materials transportation because New Mexico deposits them into its general fund. ATA and NPGA attribute no significance to the fact that the LPG Bureau collected less in fiscal year 2001–2002 than it spent on its entire LPG program because that program includes activities outside transportation, such as inspections of LPG bulk plants.

In one sense, all these fees are a ''flat,'' or fixed amount. However, in PD–22(R), RSPA clearly distinguished New Mexico's annual license fee from the other fees. RSPA found that the annual license fee remained the same regardless of the

number of miles traveled within the State, number of pick-ups or deliveries made within the State, size of weight of the vehicle used to transport LP gas within the State, or any other factor that relates the amount of the fee to a carrier's use of State roads or facilities. Consequently, an interstate carrier that travels just one time in New Mexico must pay the same fee as a local carrier that conducts all of its business within the State.

67 FR at 59403. There is no doubt that New Mexico could adopt a license fee that varies according to one or more of these activities by a company transporting LP gas within the State, or that it would be more ''fair'' to apportion the fees accordingly and base the amount of the fee upon the amount of those activities reported by the carrier. This could be done in the same manner that New Mexico may apply its gross receipts tax in NMSA 7–9–4 only to sales within the State, and not sales to customers located outside of New Mexico. *See Evco* v. *Jones,* 409 U.S. 91, 93 S.Ct. 349 (1972). Similar issues regarding verification exist for both, and the ''fairness'' standard in 49 U.S.C. 5125(g)(1) cannot rest solely on the preference of the LPG Bureau for a fee that it considers easier to enforce. New Mexico has not shown that its ''flat'' annual license fee is the ''only practicable means of collecting revenues from users and the use of a more finely gradated user-fee schedule would pose genuine administrative burdens.'' PD–22(R), 67 FR at 59403, quoting from *American Trucking Ass'ns* v. *Scheiner,* 483 U.S. 266, 296, 97 S.Ct. 2829 (1987).

Nor has New Mexico shown that the annual license fees are ''used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response,'' as required by 49 U.S.C. 5125(g)(1). Even if the annual license fees are considered to be returned to the LPG Bureau as part of its total budget, there is no information to show that these fees are used for transportation-related purposes. The costs of inspecting residential and commercial facilities, or participating in the State Fair and a balloon festival, cannot be paid out of a State-imposed fee ''related to transporting hazardous material.'' Accordingly, RSPA reaffirms its finding that Federal hazardous material transportation law preempts New Mexico's annual license fee because that fee is an obstacle to carrying out the requirements in 49 U.S.C. 5125(g)(1) that the fee must be ''fair'' and ''used for a purpose related to transporting hazardous material.''

In contrast to the licensing fee, RSPA found that the vehicle inspection fee ''appears to be related, in some manner, to the work involved in performing the inspection required.'' 67 FR at 59404. In other words, there should be the same effort and time required to inspect each vehicle, whether operated by an in-state or out-of-state carrier. As RSPA stated in PD–13(R), when

the amount of the fee is related in some measure to the work involved in conducting the required inspection, this fee appears more like a user fee than a tax. According to the U.S. Court of Appeals for the Fourth Circuit, user fees are to be distinguished from taxes, so long as they ''reflect a fair, if imperfect, approximation of the cost of using state facilities for the taxpayer's benefit, * * * [and are] not * * * excessive in relation to the costs incurred by the taxing authorities. *Center for Auto Safety* v. *Athry*, 37 F.3d 139, 142 (1994), citing *Evansville-Vanderburgh Airport Auth. District* v. *Delta Airlines*, 405 U.S. 707, 717–20 (1972).

63 FR at 45287, 65 FR at 60244; *see also* PD–21(R), Tennessee Hazardous Waste Transporter Fee and Reporting Requirements, 64 FR 54474. 54478 (Oct. 6, 1999), judicial review pending, *Tennessee* v. *U.S. Dep't of Transportation*, petition for certiorari filed July 18, 2003 (No. 03–111 U.S. Sup. Ct.). Thus, RSPA must reject the contention of ATA and NPGA that the vehicle inspection fee is not ''fair'' under the standard in 49 U.S.C. 5125(g)(1).

The fiscal year 2001–2002 budget and staffing figures for the LPG Bureau actually confirm that $37.50 appears to be a reasonable approximation of the cost to conduct a vehicle inspection or reinspection. When allocated to 10 full-time employees, the total $625,000 budget works out to an average cost of more than $30.00 per employee-hour, and the LPG Bureau Chief stated that a vehicle inspection typically takes ''from 45–60 minutes'' plus travel time. This is sufficient for RSPA to find that the vehicle inspection fee has a ''fair approximation'' to the service provided (*i.e.*, the inspection) and that the LPG Bureau is ''actually spending these fees on the purposes permitted by the law,'' even if the fees are not earmarked or deposited into a separate account. PD–21(R), 64 FR at 54478, 54479. For that reason, RSPA finds that the vehicle inspection and reinspection fee in NMAC 19.15.4.14.3(C) is not an obstacle to accomplishing and carrying out the standards in 49 U.S.C. 5125(g)(1) and is not preempted by the Federal hazardous material transportation law. However, that fee may be collected only for inspecting the cargo containment and safety equipment on a vehicle based within New Mexico, because the underlying inspection requirement is preempted with respect to vehicles based outside the State.

In a similar manner, it should take the same amount of time to administer an examination and issue an identification card to each applicant. In PD–22(R), RSPA noted that the absence of any evidence that the amounts of the employee examination and identification card fees are ''disproportionate to the work involved in administering the New Mexico safety examination and issuing identification cards. Consequently, the fees appear to be fair.'' 67 FR at 59405. New Mexico has now provided information that these fees are not deposited into the State's general fund but paid to and retained by ''private vendors'' who administer the examinations and issue identification cards. This is sufficient to show that these fees are directly related to the work that the private vendor actually performs and, in this manner, are actually ''used for a purpose related to transportation.'' As with the vehicle inspection fee, RSPA finds that the employee examination and identification card fees do not create an obstacle to accomplishing and carrying out the standards in 49 U.S.C. 5125(g)(1) and are not preempted by the Federal hazardous material transportation law. However, these fees may be collected only for administering examinations and issuing identification cards to motor vehicle drivers domiciled in New Mexico or non-drivers who dispense LP Gas, because the underlying examination and identification card requirements are preempted with respect to motor vehicle drivers domiciled outside of New Mexico.

III. Ruling

For the reasons set forth above, New Mexico's petition for reconsideration is granted in part and denied in part.

A. RSPA finds Federal hazardous material transportation law does not preempt:

(1) NMAC 19.15.4.14.3(C), with respect to fees charged for inspecting or reinspecting the cargo container and safety equipment on vehicles based within New Mexico;

(2) NMSA 70–5–7(C) and NMAC 19.15.4.15.12 through 19.15.4.15.14, with respect to the fees are charged for administering examinations and issuing identification cards to motor vehicle drivers domiciled in New Mexico or non-drivers who dispense liquefied petroleum (LP) gas;

(3) the requirements for payment of a ''reasonable'' annual license fee, in NMSA 70–5–9(A), a ''reasonable'' safety inspection fee, in NMSA 70–5–9(C), and a ''reasonable'' fee for issuance of an

identification card, in NMAC 19.15.4.9.4; and

(4) NMSA 70–5–10, requiring deposit of fees into the State's general fund.

B. RSPA incorporates and reaffirms its determination in PD–22(R) that Federal hazardous material transportation law preempts the requirements in:

(1) NMAC 19.15.4.10.1, with respect to the requirement for an annual inspection of the cargo containment and safety equipment on vehicles based outside New Mexico, but that this requirement is not preempted with respect to vehicles based within New Mexico;

(2) NMSA 70–5–7(A) and NMAC 19.15.4.9.1 through 19.15.4.9.5, with regard to requirements for a motor vehicle driver domiciled outside of New Mexico to take an examination and obtain an identification card, but that these requirements are not preempted with respect to motor vehicle drivers domiciled in New Mexico or non-drivers who dispense LP gas; and

(3) NMAC 19.15.4.15.1, requiring intrastate and interstate motor carriers that move, load, or unload LP gas in New Mexico to pay an annual license fee.

IV. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on ATA's application for a determination of preemption as to certain requirements in New Mexico's LNG and CNG Act (NMSA Chapter 70, Article 5) and LP Gas Standards (NMAC Title 19, Chapter 15, Part 4). Any party to this proceeding may bring a civil action in an appropriate district court of the United States for judicial review of this decision not later than 60 days after publication of this decision in the **Federal Register**.

Issued in Washington, DC, on September 17, 2003.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–24148 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 613X)]

CSX Transportation, Inc.—Abandonment Exemption—in Jefferson County, AL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 16.47-mile line of railroad extending from milepost ONC 384.00 at Black Creek to milepost ONJ 400.47 at West Jefferson, in Jefferson County, AL. The line traverses United States Postal Service ZIP Codes 35130, 35139, and 35207.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 22, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 2, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 14, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 26, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by September 22, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–23984 Filed 9–18–03; 12:01 pm]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

BUREAU OF TRANSPORTATION STATISTICS

Agency Information Collection; Activity Under OMB Review; Report of Passengers Denied Confirmed Space—BTS Form 251

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of

Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring U.S. and foreign air carriers that operate scheduled passenger service with large aircraft to submit reports on their oversales practices. Large aircraft are aircraft designed to carry over 60-seats. Carriers submit the quarterly Form 251 ''Report of Passengers Denied Confirmed Space.'' Carriers do not report oversales of inbound international flights because the protection provisions of 14 CFR part 250 do not apply to these flights. The Department uses Form 251 to monitor the compliance by U.S. and foreign air carriers to the oversales provisions of Part 250.

DATES: Written comments should be submitted by November 21, 2003.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. 366–3383 or EMAIL *bernard.stankus@bts.gov.*

Comments: Comments should identify the OMB # 2138–0018. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0018. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0018.

Title: Report of Passengers Denied Confirmed Space.

Form No.: BTS Form 251.

Type Of Review: Extension of a currently approved collection.

Respondents: Large U.S. and foreign air carriers.

Number of Respondents: 110.

Number of Responses: 440.

Total Annual Burden: 2,220 hours.

Needs and Uses: BTS Form 251 is a one page report on the number of passengers holding confirmed space that were voluntarily or involuntarily denied boarding. Carriers must report whether the bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntary denied-boarding rate has steadily decreased over the years from 4.38 per 10,000 enplanements in 1980 to .99 for the first six months of the year 2003. This decrease occurred at a time when air carrier load factors have increased. These statistics demonstrate the effectiveness of the ''volunteer'' provision, which has reduced the need for more intrusive regulation.

The rate of denied boarding can be examined as an air carrier continuing fitness factor. This rate provides an insight into a carrier's policy on treating overbooked passengers and its compliance disposition. A rapid increase in the rate of denied boardings often is an indicator of operational difficulty.

Because the rate of denied boarding is published in the *Air Travel Consumer Report,* travelers and travel agents can select carriers with low bumping incidents when booking a trip.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Donald W. Bright,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 03–24096 Filed 9–18–03; 12:01 pm]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of New Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Treasury Inspector General for Tax Administration (TIGTA) gives notice of ten proposed new Privacy Act systems of records.

DATES: Comments must be received by October 22, 2003. The proposed new systems of records will become effective November 3, 2003 unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be sent to Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005, 202–622–4068. Comments will be made available upon written request.

FOR FURTHER INFORMATION CONTACT: Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005, 202–622–4068.

SUPPLEMENTARY INFORMATION: This report is to give notice of ten proposed new systems of records maintained by the Treasury Inspector General for Tax Administration (TIGTA) that are subject to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. TIGTA was established pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998. TIGTA's duties and operating authority are set forth in the Inspector General Act of 1978, 5 U.S.C app. 3. TIGTA exercises all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). TIGTA conducts, supervises, and coordinates audits and investigations relating to the programs and operations of the IRS and related entities. TIGTA is organizationally placed within the Department of the Treasury, but is independent of the Department and all other Treasury offices.

The proposed systems of records are as follows:

Treasury/DO .301–TIGTA General Personnel and Payroll;
Treasury/DO .302–TIGTA Medical Records;
Treasury/DO .303–TIGTA General Correspondence;
Treasury/DO .304–TIGTA General Training;
Treasury/DO .305–TIGTA Personal Property Management Records;
Treasury/DO .306–TIGTA Recruiting and Placement Records;
Treasury/DO .307–TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files;
Treasury/DO .308–TIGTA Data Extracts;
Treasury/DO .309–TIGTA Chief Counsel Case Files, and
Treasury/DO .310–TIGTA Chief Counsel Disclosure Section.

In the notice of proposed rulemaking, which is published separately in the **Federal Register**, TIGTA is proposing to exempt records maintained in several systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2), (k)(2), (k)(5) and (k)(6).

The new system of records reports, required by the Privacy Act, 5 U.S.C.

552a(r), have been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000.

The ten proposed new systems of records, described above, are published in their entirety below.

Dated: September 8, 2003.

W. Earl Wright, Jr.,

Acting Chief Management and Administrative Programs Officer.

Treasury/DO .301

SYSTEM NAME:

TIGTA General Personnel and Payroll.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005, field offices listed in Appendices A and B, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, and Transaction Processing Center, U.S. Department of Agriculture, National Finance Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations made about TIGTA employees. These records contain data on individuals required by the Office of Personnel Management (OPM) and which may also be contained in the Official Personnel File (OPF). This system may also contain letters of commendation, recommendations for awards, awards, reprimands, adverse or disciplinary charges, and other records which OPM and TIGTA require or permit to be maintained. This system may include records that are maintained in support of a personnel action such as a position management or position classification action, a reduction-in-force action, and priority placement actions. Other records maintained about an individual in this system are performance appraisals and related records, expectation and payout records, employee performance file records, suggestion files, award files, financial and tax records, back pay files, jury duty records, outside employment statements, clearance upon separation documents, unemployment compensation records, adverse and disciplinary action files, supervisory drop files, records relating to personnel actions, furlough and recall records, work measurement records, emergency notification records, and employee locator and current address records. This system includes record created and maintained for purposes of administering the payroll system. Time-reporting records include timesheets and records indicating the number of hours by TIGTA employee attributable to a particular project, task, or audit. This system also includes records related to travel expenses and/or costs. This system includes records concerning employee participation in the mobile-workplace (telecommuting) program. This system also contains records relating to life and health insurance, retirement coverage, designations of beneficiaries, and claims for survivor or death benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301, 1302, 2951, 4506, Ch. 83, 87, and 89.

PURPOSE(S):

This system consists of records compiled for personnel, payroll and time-reporting purposes. In addition, this system contains all records created and/or maintained about employees as required by the Office of Personnel Management (OPM) as well as documents relating to personnel matters and determinations. Retirement, life, and health insurance benefit records are collected and maintained in order to administer the Federal Employee's Retirement System (FERS), Civil Service Retirement System (CSRS), Federal Employee's Group Life insurance Plan, and, the Federal Employees' Health Benefit Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party of the litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to educational institutions for recruitment and cooperative education purposes;

(11) Provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit;

(12) Provide information to a Federal, State, or local agency or to a financial institution as required by law for payroll purposes;

(13) Provide information to Federal agencies to effect inter-agency salary offset and administrative offset;

(14) Provide information to a debt collection agency for debt collection services;

(15) Respond to State and local authorities for support garnishment interrogatories;

(16) Provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgment;

(17) Provide information to a prospective employer of a current or former TIGTA employee;

(18) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(19) Provide information to the Office of Workers' Compensation, Veterans Administration Pension Benefits Program, Social Security Old Age, Survivor and Disability Insurance and Medicare Programs, Federal civilian employee retirement systems, and other Federal agencies when requested by that program, for use in determining an individual's claim for benefits;

(20) Provide information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program;

(21) Provide information to hospitals and similar institutions to verify an employee's coverage in the Federal Employees' Health Benefits Program; and,

(22) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, paper records, and microfiche.

RETRIEVABILITY:

Name, Social Security Number, and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, Nos. 1 and 2.

SYSTEM MANAGER(S) AND ADDRESS:

General Personnel Records—Assistant Inspector General for Management Services. Time-reporting records: (1) For Office of Audit employees—Deputy Inspector General for Audit; (2) For Office of Chief Counsel employees—Chief Counsel; (3) For Office of Investigations employees—Deputy Inspector General for Investigations; (4) For Office of Management Services employees—Assistant Inspector General for Management Services; and, (5) For Office of Information Technology employees—Assistant Inspector General for Information Technology. Address—1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, is derived from information supplied by that individual, or is provided by Department of the Treasury and other Federal agency personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .302

SYSTEM NAME:

TIGTA Medical Records.

SYSTEM LOCATION:

(1) Health Improvement Plan Records—Office of Investigations, 1125 15th Street, NW., Washington, DC 20005 and field division offices listed in Appendix A; and, (2) All other records of: (a) Applicants and current TIGTA employees: Office of Management Services, TIGTA, 1125 15th Street, NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328; and, (b) former TIGTA employees: National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for TIGTA employment; (2) Current and former TIGTA employees; (3) Applicants for disability retirement; and, (4) Visitors to TIGTA offices who require medical attention while on the premises.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Documents relating to an applicant's mental/physical ability to perform the duties of a position; (2) Information relating to an applicant's rejection for a position because of medical reasons; (3) Documents relating to a current or former TIGTA employee's mental/physical ability to perform the duties of the employee's position; (4) Disability retirement records; (5) Health history questionnaires, medical records, and other similar information for employees participating in the Health Improvement Program; (6) Fitness-for-duty examination reports; (7) Employee assistance records; (8) Injury compensation records relating to on-the-job injuries of current or former TIGTA employees; and, (9) Records relating to drug testing program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, 3301, 7301, 7901, and Ch. 81, 87 and 89.

PURPOSE(S):

To maintain records related to employee physical exams, fitness-for-duty evaluations, drug testing, disability retirement claims, participation in the Health Improvement Program, and worker's compensation claims. In addition, these records may be used for purposes of making suitability and fitness-for duty determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception of Routine Use ''(1),'' none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564 ''Drug-Free Federal Work Place.'' Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

Records may be used to:

(1) Disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action;

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(3) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(6) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(7) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to Federal or State agencies responsible for administering Federal benefits programs and private contractors engaged in providing benefits under Federal contracts;

(11) Disclose information to an individual's private physician where medical considerations or the content of medical records indicate that such release is appropriate;

(12) Disclose information to other Federal or State agencies to the extent provided by law or regulation;

(13) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and,

(14) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, electronic media, and x-rays.

RETRIEVABILITY:

Records are retrievable by name, Social Security Number, date of birth and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Health Improvement Program records—Deputy Inspector General for Investigations, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005; and, (2) All other records—Assistant Inspector General for Management Services, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Medical personnel and institutions; (3)

Office of Workers' Compensation personnel and records; (4) Military Retired Pay Systems Records; (5) Federal civilian retirement systems; (6) General Accounting Office pay, leave allowance cards; (7) OPM Retirement, Life Insurance and Health Benefits Records System and Personnel Management Records System; (8) Department of Labor; and, (9) Federal Occupation Health Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .303

SYSTEM NAME:

TIGTA General Correspondence.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005, and field offices listed in Appendices A and B.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of correspondence; and, (2) Persons upon whose behalf the correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received by TIGTA and responses generated thereto; and, (2) Records used to respond to incoming correspondence. Special Categories of correspondence may be included in other systems of records described by specific notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of correspondence received by TIGTA from individuals and their representatives, oversight committees, and others who conduct business with TIGTA and the responses thereto; it serves as a record of in-coming correspondence and the steps taken to respond thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and,

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management Services, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt sources of information include: (1) Initiators of the correspondence; and (2) Federal Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). *See* 31 CFR 1.36.

Treasury/DO .304

SYSTEM NAME:

TIGTA General Training Records.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) TIGTA employees; and, (2) Other Federal or non-Government individuals who have participated in or assisted with training programs as instructors, course developers, or interpreters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Course rosters; (2) Student registration forms; (3) Nomination forms; (4) Course evaluations; (5) Instructor lists; (6) Individual Development Plans (IDPs); (7) Counseling records; (8) Examination and testing materials; (9) Payment records; (10) Continuing professional education requirements; (11) Officer safety files and firearm qualification records; and, (12) Other training records necessary for reporting and evaluative purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 41, and Executive Order 11348, as amended by Executive Order 12107.

PURPOSE(S):

These records are collected and maintained to document training received by TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the training request or requirements and/or in the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name, Social Security Number, course title, date of training, and/or location of training.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For records concerning Office of Investigations employees—Deputy Inspector General for Investigations; (2) For records concerning Office of Audit employees—Deputy Inspector General for Audit; (3) For Office of Chief Counsel employees—Chief Counsel; (4) For Office of Information Technology employees—Assistant Inspector General for Information Technology; and, (5) For Office of Management Service employees—Assistant Inspector General for Management Services. Address—1125 15th Street, NW., Room 700A, Washington, DC, 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing

at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; and, (2) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .305

SYSTEM NAME:

TIGTA Personal Property Management Records.

SYSTEM LOCATION:

Office of Information Technology, TIGTA 1125 15th, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning personal property assigned to TIGTA employees including descriptions and identifying information about the property, custody receipts, property passes, maintenance records, and other similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, and 41 CFR Subtitle C Ch. 101 and 102.

PURPOSE(S):

The purpose of this system is to maintain records concerning personal property, including but not limited to, computers and other similar equipment, motor vehicles, firearms and other law enforcement equipment, communication equipment, computers, fixed assets, credit cards, telephone calling cards, credentials, and badges assigned to TIGTA employees for use in their official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Indexed by name and/or identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules, Nos. 4 and 10.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General Information Technology, Office of Information Technology, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Treasury personnel and records; (3) Vehicle maintenance facilities; (4) Property manufacturer; and, (5) Vehicle registration and licensing agencies

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/DO .306

SYSTEM NAME:

TIGTA Recruiting and Placement Records.

SYSTEM LOCATION:

Office of Management Services, 1125 15th Street, NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for employment; and, (2) Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Application packages and Resumes; (2) Related correspondence; and, (3) Documents generated as part of the recruitment and hiring process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 33, and Executive Orders 10577 and 11103.

PURPOSE(S):

The purpose of this system is to maintain records received from applicants applying for positions with TIGTA and relating to determining eligibility for employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the recruitment, hiring, and/or placement determination and/or during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Disclose information to officials of Federal agencies for purposes of consideration for placement, transfer, reassignment, and/or promotion of TIGTA employees; and,

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Records are indexed by name, Social Security Number, and/or vacancy announcement number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management Service, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(k)(5) and (k)(6).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Office of Personnel Management; and, (3) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records in this system have been designated as exempt from 5 U.S.C. 552a (c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to 5 U.S.C. 552a (k)(5) and (k)(6). *See* 31 CFR 1.36.

Treasury/DO .307

SYSTEM NAME:

TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.

SYSTEM LOCATION:

Office of Management Services, TIGTA 1125 15th, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests, (2) Appeals, (3) Complaints, (4) Letters or notices to the subject of the record, (5) Records of hearings, (6) Materials relied upon in making any decision or determination, (7) Affidavits or statements, (8) Investigative reports, and, (9) Documents effectuating any decisions or determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app 3 and 5 U.S.C. 301, Ch. 13, 31, 33, 73, and 75.

PURPOSE(S):

This system consists of records compiled for administrative purposes concerning personnel matters affecting current, former, and/or prospective TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office in order to obtain legal and/or policy guidance;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Indexed by the name of the individual and case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subjects of a background investigation, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management Services, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the records; (2) Treasury personnel and records; (3) Witnesses; (4) Documents relating to the appeal, grievance, or complaint; and, (5) EEOC, MSPB, and other similar organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain investigative records that are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). *See* 31 CFR 1.36.

Treasury/DO .308

SYSTEM NAME:

TIGTA Data Extracts.

SYSTEM LOCATION:

Office of Information Technology, 4800 Buford Highway, Chamblee, GA 30341, and Office of Investigations, Strategic Enforcement Division, 550 Main Street, Cincinnati, OH 45202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) Individuals who have filed, are required to file tax returns, or are included on tax returns, forms, or other information filings; (3) Entities who have filed or are required to file tax returns, IRS forms, or information filings as well as any individuals listed on the returns, forms and filings; and, (4) Taxpayer representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data extracts from various databases maintained by the Internal Revenue Service consisting of records collected in performance of its tax administration responsibilities as well as records maintained by other governmental agencies, entities, and public record sources. This system also contains information obtained via TIGTA's program of computer matches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of data extracts from various electronic systems of records maintained by governmental agencies and other entities. The data extracts generated by TIGTA are used for audit and investigative purposes and are necessary to identify and deter fraud, waste, and abuse in the programs and operations of the Internal Revenue Service (IRS) and related entities as well as to promote economy, efficiency, and integrity in the administration of the internal revenue laws and detect and deter wrongdoing by IRS and TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, Taxpayer Identification Number, and/or employee identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval of a new record retention schedule concerning the records in this system of records. These records will not be destroyed until TIGTA receives approval from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Information Technology, TIGTA, 1125

15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). *See* 31 CFR 1.36.

Treasury/DO .309

SYSTEM NAME:

TIGTA Chief Counsel Case Files.

SYSTEM LOCATION:

Office of Chief Counsel, TIGTA, 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS:

Parties to and persons involved in litigations, actions, personnel matters, administrative claims, administrative appeals, complaints, grievances, advisories, and other matters assigned to, or under the jurisdiction of, the Office of Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Memoranda, (2) Complaints, (3) Claim forms, (4) Reports of Investigations, (5) Accident reports, (6) Witness statements and affidavits, (7) Pleadings, (8) Correspondence, (9) Administrative files, (10) Case management documents, and, (11) Other records collected or generated in response to matters assigned to the Office of Chief Counsel.

PURPOSE(S):

This system contains records created and maintained by the Office of Chief Counsel for purposes of providing legal service to TIGTA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to, or necessary to, the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purposes of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply and/or by case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of a background investigation, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) The subject of the record, (3) Witnesses, (4) Parties to disputed matters of fact or law, (5) Congressional inquiries, and, (6) Other Federal agencies including, but not limited to, the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunities Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5) (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). *See* 31 CFR 1.36.

Treasury/DO .310

SYSTEM NAME:

TIGTA Chief Counsel Disclosure Section Records.

SYSTEM LOCATION:

Office of Chief Counsel, Disclosure Section, TIGTA 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Requestors for access and amendment pursuant to the Privacy Act of 1974, 5 U.S.C. 552a; (2) Subjects of requests for disclosure of records; (3) Requestors for access to records pursuant to 26 U.S.C. 6103; (4) TIGTA employees who have been subpoenaed or requested to produce TIGTA documents or testimony on behalf of TIGTA in judicial or administrative proceedings; (5) Subjects of investigations who have been referred to another law enforcement authority; (6) Subjects of investigations who are parties to a judicial or administrative proceeding in which testimony of TIGTA employees or production of TIGTA documents has been sought; and, (7) Individuals initiating correspondence or inquiries processed or controlled by the Disclosure Section.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests for access to and/or amendment of records, (2) Responses to such requests, (3) Records processed and released in response to such requests, (4) Processing records, (5) Requests or subpoenas for testimony, (6) Testimony authorizations, (7) Referral letters, (8) Documents referred, (9) Record of disclosure forms, and (10) Other supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 552a, 26 U.S.C 6103, and 31 CFR 1.11.

PURPOSE(S):

The purpose of this system is to enable compliance with applicable Federal disclosure laws and regulations, including statutory record-keeping requirements. In addition, this system will be utilized to maintain records obtained and/or generated for purposes of responding to requests for access, amendment, and disclosure of TIGTA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response

to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration.

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2; and,

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or electronic media.

RETRIEVABILITY:

Name of the requestor, name of the subject of the investigation, and/or name of the employee requested to produce documents or to testify.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval for a record retention schedule for records maintained in this system. These records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) Incoming requests, and (3) Subpoenas and requests for records and/or testimony.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain records that are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2),(e)(3),(e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). *See* 31 CFR 1.36.

Appendix A—Office of Investigations, TIGTA

Field Division SAC Offices

Treasury IG for Tax Administration, 401 West Peachtree St., Atlanta, GA 30365.

Treasury IG for Tax Administration, 550 Main Street, Cincinnati, OH 45202.

Treasury IG for Tax Administration, 200 W. Adams, Chicago, IL 60606.

Treasury IG for Tax Administration, 4050 Alpha Rd., Dallas, TX 75244–4203.

Treasury IG for Tax Administration, 600 17th St., Denver, CO 80202.

Treasury IG for Tax Administration, 200 W. Forsyth St., Jacksonville, FL 32202.

Treasury IG for Tax Administration, 312 East First Street, Los Angeles, CA 90012.

Treasury IG for Tax Administration, 201 Varick Street, New York, NY 10008.

Treasury IG for Tax Administration, 600 Arch Street, Philadelphia, PA 19106.

Treasury IG for Tax Administration, 1301 Clay Street, Oakland, CA 94612.

Treasury IG for Tax Administration, New Carrollton Federal Bldg., 5000 Ellin Road, Lanham, MD 20706.

Treasury IG for Tax Administration, 1739–H Brightseat Road, Landover, MD 20785.

Treasury IG for Tax Administration, 8484 Georgia Ave., Silver Spring, MD 20910.

Appendix B—Audit Field Offices, TIGTA

Treasury IG for Tax Administration, 310 Lowell Street, Andover, MA 01812.

Treasury IG for Tax Administration, 401 W. Peachtree St., Atlanta, GA 30308–3539.

Treasury IG for Tax Administration, Atlanta Service Center, 4800 Buford Highway, Chamblee, GA 30341.

Treasury IG for Tax Administration, Koger Center-Fordham Building, 2980 Brandywine Road, Chamblee, GA 30341.

Treasury IG for Tax Administration, 3651 South Interstate 35, Austin, TX 78767.

Treasury IG for Tax Administration, 31 Hopkins Plaza, Fallon Federal Building, Baltimore, MD 21201.

Treasury IG for Tax Administration, 1040 Waverly Ave, Holtsville, NY 11742.

Treasury IG for Tax Administration, 200 W Adams, Chicago, IL 60606.

Treasury IG for Tax Administration, Peck Federal Office Bldg, 550 Main Street, Room 5028, Cincinnati, OH 45201.

Treasury IG for Tax Administration, 4050 Alpha Road, Dallas, TX 75244.

Treasury IG for Tax Administration, 600 17th Street, Denver, CO 80202.

Treasury IG for Tax Administration, 197 State Route 18 South, East Brunswick NJ 08816.

Treasury IG for Tax Administration, Fresno Service Center, 5045 E. Butler Stop 11, Fresno, CA 93888.

Treasury IG for Tax Administration, 7850 SW 6th Court, Plantation, FL 33324.

Treasury IG for Tax Administration, 2306 E. Bannister Rd, Kansas City, MO 64131.

Treasury Inspector General for Tax Administration—Audit, 24000 Avila Road, Laguna Niguel, CA 92677.

Treasury IG for Tax Administration, 312 East First Street, Los Angeles, CA 90012.

Treasury IG for Tax Administration, 5333 Getwell Rd, Memphis, TN 38118.

Treasury IG for Tax Administration, 201 Varick Street, Room 1054, New York, NY 10014.

Treasury IG for Tax Administration, 1160 West 1200 South, Ogden, Utah 84201.

Treasury IG for Tax Administration, Federal Office Building, 600 Arch Street, Philadelphia, PA 19106.

Treasury IG for Tax Administration, Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19154.

Treasury IG for Tax Administration, 915 2nd Avenue, Seattle, WA 98174.

Treasury IG for Tax Administration, 1222 Spruce, St. Louis, MO 63103.

Treasury IG for Tax Administration, 92 Montvale Avenue, Stoneham, MA 02180.

Treasury IG for Tax Administration, 1600 Riviera Avenue, Walnut Creek, CA 94596.

[FR Doc. 03–24056 Filed 9–19–03; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208165–91; REG–209035–86]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, REG–208165–91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG–209035–86 (TD 8862), Stock Transfer Rules (§§ 1.367(a)–8 and 1.367(b)–1).

DATES: Written comments should be received on or before November 21, 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 regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* REG–208165–91 (TD 8770), Certain Transfers of Stock or Securities by U.S. Persons to Foreign Corporations and Related Reporting Requirements; and REG–209035–86 (TD 8862), Stock Transfer Rules.

OMB Number: 1545–1271.

Regulation Project Number: REG–208165–91 and REG–209035–86.

Abstract: A United States entity must generally file a gain recognition agreement with the IRS in order to defer gain on a Code section 367(a) transfer of stock to a foreign corporation, and must file a notice with the IRS if it realizes any income in a Code section 367(b) exchange. These regulations provide guidance and reporting requirements related to these transactions to ensure compliance with the respective Code sections.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 580.

Estimated Time Per Respondent: 4 hours, 7 minutes.

Estimated Total Annual Burden Hours: 2,390.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24133 Filed 9–18–03; 12:01 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 941, 941–PR, 941–SS, Schedule B (Form 941), and Schedule B (Form 941–PR)

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 Forms 941 (Employer's Quarterly Federal Tax Return), 941–PR (Planilla Para La Declaracion Trimestral Del Patrono-La Contribucion Federal Al Seguro Social Y Al Seguro Medicare), 941–SS (Employer's Quarterly Federal Tax Return—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), Schedule B (Form 941) (Employer's Record of Federal Tax Liability), and Schedule B (Form 941–PR) (Registro Suplementario De La Obligacion Contributiva Federal Del Patrono).

DATES: Written comments should be received on or before November 21, 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 the forms and instructions 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: Employer's Quarterly Federal Tax Return.

OMB Number: 1545–0029.

Forms Number: 941, 941–PR, 941–SS, Schedule B (Form 941), and Schedule B (Form 941–PR).

Abstract: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is

used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 5,798,054

Estimated Time Per Respondent: 59 hours, 16 minutes.

Estimated Total Annual Burden Hours: 343,652,930.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2003.

Carol Savage,

Management and Program Analyst.

[FR Doc. 03–24134 Filed 9–18–03; 12:01 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120882–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–120882–97 (TD 8898), Continuity of Interest (§§ 1.368–1(e)(1)(ii) and 1.368–1(e)(2)(ii)).

DATES: Written comments should be received on or before November 21, 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 this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Continuity of Interest.

OMB Number: 1545–1691.

Regulation Project Number: REG–120882–97.

Abstract: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368–1T), and before the effective date of the final regulations under § 1.368–1(e) may request a private letter ruling permitting them to apply § 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS, that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368–1(e) to the transaction.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 150 hours.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 16, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24135 Filed 9–18–03; 12:01 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–93–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–93–90 (TD 8364), Corporations; Consolidated Returns—Special Rules Relating To Dispositions and Deconsolidations of Subsidiary Stock (§§ 1.337(d)–2 and 1.1502–20).

DATES: Written comments should be received on or before November 21, 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 regulation 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: Corporations; Consolidated Returns—Special Rules Relating To Dispositions and Deconsolidations of Subsidiary Stock.

OMB Number: 1545–1160.

Regulation Project Number: CO–93–90.

Abstract: This regulation prevents elimination of corporate-level tax because of the operation of the consolidated returns investment adjustment rules. Statements are required for dispositions of a subsidiary's stock for which losses are claimed, for basis reductions within 2 years of the stock's deconsolidation, and for elections by the common parent to retain the net operating losses of a disposed subsidiary.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2003.

Carol Savage,

Management and Program Analyst.

[FR Doc. 03–24136 Filed 9–18–03; 12:01 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–57–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–57–94 (TD 8652), Cash Reporting by Court Clerks (§ 1.6050I–2).

DATES: Written comments should be received on or before November 21, 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 this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cash Reporting by Court Clerks.

OMB Number: 1545–14499.

Regulation Project Number: IA–57–94.

Abstract: This regulations concerns the information reporting requirements of the Federal and State court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense. The Internal Revenue Service will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name is required to be included on for 8300.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–24137 Filed 9–18–03; 12:01 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Chicago Health Care System, Chicago (Lakeside), IL

AGENCY: Department of Veterans Affairs

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate real property at VA's Lakeside property in Chicago, Illinois (''Lakeside''), to be leased under an enhanced-use lease (EUL). The Department intends to enter into a long-term (up to 75 years) lease of approximately 3.6 acres of real property with a competitively selected lessee/developer who would finance, design, develop, maintain and manage mixed-use facilities, possibly including such uses as residential, commercial, and medical, all at no cost to VA. VA would use the consideration from the lease to improve services and facilities for veterans in the Chicago area.

FOR FURTHER INFORMATION CONTACT: Brian A. McDaniel, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9492.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.*, specifically provides that the Secretary may enter into an enhanced-use lease if he determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: September 11, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–24054 Filed 9–18–03; 12:01 pm]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 183

Monday, September 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Carpinteria Shoreline, a Feasibility Study in the City of Carpinteria, Santa Barbara County, CA

Correction

In notice document 03–23173 beginning on page 53598 in the issue of Thursday, September 11, 2003, make the following correction:

On page 53599, in the first column, under the heading **ADDRESSES**, in the fourth line, ''90052'' should read, ''90053''.

[FR Doc. C3–23173 Filed 9–19–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
September 22, 2003

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Proposed Rules

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–143–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and notice of public hearing on a proposed action.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes revisions to its program in response to our final rulemaking of December 27, 2001 (66 FR 67010) regarding mine subsidence control, subsidence damage repair or compensation, and water supply replacement or restoration. In that rulemaking, we required changes to the Pennsylvania program to make it no less effective than the Federal regulations. This amendment addresses those required changes. The specific changes Pennsylvania is proposing to make are detailed below. Pennsylvania has also submitted supplementary information that appears to satisfy some of the required changes without the need of additional regulations or modification to existing regulations or statutes. That information is also detailed below. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations and/or SMCRA.

In this proposed rule, we are asking for comments regarding the changes Pennsylvania is proposing to make to its regulations related to the implementation of the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA). In a separate proposed rulemaking, also published today, we are asking for comments on proposed supersession of some of the provisions of BMSLCA. We will be holding public hearings on both the proposal for superseding certain provisions of BMSLCA and Pennsylvania's proposed changes to its regulations, as noted below, on the dates indicated below under DATES. Pennsylvania will also be holding public hearings on its proposed changes to its regulations. In order to accommodate those who wish to speak at both Pennsylvania's and our public hearings, the hearings will be held on the same days and at the same locations, but at different times.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on this proposed action, and the procedures that we will follow for the public hearings.

DATES: We will accept written comments on this proposal until 4 p.m., e.s.t. October 22, 2003. We will hold public hearings on the proposal on October 15, 2003, at the Best Western University Inn in Indiana, Pennsylvania at 3 p.m. and at 7 p.m. and on October 16, 2003, at the Holiday Inn Meadow Lands in Washington, Pennsylvania at 3 p.m. and at 7 p.m.. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 7, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Field Office Director at the address listed below.

You may review copies of the Pennsylvania program, this proposal, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

George Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, E-mail: *grieger@osmre.gov.*

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, PO Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036, E-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Action
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Action

By letter dated August 27, 2003, (Administrative Record No. PA 841.64) as modified on September 3, 2003 (Administrative Record No. PA 841.65), Pennsylvania sent us a proposed amendment to its program under SMCRA (30 U.S.C. 12501 *et seq.*). Pennsylvania sent the amendment in response to the required program amendments at 30 CFR 938.16(hhhh)—(bbbbbb). We required those amendments in our December 27, 2001, final rule, (66 FR 67010) as a result of our review of Pennsylvania's amendment to the BMSLCA and its implementing regulations regarding repair or compensation for structures and restoration or replacement of water supplies damaged by underground mining operations.

Pennsylvania responded to the required amendments related to its regulations in a pre-submission assistance request dated February 25, 2002 (Administrative Record No. PA 841.49). Pennsylvania noted in the pre-submission assistance request that it was unable to address the required amendments involving changes to the BMSLCA because the Pennsylvania General Assembly is the only State entity with the authority to make statutory changes. While Pennsylvania can recommend changes to the statute it has no control over their adoption or the time frame in which the General Assembly might enact them. Accordingly, in a separate rulemaking located in this same **Federal Register** issue, OSM is proposing to supersede those sections of the BMSLCA that it found to conflict with SMCRA.

OSM reviewed the pre-submission assistance request and submitted its

written comments to Pennsylvania on April 25, 2002 (Administrative Record No. PA 841.54). Pennsylvania and OSM also conducted a series of meetings to discuss the required amendments. Both agencies believed that jointly exploring resolutions to the required amendments would be beneficial in securing any necessary program changes as quickly as possible and eliminate the uncertainty of enforcement of BMSLCA to all affected groups. The amendment that is the subject of this proposed rule reflects the outcome of those meetings. Pennsylvania's proposed amendment that is the subject of this rulemaking includes a summary of each of the required amendments from the December 27, 2001, final rule, a discussion section that reflects the results of the meetings between Pennsylvania and OSM, and Pennsylvania's proposal to resolve each of the required amendments. For organizational purposes, the regulation changes proposed by Pennsylvania and the information submitted in response to the required amendments are presented according to the required amendments at 30 CFR 938.16. Additionally, Pennsylvania is proposing several amendments to Chapters 86 and 89 that we did not specifically require. Pennsylvania contends these amendments are needed to clarify or supplement regulatory provisions that were changed in response to the required amendments. These proposed changes will be noted following the discussion on the required amendments.

Regulation at 30 CFR 938.16(hhhh). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 5(b) of the BMSLCA to delete the reference to section 6(a) of the BMSLCA, which no longer exists, and replace it with a reference to 6(b).

Discussion: In the December 27, 2001, final rule, OSM found this incorrect cross-reference in its review of the 1994 amendments to BMSLCA. Section 5(b), which sets forth an operator's obligation to file a bond, references section 6(a) as the site describing the scope, terms and criteria for subsidence bonds. Section 6(a) of the amended statute is a vacant site. The targeted descriptions actually appear in section 6(b). This error resulted from a failure to re-designate section 6(b) to 6(a) during the 1994 amendment process.

In this submission, the Pennsylvania Department of Environmental Protection (PADEP) asserts that the cross reference to section 6(a) is an obvious error. It is PADEP's position that when there is an obvious error in a statute, the principles governing statutory construction in Pennsylvania require that section 5(b) of the BMSLCA be read in conjunction with section 6. *Bloom* v. *Cmwlth., Dept. of Environmental Resources,* 101 Pa. Cmwlth. 8, 515 A.2d 361 (1986). Furthermore, PADEP asserts that section 1932 of the Statutory Construction Act, 1 Pa. C.S.A. section 1932, requires that parts of statutes, which are in *pari materia,* shall be construed together. The parts are in *pari materia* when they relate to the same person or things. Sections 5(b) and 6(b) both relate to the PADEP, applicants and bonding. When construing sections 5(b) and 6 together PADEP argues that it is obvious that the cross-reference in section 5(b) should be to section 6(b) and that section 5(b) can be read as cross-referencing section 6(b) and not 6(a).

PADEP further asserts that in *People United to Save Homes* v. *Department of Environmental Protection,* 1999 EHB 457, *aff'd,* 789 A.2d 319 (Pa. Cmwlth. 2001), the parties litigated the appropriate bond required under the BMSLCA. Neither the Environmental Hearing Board nor the Commonwealth Court had any difficulty with the erroneous cross reference in section 5(b).

Sections 5(b) and 6(b) both impose on Pennsylvania the duty to require the applicant to post a bond or other security. PADEP maintains that the erroneous cross-reference in section 5(b) does not negate the obligation imposed by section 6(b). In summary, Pennsylvania is proposing that this reference does not interfere with its authority to require a bond or make its bonding requirements any less effective than Federal bonding requirements.

PADEP's Proposed Resolution: PADEP proposes that sections 5(b) and 6(b) remain unchanged, as it has satisfied the requirement in 30 CFR 938.16(hhhh).

Regulation at 30 CFR 938.16(iiii). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 5.1(a)(1) of the BMSLCA to require the prompt replacement of all water supplies affected by underground mining operations.

Discussion: In the December 27, 2001, final rule, OSM found that neither BMSLCA nor Chapter 89 expressly require operators to achieve permanent restoration or replacement of a water supply in a ''prompt'' manner. Although sections 5.1(a) and (b) include provisions requiring the prompt provision of temporary water, there is no explicit requirement to achieve permanent restoration or replacement in a ''prompt'' manner.

In this submission, PADEP asserts that although section 5.1(a)(1) does not explicitly indicate that permanent restoration or replacement must take place in a prompt manner, it does not bar Pennsylvania from acting to require prompt restoration or replacement. It is PADEP's position that water supply claims should be resolved as quickly as possible. PADEP therefore proposes to resolve this matter by inserting the term ''promptly'' in section 89.145a(b), which sets forth the basic requirement to restore or replace an affected water supply. With this change, PADEP argues that Pennsylvania's water supply replacement requirements will be no less effective than the Federal counterpart requirements in 30 CFR 817.41(j) in regard to the timeliness of permanent restoration or replacement.

PADEP further asserts that it is unnecessary to amend section 5.1(a)(1) to accomplish this change since it is silent on what is timely.

PADEP's Proposed Resolution: PADEP proposes to resolve OSM's concern by amending 25 Pa. Code 89.145a(b), as follows:

89.145a. Water supply replacement: performance standards.

* * * * *

(b) Restoration or replacement of water supplies. When underground mining activities conducted on or after August 21, 1994, affect a public or private water supply by contamination, diminution or interruption, the operator shall promptly restore or replace the affected water supply with a permanent alternate source which adequately serves the premining uses of the water supply and any reasonably foreseeable uses of the water supply. The operator shall be relieved of any responsibility under the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. sections 1406.1–1406.21) to restore or replace a water supply if the operator demonstrates that one of the provisions of section 89.152 (relating to water supply replacement: relief from responsibility) relieves the operator of further responsibility. This subsection does not apply to water supplies affected by underground mining activities which are covered by Chapter 87 (relating to surface mining of coal).

* * * * *

Regulation at 30 CFR 938.16(jjjj). Amendment Required by December 27, 2001 ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove section 5.1(b) of the BMSLCA, which establishes a two-year limit on filing water supply damage claims. OSM made a similar finding in 30 CFR 938.16(yyyyy) with regard to the corresponding regulatory requirement in 25 Pa. Code 89.152(a)(4).

Discussion: In the December 27, 2001, final rule, OSM stated that section 5.1(b) provides that a mine operator shall not be liable to restore or replace a water

supply if a claim is made more than two years after the date of impact. OSM further noted that neither SMCRA nor the Federal regulations contain a similar waiver of liability.

In disapproving section 5.1(b) and the corresponding regulation, OSM found that the two-year filing deadline rendered Pennsylvania's water supply replacement requirements less effective than Federal counterpart requirements. OSM reasoned that the filing deadline could result in release from replacement liability for some EPAct water supplies. OSM also expressed concern that the two-year statute of limitations could preclude a citizen suit because the landowner would not know that the PADEP wasn't taking action until the two years had elapsed.

In this submission, PADEP acknowledges that section 5.1(b) provides a statute of limitations that could serve as a basis for releasing an operator of the obligation to replace an affected water supply. As a result, PADEP agrees that OSM must supersede this provision to the extent it is inconsistent with SMCRA. It is PADEP's position that section 5.1(b) be superseded only to remove the statute of limitation as it relates to EPAct water supplies. PADEP concludes that limiting the superseded section as described will serve to satisfy the Federal requirement in 30 CFR 938.16(jjjj), while preserving Pennsylvania law to the maximum extent possible.

In this submission, PADEP also proposes to delete the corresponding provision in 25 Pa. Code 89.152 to the extent it relates to EPAct water supplies.

Proposed Resolution: PADEP proposes to amend 25 Pa. Code 89.152(a) to remove the two-year filing deadline in regard to claims involving EPAct water supplies as follows:

89.152. Water supply replacement: special provisions.

(a) In the case of an EPAct water supply, an operator may not be required to restore or replace the water supply if one of the following has occurred:

(1) The Department has determined that a replacement water supply meeting the criteria in section 89.145a(f) (relating to water supply replacement: performance standards) cannot be developed and the operator has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(2) The landowner and operator have entered into a valid voluntary agreement under section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. 1406.5) which does not require restoration or replacement of the water supply and the Department has determined that an adequate replacement water supply could feasibly be developed.

(3) The operator can demonstrate one of the following:

(i) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.

(ii) The contamination, diminution or interruption occurred more than three years after underground mining activities occurred.

(iii) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(b) In the case of a water supply other than an EPAct water supply, an operator will not be required to restore or replace a water supply if the operator can demonstrate one of the following:

(1) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.

(2) The contamination, diminution or interruption is due to underground mining activities which occurred more than 3 years prior to the onset of water supply contamination, diminution or interruption.

(3) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(4) The claim for contamination, diminution or interruption of the water supply was made more than 2 years after the water supply was adversely affected by the underground mining activities.

(5) That the operator has done one of the following:

(i) Has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(ii) The landowner and operator have entered into a valid voluntary agreement under section 5.3 of The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. 1406.5c) which does not require restoration or replacement of the water supply or authorizes a lesser amount of compensation to the landowner than provided by section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act.

(c) * * *

In this submission, PADEP indicated that in order for this change to become effective, OSM must set aside the language in section 5.1(b) to the extent this provision would relieve an operator of liability to restore or replace an EPAct water supply. Section 5.1(b) provides that:

* * * * *

(b) A mine operator shall not be liable to restore or replace a water supply under the provisions of this section if a claim of contamination, diminution or interruption is made more than two years after the supply has been adversely affected.

* * * * *

The proposal to supersede section 5.1(b) appears in a separate rulemaking located in this same **Federal Register** issue.

Regulation at 30 CFR 938.16(kkkk). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove the clause in section 5.2(b)(2), which acknowledges that water supply claims may exist for periods up to three years prior to PADEP enforcement action. Pennsylvania must also amend its program as necessary to ensure that landowners receive investigation results within 10 days of the date PADEP completes its investigation.

Discussion: In the December 27, 2001, final rule, OSM found two provisions of section 5.2(b)(2) that could potentially interfere with the prompt replacement of water supplies. One provision, which provides examples of compliance orders, includes language suggesting that PADEP could allow a claim to linger for as long as three years before taking an enforcement action. Another provision, describing PADEP responsibilities, allows PADEP as long as 45 days to report the findings of a water supply claim to an affected landowner.

Regarding the three-year period, section 5.2(b)(2) includes descriptions of some of the types of orders PADEP may issue to require compliance with BMSLCA water supply replacement provisions. Among the examples provided are ''orders requiring the provision of a permanent alternate source where the contamination, diminution or interruption does not abate within three years of the date on which the supply was adversely affected.'' OSM interpreted this clause as potentially delaying the issuance of a water supply replacement order for three years. OSM viewed this delay as interfering with the requirement to promptly restore or replace an affected water supply, and, moreover, noted that it exceeded the Federal guideline on establishing permanent water supplies within two years of the date of impact (*see* 60 FR 16727).

As explained in the discussion under 30 CFR 938.16(iiii), PADEP intends to ensure that water supplies are replaced as promptly as possible. To this end, PADEP has committed to amending 25 Pa. Code 89.145a(b) to clarify that the requirement is to ''promptly'' restore or replace the affected water supply. It is PADEP's position that the language in section 5.2(b)(2) does not prevent PADEP from taking action sooner than three years after the date of impact. In this submission, PADEP is asserting that it will not interfere with the general requirement to complete water supply replacement in a prompt manner. PADEP asserts that if anything, this language serves as guidance to PADEP that under no circumstances should permanent restoration or replacement take more than three years.

In this submission, PADEP regards OSM's concern about the ''three-year'' clause in section 5.2(b)(2) as effectively nullified by the proposed changes to 25 Pa. Code 89.145a(b). PADEP contends that there is no need to supersede this section because its primary purpose is to illustrate some of the conditions under which PADEP will issue orders and to describe the types of action PADEP will require.

Regarding the investigation time frames, section 5.2(b)(2) provides that PADEP will commence investigations of claims of water supply impacts within ten days of notification. Within 45 days of notification PADEP is to make a determination of whether mining caused the water supply problems. OSM found that the timeframes described in this section did not meet the Federal guidelines for responding to citizens' complaints. Specifically, section 5.2(b)(2) does not require PADEP to notify a claimant of the findings of investigation within 10 days of completing the investigation. OSM required PADEP to amend its program to ensure that investigation results are provided to claimants in accordance with the time frames specified in 30 CFR 842.12. OSM made a similar finding in 30 CFR 938.16(wwwww) with regard to the implementing regulations at 25 Pa. Code 89.146a(c).

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.146a(c) to require the reporting of investigation results to claimants within 10 days of completing the investigation and maintains that there is no need to amend section 5.2(b)(2).

In this submission, PADEP asserts that the proposed amendment to 25 Pa. Code 89.145a(b), which requires the prompt restoration or replacement of an affected water supply, and Pennsylvania's commitment to ensure prompt restoration or replacement, effectively nullify any concerns regarding the language in section 5.2(b)(2). (*See* proposal under 30 CFR 938.16(iiii) in this section).

PADEP also proposes to amend 25 Pa. Code 89.146a(c) to address OSM's concerns regarding the timely reporting of investigation results to claimants.

PADEP's Proposed Resolution: PADEP proposes to amend 25 Pa. Code 89.145a(b) as described under 30 CFR 938.16(iiii) and to revise 25 Pa. Code 89.146a(c). The revision to 89.146a(c) reads as follows:

89.146a. Water supply replacement: procedure for resolution of water supply damage claims.

* * * * *

(c) If the affected water supply has not been restored or an alternate water supply has not been provided by the operator or if the operator provides and later discontinues an alternate source, the landowner or water supply user may so notify the Department and request that the Department conduct an investigation in accordance with the following procedure:

(1) Within 10 days of notification, the Department will commence an investigation of landowner's or water supply user's claim.

(2) Within 45 days of notification, the Department will make a determination of whether the contamination, diminution or interruption was caused by the operator's underground mining activities. The Department will notify all affected parties of its determination within 10 days of completing the investigation.

(3) If the Department determines that the operator's underground mining activities caused the water supply to be contaminated, diminished or interrupted, the Department will issue any orders that are necessary to assure compliance with The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. sections 1406.1–1406.21) and this chapter.

* * * * *

Regulation at 30 CFR 938.16(llll). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to delete the phrase, ''Wherever a mine operator, upon request, has been denied access to conduct a premining survey and the mine operator thereafter served notice upon the landowner by certified mail or personal service, which notice identified the rights established by sections 5.1 and 5.3 and this section, was denied access and the landowner failed to provide or authorize access within ten days after receipt thereof, then such affirmative proof shall include premining baseline data, provided by the landowner or the department, relative to the affected water supply.'' from section 5.2(d) of the BMSLCA. Pennsylvania's regulation at 25 Pa. Code 89.153 included a similar provision for denial of survey access; however, the regulations did not require ''pre-mining baseline data'' as a condition of proof.

Discussion: In this submission, PADEP proposes that OSM does not need to disapprove the statutory language in section 5.2(d) of the BMSLCA. PADEP has reviewed the statutory language at section 5.2(d) and has determined that it will use any and all evidence in cases of water supply impacts and that this section will not interfere with its ability to use any evidence other than ''premining baseline information'' in cases of water supply impacts. In conclusion, PADEP is assuring OSM that the requirements in 25 Pa. Code 89.153 are sufficient to prohibit an operator from refusing to replace an adversely affected supply and from requiring only ''premining baseline data'' as a condition of proof of adverse effect.

Proposed Resolution: PADEP proposes that section 5.2(d) of the BMSLCA remain unchanged based on its interpretation of its statute and regulations and argues that it has satisfied the requirement in 30 CFR 938.16(llll).

Regulation at 30 CFR 938.16(mmmm). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* Section 5.2(e)(2) allows a mine operator to seek relief from liability for water supply impacts by affirmatively proving that the impacts occurred more than three years after mining activity. This provision is also reflected in 25 Pa. Code 89.152(a)(2).

In the December 27, 2001, final rule, OSM found that this provision rendered Pennsylvania's water supply replacement requirements less effective than those of the Federal program. Federal law and regulations relating to the replacement of EPAct water supplies do not limit the obligation to replace to any specific time period. OSM further indicated that subsidence can occur any time after mining and, accordingly, that an operator's liability extends indefinitely into the future.

Discussion: During the joint meeting process, OSM noted that its regulations in 30 CFR 700.11 did provide for termination of jurisdiction over mining activities when all aspects of reclamation are observed to be complete or when the reclamation bond is released. OSM acknowledged that following bond release, it would no longer regard the former area of activity as an underground mining operation subject to the requirements of Federal law and regulation. While it is possible for water supply impacts to arise after

this point in time, OSM would not normally reassert jurisdiction unless it found that the decision to terminate jurisdiction was based on fraud, collusion, or misrepresentation of a material fact.

Also during the joint meeting process, OSM and PADEP discussed technical considerations relating to the termination of jurisdiction and release of liability. It was noted that most water supply impacts occur in close association with the time of mining. This relationship is fostered by the basic requirement to either use a mining technique that results in planned subsidence or provide sufficient support to prevent unplanned subsidence (*see* 30 CFR 817.121(a) and 25 Pa. Code 89.142a(a)(4)). PADEP asserts that water supply impacts tend to occur at the time of subsidence or upon the advance of mine workings into or adjacent to water supply aquifers. After workings are completed within an individual section of the mine, they become stable leaving little potential for additional subsidence-related impacts. At that point, the only remaining consideration is the effect of the mine pool that will develop after mine closure. In certain settings, the pool may influence adjacent aquifers causing pollution of water supplies. Impacts of this type occur within a few months to a decade after the closure of the entire mine. OSM's decision to terminate jurisdiction is based on the satisfaction of reclamation standards and not necessarily on the date of pool stabilization. PADEP considers the management of the post closure mine pool as falling within the scope of the term ''underground mining activities'' and bases its decision to release or retain liability on evidence of pool stability.

Following discussions, OSM established three criteria that PADEP must meet in order to demonstrate that Pennsylvania's application of the three-year limit does not result in outcomes that are inconsistent with the Federal regulations. Those criteria are: (1) PADEP must show that its application of the three-year limit will not result in release of liability prior to the time OSM would terminate jurisdiction under the Federal regulations. Federal termination of jurisdiction normally occurs five years after the final augmented seeding, provided the operator demonstrates fulfillment of all reclamation requirements; (2) PADEP must show that it can reassert jurisdiction if a decision to release liability is based on fraud, collusion, or misrepresentation of a material fact; and (3) PADEP must show that the three-year limit does not interfere with a citizen's right to sue as provided under section 520 of SMCRA.

In this submission, PADEP maintains that it addresses OSM's criteria. Regarding the three-year limit vs. Federal termination of jurisdiction, PADEP asserts that Pennsylvania's three-year limit will always result in a longer duration of liability than OSM's termination of jurisdiction rule. Section 5.2(e)(2) and 25 Pa. Code 89.152(a)(2) mark the start of the three-year period at the time of the last ''mining activity'' (a term that PADEP interprets to mean the last aspect of the reclamation). In every case, the last activity completed will be the management of the post closure mine pool, which, as previously noted, is the most likely cause of postmining water supply impacts. PADEP does not start the three-year period until it is convinced that the pool has stabilized. Mine pools typically take several years to a decade to reach a stable elevation and require an additional six months to a year of monitoring to verify stabilization. In the meantime, site reclamation, which is the basis for OSM's decision to terminate jurisdiction, moves forward according to a separate schedule that normally ends in advance of pool stabilization. PADEP assures OSM that its decision to release operator liability will always occur after the Federal termination of jurisdiction because the three-year period will always start at least two years after the final augmented seeding of the reclaimed surface sites. In addition, PADEP is proposing to amend the definition of ''underground mining activities'' to clarify that the term includes management of the post closure mine pool.

Regarding the authority to reassert jurisdiction, PADEP contends that section 5.2(e) clearly provides for PADEP to retain jurisdiction when an operator's defense is based on fraud, collusion, or misrepresentation of a material fact. It requires the operator to provide affirmative proof that the last mining activity occurred more than three years before the time of water supply impact. If PADEP subsequently discovers that the operator's information regarding the three-year period is incorrect, PADEP maintains that it has authority to reject the operator's ''proof'' and deny the operator's defense. Most likely, this would involve PADEP's discovery of impacts from a mine pool that was prematurely reported to be stable. If PADEP found that the pool had continued to rise after the date provided by the mine operator, it would recalculate the three-year period and, if appropriate, reject the operator's defense. PADEP asserts that the provisions of section 5.2(e) actually provide greater authority than those of 30 CFR 700.11 because they allow PADEP to retain jurisdiction until it is satisfied that an operator's assertions are correct and, moreover, jurisdiction is never terminated where an operator's assertions are incorrect regardless of the reason for the error. Consequently, there is not a need for PADEP to reassert jurisdiction. Finally, it is PADEP's position that section 5.2(e) is not a termination of jurisdiction law. Section 5.2(e) establishes the grounds an operator can affirmatively use to be relieved of the obligation to replace a water supply. PADEP asserts that if an operator uses erroneous or fraudulent information the operator has failed to meet the affirmative defense requirements and would still be liable to replace the water supply and termination of jurisdiction is never an issue.

PADEP also proposes that it has authority to deal with the submission of fraudulent information under sections 9 and 17.1 of the BMSLCA. Section 9 provides PADEP general authority to issue ''such orders as are necessary to aid in the enforcement of the provisions of this act.'' Such orders could include orders requiring replacement of water supplies in cases where an operator bases a defense against liability on fraud, collusion, or misrepresentation of a material fact. Section 17.1 defines the submission of false information as unlawful conduct under the act and exposes the person submitting the false information to enforcement proceedings and penalties.

Regarding preservation of citizens' right to sue, the right of citizens to sue for the effects of underground coal mining is described in section 13 of the BMSLCA. This section was significantly modified in 1980 for purposes of obtaining State primacy. The provisions of this section are part of Pennsylvania's approved program and PADEP interprets section 13 as not being affected by the three-year limit described in section 5.2(e)(2).

PADEP's Proposed Resolution: In summary, PADEP asserts that the three-year limit described in section 5.2(e)(2) and 25 Pa. Code 89.152(a)(2) does not render Pennsylvania's water supply replacement provisions any less effective than those of the Federal program. PADEP requests that OSM withdraw the required amendments under 30 CFR 938.16(mmmm) and 938.16(xxxxx) relating to the removal of the three-year liability limit.

PADEP also proposes to amend the definition of ''underground mining activities'' to clarify that the term

includes management of the post closure mine pool. The definition, which appears in 25 Pa. Code 86.1 and 25 Pa. Code 89.5, is proposed to be amended as follows:

Underground mining activities includes the following:

(i) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas used for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed.

(ii) Underground operations such as underground construction, operation, and reclamation of shafts, adits, support facilities located underground, in situ processing, and underground mining, hauling, storage and blasting.

(iii) Operation of a mine including preparatory work in connection with the opening and reopening of a mine, backfilling, sealing, and other closing procedures, post closure mine pool maintenance and any other work done on land or water in connection with a mine.

* * * * *

Regulation at 30 CFR 938.16(nnnn), (oooo), (qqqq), (rrrr). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM required Pennsylvania to remove provisions in sections 5.2(g) and (h) and 5.3 of BMSLCA which allow an operator to provide compensation in lieu of restoring or replacing an affected water supply.

Discussion: Sections 5.2(g) and (h) and section 5.3 of the BMSLCA include provisions that allow water supply cases to be resolved through compensation rather than replacement of the affected water supply. They allow an operator to seek relief from liability if restoration or replacement cannot be achieved within three years of the date of impact. Compensation under sections 5.2(g) and (h) may take one of three forms: (1) An amount agreed to by the operator and landowner, (2) an amount representing the reduction in fair market value caused by the water loss, or (3) the purchase of the property at its fair market value prior to impact. Section 5.3 provides similar forms of compensation but allows the landowner or water user to take the initiative in seeking financial relief. Section 5.3 also allows the operator and landowner to agree on compensation in lieu of replacement before or after impacts occur.

In the December 27, 2001, final rule, OSM disapproved these provisions of the BMSLCA as well as corresponding regulations in Chapter 89. OSM asserted that neither the EPAct nor the Federal regulations allowed compensation to suffice in lieu of water supply replacement. Moreover, OSM promulgated regulations requiring that in every case within the scope of EPAct, the mine operator had to provide an adequate replacement water supply or, if the landowner waived replacement, demonstrate that an adequate water supply could be developed. OSM stated that Federal law requires that a property has to be provided with an equivalent water supply or the capacity to develop a suitable alternate water supply.

During the joint meeting process, PADEP presented information showing how situations could develop in which an operator was unable to provide a water supply meeting all of the criteria under 25 Pa. Code 89.145a(f) (relating to adequacy of permanently restored or replacement water supplies). PADEP stated that although it closely reviews hydrologic data in permit applications to identify situations where replacement may be difficult or impractical, there are some situations that may be impossible to predict. PADEP further stated that replacement problems, when they arise, normally occur as a result of a combination of factors and conditions that are not evident at the time of permit application. PADEP gave an example of a small residential property with a shallow well, no surface springs, no public water service, and an undetected pollution problem affecting aquifers below the well. It may be assumed that PADEP approved the operator's plan to replace the affected water supply based on the proven success of this approach in the local area and that neither the PADEP nor the operator had knowledge of the localized pollution problem affecting the deeper aquifers beneath the property. In this case, the undetected pollution problem and lack of alternate water sources would combine to prevent the development of an adequate replacement water supply if the shallow well were affected.

PADEP states that it rarely encounters cases where water supplies cannot be replaced. PADEP contends that there are, however, situations like the one in the previous example where various factors could interact to prevent the development of an adequate replacement water supply. Although public water offers a suitable remedy for many problems, it is not available in all locations, particularly rural and remote areas where underground mining operations tend to be located. PADEP asserts that it always evaluates the possibility of extending public water service into areas where affected water supplies cannot be replaced using wells and springs. These determinations include considerations of service areas, water system capacity, distribution design factors and availability of right-of-way for line installation. In the final determination, PADEP proposes that it only considers replacement to be unachievable when the affected property cannot be provided with a well or spring, meeting the criteria in 25 Pa. Code 89.145a(f), or connected to a public water line for reasons of system limitations.

During the joint meeting process, OSM acknowledged that rare cases may exist where the operator cannot develop an adequate replacement water supply. OSM indicated that upon encountering a case where an EPAct water supply cannot be replaced, it would regard the loss of supply as material damage to the dwelling or noncommercial building served by the water supply. Under these circumstances, OSM would require the operator to compensate the landowner for the reduction in fair market value of the structure according to 30 CFR 817.121(c). OSM does not equate these instances to compensation in lieu of water supply replacement.

In the joint meeting process, OSM recognized two conditions under which a water supply claim can result in compensation.

Condition 1: The operator provides a written statement from the landowner indicating that the water supply was not needed for the land use in existence at the time of loss and is not needed to achieve the postmining land use, and demonstrates that a suitable alternative water source could feasibly be developed.

Condition 2: The regulatory authority determines that an equivalent replacement water supply cannot be developed and the mine operator compensates the landowner for the reduction in fair market value of the property.

Under the BMSLCA, PADEP has advised there are several situations that could lead to compensation in lieu of water supply replacement. The first situation is where the water supply can be replaced but the operator and landowner have entered into an agreement pursuant to section 5.3 waiving the provision of a replacement water supply. The second situation is where the water supply cannot be replaced and the operator and landowner have entered into an agreement pursuant to section 5.2(g) or 5.3 waiving the provision of a replacement water supply. The third situation is where the water supply cannot be replaced and the landowner

is unwilling to accept compensation in lieu of a replacement water supply. The fourth situation is where the water supply can be replaced but the operator only offers compensation as the means of settlement.

PADEP contends that the first Pennsylvania scenario is similar to OSM's Condition 1. The landowner signs an agreement that expressly waives the provision of a replacement water source. This equates to ''indicating that the water supply was not needed for the land use in existence at the time of loss and is not needed to achieve the postmining land use.'' The Federal condition also requires the operator to demonstrate ''that a suitable alternative water source could feasibly be developed.'' Under the Pennsylvania program, this demonstration is provided at the time of permit application in accordance with 25 Pa. Code 89.36(c) and is reviewed by PADEP technical staff prior to permit issuance. PADEP states that it does not issue a permit unless it determines that all potentially affected water supplies can be replaced by the methods proposed by the operator. No additional demonstration is required at the time of settlement. In this submission, PADEP proposes that the Pennsylvania program is essentially the same as the Federal program in regard to these types of situations.

PADEP maintains that the second and third Pennsylvania scenarios must be evaluated in terms of OSM Condition 2. In these scenarios, PADEP must first determine that the operator cannot develop an adequate replacement water supply and subsequently determine that the landowner has been fairly compensated in accordance with section 5.2(g) or section 5.3(a)(5). Pennsylvania requirements for adequacy turn on a replacement water supply's capacity to meet the original water supply's premining and reasonably foreseeable uses, while Federal regulations require a replacement water supply to be equivalent to the premining water supply in terms of quality and quantity. Additional explanations of how Pennsylvania's standards for ''adequacy'' are no less effective than Federal standards for ''equivalency'' are provided in the preamble discussion at 66 FR 67012.

PADEP asserts that determinations regarding the development of a replacement water supply are based on several factors, including the replacement methods described in the permit application, the operator's efforts in replacing the water supply, the means of replacing nearby water supplies, the hydrologic resources of the property, the availability of public water and the potential for extending public water to the property. If PADEP determines that the operator cannot develop a replacement water supply meeting the criteria in 25 Pa. Code 89.145a(f), it assists the landowner in obtaining appropriate compensation under section 5.2(g) or 5.3(a)(5). In this submission, PADEP proposes that both of these situations will fall within the guidelines of OSM Condition 2.

In this submission, PADEP proposes that the fourth Pennsylvania scenario does not fall within the scope of OSM Condition 1 or 2. The existing provisions of sections 5.2(g) and (h) limit PADEP's authority to require a replacement water supply when an operator decides to pursue a settlement involving compensation. If PADEP is to have authority to require replacement water supplies in situations where it determines that a replacement water supply meeting the standards in 25 Pa. Code 89.145a(f) can be developed, PADEP asserts that OSM must supersede these provisions to the extent they would interfere with PADEP actions requiring replacement of EPAct water supplies.

In this submission, PADEP proposes that the final aspect of Pennsylvania's program that must be evaluated is whether or not the compensation provided under Pennsylvania's program is equal to that provided under the Federal program (*i.e.*, compensation equal to the reduction in fair market value of the structure). As noted earlier, section 5.2(g) provides for compensation equal to the reduction in fair market value of the property, which is at least equal to the amount required by the Federal program. Subsection (g) also provides an option to purchase the property at its fair market value prior to impact. Subsection (g) also allows compensation pursuant to other types of agreements made between the operator and landowner. Although section 5.2 is silent regarding the amount of compensation required under these agreements, section 5.3 provides the landowner a second chance at securing appropriate compensation if the amount provided under a previous agreement is less than the reduction in fair market value of the property or purchase price of the property prior to impact. Pennsylvania maintains that these provisions act together to ensure that landowners have the opportunity to obtain compensation equal to or greater than the amount provided by the Federal program.

As indicated in the foregoing discussion, PADEP is proposing that Pennsylvania's provisions relating to compensation in lieu of water supply replacement are no less effective than the Federal provisions in most respects. PADEP asserts that both Federal and State regulations allow compensation in cases where replacement is achievable but waived by the landowner and both sets of regulations recognize the existence of conditions where the loss of a water supply can result in compensation. As noted by Pennsylvania, its program does, however, include provisions limiting PADEP's authority to require replacement when an operator opts to pursue compensation without regard to the feasibility or practicality of replacing a water supply. PADEP argues that this inconsistency must be addressed through a partial supersession of various provisions of sections 5.2(g) and (h) to the extent that they would interfere with the replacement of EPAct water supplies and corresponding changes to 25 Pa. Code 89.152(a). With these changes, PADEP is proposing that Pennsylvania's provisions relating to the replacement of EPAct water supplies will be no less effective than those of the Federal regulations.

PADEP's Proposed Resolution: PADEP proposed to address OSM's concerns through amendments to 25 Pa. Code 89.152. The section as proposed to be amended reads:

89.152. Water supply replacement: special provisions.

(a) In the case of an EPAct water supply, an operator may not be required to restore or replace the water supply if one of the following has occurred:

(1) The Department has determined that a replacement water supply meeting the criteria in section 89.145a(f) (relating to water supply replacement: performance standards) cannot be developed and the operator has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(2) The landowner and operator have entered into a valid voluntary agreement under section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. 1406.5) which does not require restoration or replacement of the water supply and the Department has determined that an adequate replacement water supply could feasibly be developed.

(3) The operator can demonstrate one of the following:

(i) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not

worsen the preexisting contamination, diminution or interruption.

(ii) The contamination, diminution or interruption occurred more than three years after underground mining activities occurred.

(iii) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(b) In the case of a water supply other than an EPAct water supply, an operator will not be required to restore or replace a water supply if the operator can demonstrate one of the following:

(1) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.

(2) The contamination, diminution or interruption is due to underground mining activities which occurred more than 3 years prior to the onset of water supply contamination, diminution or interruption.

(3) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(4) The claim for contamination, diminution or interruption of the water supply was made more than 2 years after the water supply was adversely affected by the underground mining activities.

(5) That the operator has done one of the following:

(i) Has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(ii) The landowner and operator have entered into a valid voluntary agreement under section 5.3 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. 1406.5c) which does not require restoration or replacement of the water supply or authorizes a lesser amount of compensation to the landowner than provided by section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act.

(c) This section does not apply to underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

* * * * *

In order for this change to become effective, PADEP informed OSM that the language in sections 5.2(g) and (h) of BMSLCA must be superseded. Specifically, PADEP indicated section 5.2(g) must be superseded to the extent that it would remove an operator's liability to restore or replace a water supply covered under section 720 of SMCRA. The proposal to supersede section 5.2(g) to this extent appears in a separate rulemaking in this *Federal Register* issue. Section 5.2(g) provides that:

(g) If an affected water supply is not restored or reestablished or a permanent alternate source is not provided within three years, the mine operator may be relieved of further responsibility by entering into a written agreement providing compensation acceptable to the landowner. If no agreement is reached, the mine operator, at the option of the landowner shall:

(1) Purchase the property for a sum equal to its fair market value immediately prior to the time the water supply was affected; or

(2) Make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and at the time payment is made; whereupon the mine operator shall be relieved of further obligation regarding contamination, diminution or interruption of an affected water supply under this act. Any measures taken under sections 5.1 and 5.3 and this section to relieve a mine operator of further obligation regarding contamination, diminution or interruption of an affected water supply shall not be deemed to bar a subsequent purchaser of the land on which the affected water supply was located or any water user on such land from invoking rights under this section for contamination, diminution or interruption of a water supply resulting from subsequent mining activity other than that contemplated by the mine plan in effect at the time the original supply was affected.

PADEP also informed OSM that it must also supersede section 5.2(h) of BMSLCA to the extent that it would bar PADEP from requiring the restoration or replacement of a water supply covered under section 720 of SMCRA. OSM's proposal to supersede this section appears in a separate rulemaking in this **Federal Register** issue. Section 5.2(h) provides that:

(h) Prior to entering into an agreement with the mine operator pursuant to subsection (g), the landowner may submit a written request to the department asking that the department review the operator's finding that an affected water supply cannot reasonably be restored or that a permanent alternate source, as described in subsection (i), cannot reasonably be provided. The department shall provide its opinion to the landowner within sixty days of receiving the landowner's request. The department's opinion shall be advisory only, including for purposes of assisting the landowner in selecting the optional compensation authorized under subsection (g). The department's opinion shall not prevent the landowner from entering into an agreement with the mine operator pursuant to subsection (g), and such opinion shall not serve as the basis for any action by the department against the mine operator or create any cause of action in a third party, provided the operator otherwise complies with subsection (g).

Regulation at 30 CFR 938.16(pppp). Amendment Required by *December 27, 2001,* ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove the phrase, ''and of reasonable cost'' from subsection 5.2(i) of the BMSLCA. This section provides that a permanent alternate source includes any well, spring, municipal water supply system or other supply approved by PADEP which is adequate in quantity, quality and of reasonable cost to serve the premining uses of the affected water supply.

Discussion: Subsection 5.2(i) requires a permanent alternate water source to be adequate in quantity, quality and of reasonable cost to serve the premining uses of the affected water supply. In the December 27, 2001, rule, OSM stated the following two concerns regarding this provision: (1) The ''reasonable cost'' criterion could be interpreted to limit an operator's obligation to replace an affected water supply based on an operator's assertion that the replacement costs would be unreasonable. The Federal regulations require replacement without regard to cost; and (2) the use of the term ''reasonable costs'' implies that the landowner or water user could incur additional costs associated with the operation and maintenance of the replacement water supply. Federal regulations require the operator to pay operation and maintenance costs that exceed customary and reasonable costs associated with the premining water supply.

Regarding the first concern, OSM's December 27, 2001, final rule viewed the ''reasonable cost'' criterion as potentially setting a limit on the liability of an operator. OSM was concerned that the criterion could be applied to relieve an operator of liability if the cost of replacing an affected water supply is unreasonable. OSM noted that Federal regulations require the replacement of affected water supplies without regard to the cost of replacement.

In response to OSM's concern, PADEP asserts that the reasonable cost criterion in section 5.2(i) refers to a right of the property owner to a restored or replacement water supply that can be operated and maintained at a reasonable cost. It is not applied as a basis for relieving an operator of the liability to restore or replace an affected water supply.

PADEP noted that its position is codified in 25 Pa. Code 89.145a(f), which establishes criteria for determining the adequacy of replacement water supplies. Subsection (f) includes specific criteria relating to the quantity, quality, reliability, maintenance, control and operation costs of replacement water supplies. PADEP maintains that these criteria are clearly intended to ensure the right of a

landowner or water user to an adequate replacement water supply. Moreover, PADEP notes that 25 Pa. Code 89.152, which sets forth conditions for relief of liability, does not mention cost as a relevant factor.

In this submission, PADEP asserts that the reasonable cost criterion in section 5.2(i) does not interfere with the replacement of affected water supplies and does not make Pennsylvania's water supply replacement provisions less effective than Federal counterpart provisions.

Regarding the second concern, OSM indicated that the ''reasonable cost'' criterion could result in landowners or water users incurring operation and maintenance costs in excess of those allowed under the Federal regulations. OSM noted that the Federal definition of the term ''replacement of water supply'' indicates that replacement includes payment of operation and maintenance cost in excess of customary and reasonable delivery costs of premining water supplies. OSM raised similar concerns under 30 CFR 938.16(ddddd) and (uuuuu) in regard to Pennsylvania regulations that relieve operators of the liability to compensate for *de minimis* cost increases.

In this submission, PADEP is proposing amendments to 25 Pa. Code 89.145a(f) to specifically address the operation and maintenance costs of EPAct water supplies. The amendments require that, in the case of an EPAct water supply, the restored or replacement water supply shall cost no more to operate and maintain than the previous water supply. The amendments further provide that any increased costs associated with the operation and maintenance of an EPACT water supply are the responsibility of the mine operator. The amendments also allow an operator to satisfy its responsibility for increased costs by compensating the landowner or water user by a one-time payment in an amount which covers the present worth of the increased annual operations and maintenance cost for a period agreed to by the operator and the landowner or water user. The provisions of proposed paragraph (5)(i) mirror the Federal requirement in regard to the operation and maintenance costs of EPAct water supplies.

The proposed amendments to 25 Pa. Code 89.145a(f) as submitted retain the allowance of a *de minimis* cost increase for replacement water supplies that are outside the scope of the Federal regulations. The retention of this provision preserves Pennsylvania law to the maximum extent possible.

PADEP's Proposed Resolution: PADEP recommends that OSM accept its interpretation that the provision regarding ''reasonable cost'' in section 5.2(i) of the BMSLCA, as applied through the regulations and through the proposed changes to 25 Pa. Code 89.145a(f), does not render the Pennsylvania water supply replacement requirements less effective than the Federal counterpart requirements. Proposed amendments to 25 Pa. Code 89.145a(f) are shown in the response to 30 CFR 938.16(uuuuu).

Regulation at 30 CFR 938.16(ssss). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to make it clear that section 5.3(c) of the BMSLCA, relating to other remedies under State law, cannot negate or provide less protection than EPAct.

Discussion: Section 5.3(c) of the BMSLCA provides that nothing in the act shall prevent a landowner who claims water supply problems from seeking any other remedy that may be provided in law or equity. It goes on to indicate that in any proceedings in pursuit of a remedy other than the BMSLCA, the provisions of the Act shall not apply and the operator may assert in defense any rights or waivers from deeds, leases or agreements pertaining to mining rights or coal ownership.

In the December 27, 2001, final rule, OSM interpreted this section to mean that if a landowner sought out legal protections apart from the BMSLCA, then he would lose the protection of the BMSLCA. Section 5.3(c) was not approved to the extent that any State law negates or provides less protection than EPAct.

In this submission, PADEP has advised OSM that it interprets section 5.3(c) to allow a landowner or water user who claims contamination, diminution or interruption of a water supply to seek any other remedy that may be provided under law or in equity. PADEP further assures OSM that the landowner has full rights under the BMSLCA while seeking remedies under other laws and that this interpretation does not diminish the protections provided by EPAct.

PADEP's Proposed Resolution: PADEP proposes that section 5.3(c) of the BMSLCA remain unchanged because it has satisfied the requirement in 30 CFR 938.16(ssss).

Regulation at 30 CFR 938.16(tttt). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 5.4 of the BMSLCA to require prompt repairs or compensation in cases involving damage to EPAct structures (*i.e.*, noncommercial buildings, dwellings and structures related thereto).

Discussion: In the December 27, 2001, final rule, OSM found that SMCRA at section 720(a)(1) and the Federal regulations at 30 CFR 817.121(c)(2) require the prompt repair of structural damage or the payment of compensation to owners of non-commercial buildings or occupied residential dwellings. OSM found that while Pennsylvania did require the repair of, or compensation for damage to, these structures, there was no standard requiring that such repairs or compensation be performed promptly. OSM required Pennsylvania to amend section 5.4 of the BMSLCA (52 P.S. 1406.5d) to require prompt repair and compensation for structures protected under section 720(a)(1) of SMCRA and 30 CFR 817.121(c)(2). OSM made a similar requirement at 30 CFR 938.16(kkkkk) with regard to the implementing regulations at 25 Pa. Code 89.142a(f)(1).

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.142a(f)(1) to incorporate a requirement for prompt repair or compensation with the understanding that prompt means as soon as practicable. PADEP maintains that this will make Pennsylvania's requirements for repair and compensation of structure damage no less effective than Federal counterpart requirements in regard to timeliness of actions.

Because the BMSLCA is silent on the ''prompt'' standard, PADEP maintains that the aforementioned regulation change will be sufficient to meet the Federal ''prompt'' standard. PADEP does not believe that existing statutory language is conflicting with or diminishing the authority of the revised regulatory standard. Accordingly, PADEP asserts that there is no need to amend section 5.4 of the BMSLCA.

PADEP's Proposed Resolution: PADEP proposes to amend 25 Pa. Code 89.142a(f)(1). The amended language reads.

89.142a. Subsidence control: performance standards.

* * * * *

(f) Repair of damage to structures.

(1) Repair or compensation for damage to certain structures. Whenever underground mining operations conducted on or after August 21, 1994, cause damage to any of the structures listed in subparagraphs (i)—(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of 25 Pa. Code 89.144a (relating to subsidence control: relief

from responsibility) relieves the operator of responsibility.

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In this submission, PADEP proposes that section 5.4 of the BMSLCA remain unchanged, as it has satisfied the requirement in 30 CFR 938.16(tttt).

Regulation at 30 CFR 938.16(uuuu). Amendment Required by December 27, 2001 ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 5.4(a)(3) of the BMSLCA to remove the phrase, ''in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application.''

Discussion: Section 5.4(a)(3) of the BMSLCA refers to repair or compensation for damage to improvements that are related to dwellings. In describing the scope of these requirements, subsection (a)(3) limits repair and compensation liability to improvements that are ''in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application.'' In the December 27, 2001, final rule, OSM found that this qualification could potentially exclude improvements covered by Federal repair and compensation requirements. The Federal regulations cover all improvements that fall within the scope of the term ''occupied residential dwelling and structures related thereto'' as long as they are in place at the time of mining.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.142a(f)(1)(iii) to remove the special conditions that govern the coverage of improvements related to dwellings used for human habitation. With the removal of these special qualifications, PADEP asserts that paragraph (f)(iii) will provide repair or compensation remedies for all improvements that are related to dwellings used for human habitation and in place at the time of mining. PADEP maintains that this will make the scope of Pennsylvania's repair and compensation provisions as inclusive as the Federal provisions, which address all ''occupied residential dwellings and structures related thereto.''

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(f)(1)(iii) as follows:

89.142a. Subsidence control: performance standards.

* * * * *

(f) Repair of damage to structures.

(1) Repair or compensation for damage to certain structures. Whenever underground mining operations conducted on or after August 21, 1994, cause damage to any of the structures listed in subparagraphs (i)–(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of 25 Pa. Code 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

* * * * *

(iii) Dwellings which are used for human habitation and permanently affixed appurtenant structures or improvements. In the context of this paragraph, the phrase permanently affixed appurtenant structures and improvements includes, but is not limited to, structures adjunct to or used in conjunction with dwellings, such as garages; storage sheds and barns; greenhouses and related buildings; customer-owned utilities and cables; fences and other enclosures; retaining walls; paved or improved patios; walks and driveways; septic sewage treatment facilities; inground swimming pools; and lot drainage and lawn and garden irrigation systems.

* * * * *

PADEP contends that in order for this change to become effective, OSM must supersede the corresponding language in section 5.4(a)(3) of the BMSLCA which serves as the basis for the existing restrictions. The proposal to supersede this section appears in a separate rulemaking in this **Federal Register** issue.

Regulation at 30 CFR 938.16(vvvv). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove section 5.4(c) of the BMSLCA, which waives an operator's liability for damage repair and compensation in cases where landowners deny access for premining or postmining surveys.

OSM made a similar requirement in 30 CFR 938.16(ppppp) with regard to 25 Pa. Code 89.144a (relating to subsidence control: release of liability).

Discussion: Section 5.4(c) provides that:

> A mine operator shall not be liable to repair or compensate for subsidence damage if the mine operator, upon request, is denied access to the property upon which the building is located to conduct premining and postmining surveys of the building and the surrounding property and thereafter serves notice upon the landowner by certified mail or personal service, which notice identifies the rights established by section 5.5 and 5.6 and this section, the mine operator was denied access and the landowner failed to provide or authorize access within ten days after receipt thereof.

In the December 27, 2001, final rule, OSM stated that section 5.4(c) provides a release of liability that is not provided in the Federal regulations. OSM found that this would prevent the owner of an EPAct structure from receiving repairs or compensation required by 30 CFR 817.121(c)(4)(iii). Accordingly, OSM directed PADEP to remove subsection (c) to eliminate this relief as it pertains to EPAct structures.

In this submission, PADEP stated that it regards premining survey data as important to determining where liability should begin and end. PADEP maintains that a landowner's denial of access would deprive the operator and the regulatory agency of the information needed to accurately determine the extent of subsidence damage. PADEP asserts that section 5.4(c) serves as an incentive for the landowner to provide access for the performance of surveys. PADEP regards this provision as merely conditioning a landowner's rights in a reasonable manner.

PADEP also notes that it is unaware of any case where repair or compensation was refused on the basis of section 5.4(c), but acknowledged that it could not ensure that cases would not arise in the future.

To address OSM's concerns, PADEP proposes in this submission to amend 25 Pa. Code 89.144a to provide that the release of liability may not occur if the affected structure is an EPAct structure and the damage can be shown by a preponderance of evidence to be the result of underground mining operations. It is PADEP's position that this approach preserves some incentive for landowners to allow access for premining and postmining surveys. PADEP maintains that it also serves to ensure that damages to EPAct structures will be repaired if PADEP or the landowner can show through a reasonable amount of evidence that the damage resulted from underground mining operations. Finally, it retains the release of liability in cases involving non-EPAct structures, thereby preserving, to the extent possible, the provisions of existing Pennsylvania law governing structures not covered by the Federal law.

PADEP asserts that with these changes, Pennsylvania's program will be no less effective than the Federal program in regard to repair or compensation for damage to EPAct structures. The release provided by revised 25 Pa. Code 89.144a will only apply in cases involving EPAct structures where neither PADEP nor the

landowner can prove the damage resulted from underground mining operations, and in cases involving non-EPAct structures.

PADEP further argues that it can only pursue the proposed amendments to 25 Pa. Code 89.144a if OSM supersedes section 5.4(c) of BMSLCA to the extent that it applies to EPAct structures.

PADEP's Proposed Resolution: In this submission, PADEP proposes to address this issue by revising parts of 25 Pa. Code 89.144a. The revised subsections now read:

89.144a. Subsidence control: relief from responsibility.

(a) Except as provided in (b), the operator will not be required to repair a structure or compensate a structure owner for damage to structures identified in 25 Pa. Code 89.142a(f)(1) (relating to subsidence control: performance standards) if the operator demonstrates to the Department's satisfaction one or more of the following apply:

(1) The landowner denied the operator access to the property upon which the structure is located to conduct a premining survey or a postmining survey of the structure and surrounding property, and thereafter the operator served notice upon the landowner by certified mail or personal service. The operator shall demonstrate the following:

* * * * *

(b) The relief in paragraph (a)(1) shall not apply in the case of an EPAct structure if the landowner or the Department can show, by a preponderance of evidence, that the damage resulted from the operator's underground mining operations.

PADEP asserts that in order for this change to become effective, OSM must supersede section 5.4(c) of the BMSLCA to the extent that it would relieve an operator of the liability to repair or compensate for damage to an EPAct structure. The proposal to supersede this section appears in a separate rulemaking in this **Federal Register** issue.

Regulation at 30 CFR 938.16(wwww). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 5.5(a) of the BMSLCA to make it clear that operators are responsible for repair or compensation in all cases where EPAct structures are damaged by subsidence from ''underground mining operations.''

OSM made a similar requirement at 30 CFR 938.16(bbbbbb) with regard to the implementing regulations at 25 Pa. Code 89.143a(a).

Discussion: In the December 27, 2001, final rule, OSM observed that the duty to repair or compensate in section 5.5(a) is predicated on the condition that damage resulted from ''underground mining.'' OSM noted that section 720(a) of SMCRA applies to all damages resulting from ''underground coal mining operations''—a broad term, which OSM defines to include underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage and blasting. OSM further observed that Pennsylvania defines the term ''underground mining'' in its regulations to include only the extraction of coal. OSM interpreted the language of section 5.5(a) in combination with Pennsylvania's regulatory definition of the term ''underground mining'' as potentially limiting the conditions under which an operator would be liable to repair or compensate for damage to EPACT structures.

In this submission, PADEP proposes to address OSM's concern by revising 25 Pa. Code 89.143a(a) to incorporate the term ''underground mining operations,'' a term that is defined in the regulations at 25 Pa. Code 89.5, in a manner consistent with the term ''underground mining operations'' as used in SMCRA. PADEP notes that the terms ''underground mining'' and ''underground mining operations'' are not defined in BMSLCA and are not used in a manner that construes any distinct differences in meaning. As a result, PADEP is proposing that this issue can be effectively addressed by simply changing the regulation.

PADEP asserts that the proposed amendment to § 89.143a.(a) will make Pennsylvania's program no less effective than the Federal program in regard to the types of activities that trigger liability for damage to EPACT structures. PADEP further asserts that it is unnecessary to make any changes to section 5.5(a) of the BMSLCA.

In this submission, PADEP is asserting that the proposed amendment to 25 Pa. Code 89.143a(a) will make Pennsylvania's program no less effective than the Federal program in regard to the types of activities that trigger liability for damage to EPAct structures. PADEP further asserts that it is unnecessary to make any changes to section 5.5(a) of the BMSLCA.

Proposed Resolution: In this submission, Pennsylvania proposes to revise 25 Pa. Code 89.143a(a) and (d) by adding the word ''operations.'' The revised subsections read as follows:

(**Note:** The other changes to this section are discussed elsewhere in this proposed rule.)

89.143a. Subsidence control: procedure for resolution of subsidence damage claims.

(a) The owner of a structure enumerated in section 89.142a(f)(1) (relating to subsidence control: performance standards) who believes that underground mining operations caused mine subsidence resulting in damage to the structure and who wishes to secure repair of the structure or compensation for the damage shall provide the operator responsible for the underground mining with notification of the damage to the structure.

(b) If the operator agrees that mine subsidence damaged the structure, the operator shall fully repair the damage or compensate the owner for the damage in accordance with either 25 Pa. Code 89.142a(f) or a voluntary agreement between the parties authorized by section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. Section 1406.5f).

(c) If the parties are unable to agree as to the cause of the damage or the reasonable cost of repair or compensation for the structure, the owner of the structure may file a claim in writing with the Department. The owner of a structure that is not an EPAct structure must file the claim within two years of the date the structure was damaged.

(d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining operations caused the subsidence damage to the structure and provide the results of its investigation to the property owner and mine operator within 10 days of completing the investigation.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining operations and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Department may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

Regulation at 30 CFR 938.16(xxxx). Amendment Required by December 27, 2001 ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove section 5.5(b) of the BMSLCA which describes procedures for the resolution of structure damage claims. Section 5.5(b) provides a six-month negotiation period prior to intervention of the regulatory agency. It also establishes a two-year period for filing subsidence damage claims. OSM made a similar requirement at 30 CFR 938.16(nnnnn) with regard to the implementing regulations at 25 Pa. Code 89.143a(c).

Discussion: Section 5.5(b) provides that:

* * * * *

(b) If the parties are unable to agree within six months of the date of notice as to the cause of the damage or the reasonable cost of repair or compensation, the owner of the building may file a claim in writing with the Department of Environmental Resources, a copy of which shall be sent to the operator. All claims under this subsection shall be filed within two years of the date damage to the building occurred.

* * * * *

In the December 27, 2001, final rule, OSM had two concerns regarding this section of the BMSLCA. OSM was concerned that the provision of a six-month negotiation period could delay PADEP enforcement action and result in repair or compensation that is not ''prompt.'' OSM was also concerned that the requirement to file a claim within two years of the date of damage could function as a statute of limitations depriving landowners who missed the filing deadline of the right to repair or compensation. OSM stated that EPAct requires operators to promptly provide repair or compensation and does not require landowners to file damage claims in any specified time frame.

Regarding the six-month negotiation period, PADEP asserts in this submission that it has the authority to take enforcement action, when appropriate, prior to the expiration of the six-month negotiation period. According to PADEP, section 9 of the BMSLCA gives PADEP broad authority to issue orders ''as are necessary to aid in the enforcement of the provisions of [the BMSLCA].'' PADEP states that in most cases, enforcement actions prior to the expiration of the six-month period will focus on requirements for emergency temporary repair measures because subsidence will not be complete.

PADEP notes in this submission that, under Pennsylvania's program, all concerned parties receive timely notification of the occurrence of structure damage. The PADEP surface subsidence agents will learn of the damage through field observations and communications with the property owner. The operator will learn of the damage through reports from its field agent, the landowner or the PADEP agent. Section 25 Pa. Code 89.142a(k) also requires the operator to file a report of the claim to PADEP within 10 days of being advised of a damage incident. PADEP maintains that this system of overlapping notifications serves to ensure that the landowner, operator and PADEP receive timely information regarding the occurrence and nature of damage.

In regard to OSM's second concern about the obligation to file a claim within two years, PADEP asserts that it does not interpret the two-year claim filing period in section 5.5(b) as a statute of limitations. However, PADEP acknowledges it cannot ensure that, in the event of an appeal, a court would not interpret this provision as a statute of limitations. Consequently, PADEP agrees that OSM must supersede this provision to the extent it is inconsistent with the Federal regulations. PADEP asserts that OSM should only supersede the statute of limitation as it relates to EPACT structures. A limited supersession will serve to satisfy the Federal requirement in 30 CFR 938.16(xxxx), while preserving Pennsylvania law to the maximum extent possible. The proposal to supersede section 5.5(b) appears in a separate rulemaking in this **Federal Register** issue.

In this submission, PADEP proposes to address OSM's concerns through amendments to 25 Pa. Code 89.143a(c). Under the proposal, language referring to the six-month negotiation period will be deleted. In addition, the regulation will be restructured so that the requirement to file a claim within two years of damage does not apply in cases involving EPAct structures. These changes will ensure that Pennsylvania provisions relating to the filing of structure damage claims are not inconsistent with Federal requirements.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.143a(c). The proposed language reads:

89.143a. Subsidence control: procedure for resolution of subsidence damage claims.

* * * * *

(c) If the parties are unable to agree as to the cause of the damage or the reasonable cost of repair or compensation for the structure, the owner of the structure may file a claim in writing with the Department. The owner of a structure that is not an EPAct structure must file the claim within two years of the date the structure was damaged.

* * * * *

Regulation at 30 CFR 938.16(yyyy). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 5.5(c) to remove the following phrase relating to timeframes for enforcement orders, ''* * * within six months or a longer period if the department finds that the occurrence of subsidence or subsequent damage may occur to the same building as a result of mining.'' (OSM made a similar requirement in 30 CFR 938.16(ooooo) with regard to the implementing regulations at 25 Pa. Code 89.143a(d)).

OSM further required Pennsylvania to ensure that written damage determinations made by PADEP will take into account subsidence due to ''underground coal mining operations'' as required by SMCRA. OSM made a similar requirement at 30 CFR 938.16(bbbbbb) with regard to the implementing regulations at 25 Pa. Code 89.143a(d)(1)–(3).

Finally, OSM required Pennsylvania to insure the timeframes for investigation of claims of subsidence damage are consistent with Federal procedures for response to citizen complaints.

Discussion: Regarding the time frames in enforcement orders, section 5.5(c) of BMSLCA provides that PADEP shall make an investigation of a damage claim within 30 days following receipt of the claim. Within 60 days following the investigation, PADEP shall determine whether subsidence caused the damage and the reasonable cost of repairing or replacing the damaged structure. PADEP must issue a written order directing the operator to compensate or cause repairs to be made within six months. The six months can be extended if PADEP finds that subsidence may continue or subsequent damage may occur to the same building as a result of mining.

In the December 27, 2001, final rule, OSM was concerned that the reference to the six-month timeframe could be construed as a basis for incorporating six-month compliance periods in all PADEP orders. OSM stated that this could interfere with the requirement to promptly repair or compensate in situations where resolutions could be practically achieved in less than six months.

In response to OSM's concern, PADEP asserts in this submission, that the specified time period for compliance is ''within six months'' and not ''six months,'' per se. It is PADEP's interpretation that this language does not prohibit PADEP from writing orders that require repair or compensation in less than six months. To affirm this interpretation, PADEP proposes to amend 25 Pa. Code 89.143a(d)(3) to remove the reference to the six-month period and add provisions relating to the prompt performance of actions required by enforcement orders. PADEP can extend the time for repair or compensation when it finds that subsidence may continue or subsequent damage may occur to the same building as a result of mining.

PADEP proposes that these changes will make Pennsylvania's enforcement requirements no less effective than those required under the Federal program. In addition, PADEP maintains that these changes can be implemented

without amending the statutory language in section 5.5(c).

Regarding the issue relating to underground mining operations, OSM stated that section 5.5(c) conditions the issuance of enforcement orders upon a finding that damage was due to ''underground coal mining.'' OSM further determined that the Federal regulations require repair or compensation for all damages caused by ''underground mining operations''—a term that is more expansive than ''underground coal mining.'' On this basis, OSM found that section 5.5(c) might limit PADEP's authority to write enforcement orders for repair or compensation that would be required under the Federal program.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.143a(d)(1)–(3) to replace the term ''underground mining'' with ''underground mining operations.'' PADEP contends that this will make Pennsylvania's repair and compensation requirements no less effective than Federal requirements in regard to the type of mining activities that trigger liability.

PADEP further asserts that there is no need to amend the language in section 5.5(c) to accomplish this change. The term ''underground coal mining'' is not defined in BMSLCA and according to PADEP, there is no consistent usage of the terms ''mining,'' ''underground mining'' or ''underground mining operations'' that would suggest any specific differences in the meaning of these terms.

Regarding the issue of citizen complaint time frames, OSM also determined that the investigation time frames in section 5.5(c) do not require PADEP to inform the claimant of the results of its investigation within 10 days of completing the investigation. OSM found this to be inconsistent with Federal requirements on responding to citizens' complaints.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.143a(d)(1) to add a requirement regarding claimant notification. Under the proposed amendment, PADEP would be required to notify the claimant and the mine operator of its findings within 10 days of completing its investigation. PADEP contends that this provision makes Pennsylvania's complaint response time frames no less effective than those of the Federal program.

Finally, PADEP maintains that the proposed regulation change can be made without amending section 5.5(c) of the BMSLCA.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.143a(d). The amended subsection reads as follows:

89.143a. Subsidence control: procedure for resolution of subsidence damage claims

* * * * *

(d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining operations caused the subsidence damage to the structure and provide the results of its investigation to the property owner and mine operator within 10 days of completing the investigation.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining operations and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Department may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

* * * * *

Regulation at 30 CFR 938.16(zzzz). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove the following phrase from section 5.5(f) of the BMSLCA, ''* * * within six months or such longer period as the department has established or shall fail to perfect an appeal of the department's order directing such repair or compensation, * * *''

Discussion: Section 5.5(f) provides that if a mine operator fails to repair or compensate for subsidence damage within six months or longer period or fails to perfect an appeal of PADEP's order requiring repair or compensation, PADEP shall issue the orders necessary to compel compliance. If the operator fails to repair or compensate after exhausting its right of appeal, PADEP shall pay the escrow deposit required by section 5.5(e) to the owner of the damaged building.

In disapproving the specific language, OSM found that the portion of section 5.5(f) allowing six months or longer to pass before Pennsylvania takes an enforcement action is less effective than the Federal regulation at 30 CFR 843.12(c), which requires abatement of violations within 90 days. As stated in the finding for 5.5(c), an operator's failure to promptly repair or compensate for subsidence damage is a violation that must be abated within 90 days. As a separate issue, OSM also disapproved language in section 5.5(f) that deals with perfecting an appeal of the PADEP's orders. OSM stated that the phrase prevents Pennsylvania from issuing a cessation order if an operator files an appeal, thus acting as a stay and that the provision is not as effective as the Federal regulations at 30 CFR 843.16(b) which indicate that the filing of an application for review and request for a hearing cannot operate as a stay of any notice or order.

In this submission, PADEP proposes to address OSM's required amendment through changes in 25 Pa. Code 89.143a(d) and by proposing that the effect of the escrow provision on staying the issuance of further orders by PADEP is no less effective than Federal regulations at 30 CFR part 843. PADEP asserts that the proposed changes and additional information eliminate any need to revise section 5.5(f) of BMSLCA.

Regarding the issue of the six-month compliance periods in enforcement orders, PADEP proposes to address OSM's concern regarding the length of the compliance period through a change in regulations. PADEP notes that section 5.5(c) uses the phrase ''within six months'' to describe the time frame in which the operator is expected to comply. PADEP asserts that this phrase can be interpreted to require compliance in less than six months in situations where it is reasonable to expect resolution within a shorter time frame. PADEP states that it clearly has authority to require repair or compensation within the 90-day period specified by OSM, since 90 days clearly falls ''within six months'' of the date an order is issued.

PADEP's position is that repair or compensation should be provided as promptly as possible based on site-specific considerations. PADEP argues that the most significant part of the determination turns on when PADEP considers subsidence to be complete. PADEP maintains that premature repair or compensation does little to minimize inconvenience to the property owner and, in some cases, may lead to more severe damage.

Based on its position, PADEP proposes to amend 25 Pa. Code 89.143a(d) to accomplish three objectives. One is to clarify PADEP's intent to require ''prompt'' compliance. The second is to condition time extensions for abatement on PADEP determinations that additional

subsidence is expected to occur. The final objective is to remove all references to ''six month'' compliance periods thereby eliminating any confusion and potential conflicts.

The proposal involves the deletion of references to ''the six-month period'' mentioned in section 5.5(c) and the addition of a requirement for ''prompt'' compliance. PADEP contends that these proposed changes will address the required amendments and eliminate any need to revise section 5.5(c) of BMSLCA. PADEP notes that the section of the regulations that most closely resembles the portion of the statute that OSM required to be deleted is 25 Pa. Code 89.143a(d)(3). [*See* discussion under 30 CFR 938.16(yyyy) for information on the disposition of 25 Pa. Code 89.143a(d).]

Regarding the issue of stays of enforcement orders, PADEP is not proposing any change in response to OSM's concern that a perfected appeal could stay additional enforcement action because it is PADEP's position that the effect of a perfected appeal is the same as a compensation remedy provided under the Federal regulations. Section 5.5(e) requires that a mine operator must ''deposit an amount equal to the cost of repair or the compensation amount ordered by the Department into an interest-bearing escrow account'' in order to perfect its appeal. Furthermore, the operator must post the escrow within 60 days of receiving the order. PADEP asserts that the deposit of the escrow constitutes the provision of compensation because the funds needed to repair the damage have been secured from the operator.

PADEP also maintains that the escrow required to perfect an appeal will always be equal to or greater than the amount of compensation required under 30 CFR 817.121(c)(2). In accordance with section 5.5(e), PADEP notes that the required escrow must be sufficient to cover all damage up to the replacement value of the structure and, if required by PADEP, temporary relocation costs and other reasonable incidental expenses incurred by the landowner.

In summary, PADEP asserts that the escrow provisions of sections 5.5(e) and (f) constitute a compensation remedy that is no less effective than that of the Federal regulations because it meets or exceeds Federal requirements regarding timeliness and the amount of compensation. Accordingly, PADEP argues that any stay of further enforcement action is of no consequence.

PADEP's Proposed Resolution: In this submission, PADEP proposes to revise 25 Pa. Code 89.143a(d)(3). The proposed language reads as follows:

> 89.143a. Subsidence control: procedure for resolution of subsidence damage claims.
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> * * * * *
>
> (d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:
>
> * * * * *
>
> (3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Department may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.
>
> * * * * *

In this submission, PADEP proposes that OSM accept the above revisions to 25 Pa. Code 89.143a(d)(3), and that the above demonstration that the escrow provision at section 5.5(f) is no less effective than the Federal enforcement requirements at 30 CFR part 843.

Regulation at 30 CFR 938.16(aaaaa). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM required Pennsylvania to amend section 5.6(c) to remove provisions relating to agreements executed between April 27, 1966, and August 21, 1994.

Discussion: Section 5.6(c) of BMSLCA provides:

> The duty created by section 5.5 to repair or compensate for subsidence damage to the buildings enumerated in section 5.4(a) shall be the sole and exclusive remedy for such damage and shall not be diminished by the existence of contrary provisions in deeds, leases or agreements which relieved mine operators from such duty. Nothing herein shall impair agreements entered into after April 27, 1966, and prior to the effective date of this section, which, for valid consideration, provide for a waiver or release of any duty to repair or compensate for subsidence damage. Any such waiver or release shall only be valid with respect to damage resulting from the mining activity contemplated by such agreement.

The last two sentences of this section protect the terms and conditions of agreements executed under former section 4 of BMSLCA, which was effective from April 27, 1966, until August 21, 1994. Section 4 was repealed by Act 54 of 1994, but while in effect, required the absolute protection of dwellings and certain other structures in place on April 27, 1966. Section 4 allowed operators and landowners to enter into agreements consenting to damage of dwellings and other protected structures if the landowner was fully compensated for resultant damage. In the December 27, 2001, final rule, OSM stated that these agreements could negate an operator's liability to repair or compensate for damage to EPAct structures or provide a landowner with less compensation than would be due under EPAct. Federal regulations do not waive an operator's liability to repair or compensate for damage based on the provisions of agreements executed prior to the effective date of EPAct. Based on these concerns, OSM directed Pennsylvania to remove the last two sentences of section 5.6(c).

In this submission, PADEP asserts that the provisions under section 5.6(c), which recognize the terms and conditions of section 4 agreements, are no longer a cause for concern. This assertion is based on the following two considerations: (1) The absence of any agreements for post-1966 structures—Because post-1966 structures had no protection from subsidence damage until Act 54, it is highly unlikely there are any agreements providing for repair or compensation, and (2) Agreement under former section 4 provided for full compensation or repairs. Because pre-1966 dwellings were completely protected, post-1966 agreements for those dwellings would have to have provided the homeowners more than full compensation or repairs otherwise the owner would not have had any reason to enter into an agreement with a mine operator.

PADEP stated that it has not encountered any case where repairs or compensation were denied on the basis of an agreement executed under former section 4. Furthermore, neither industry nor citizens' interests have come forth with any pertinent information regarding these agreements or their effect, despite specific inquiries by PADEP and OSM.

At this time, PADEP contends that these agreements no longer play a role in the settlement of structure damage cases in Pennsylvania and asserts that there is no need to amend section 5.6(c) of BMSLCA.

PADEP's Proposed Resolution: In this submission, PADEP proposes that the provisions relating to agreements entered into after April 27, 1966, and prior to the effective date of section 5.6, be retained pending the receipt of information showing that these provisions result in remedies that are less effective than those provided under EPAct. At this time, we are requesting information from the public regarding the existence of these agreements. If you know that agreements such as these

exist, please provide them to us during the comment period.

Regulation at 30 CFR 938.16(bbbbb): Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to ensure that the provisions of section 5.6(d) reflect OSM's decision in regard to 30 CFR 938.16(aaaaa).

Discussion: In the December 27, 2001, final rule, OSM stated that section 5.6(d) includes a reference to the ''pre-1994'' agreements mentioned in 5.6(c). Since OSM's earlier decision was to require removal of provisions recognizing these agreements (*see* 30 CFR 938.16(aaaaa)), it had directed Pennsylvania to amend section 5.6(d) as well.

As explained in the discussion under 30 CFR 938.16(aaaaa), PADEP maintains that these agreements no longer play a role in the settlement of subsidence damage claims and asserts that there is no need to remove the clause in 5.6(c), which recognizes the terms and conditions of ''pre-1994'' agreements. PADEP maintains that there is no need to change section 5.6(d).

PADEP's Proposed Resolution: In this submission, PADEP proposes that the provision regarding agreements entered into after April 27, 1966, and prior to the effective date of this section be retained pending the receipt of information showing that this provision results in remedies that are less effective than those provided under EPAct.

Regulation at 30 CFR 938.16(ccccc). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 6 of the BMSLCA to comply with the provisions of 30 CFR 817.121(c)(5) regarding when, and under what circumstances, the regulatory authority must require permittees to obtain additional performance bond and the amount of such bond.

Discussion: In the December 27, 2001, final rule, OSM's required amendment was based upon the Federal regulation at 30 CFR 817.121(c)(5) that requires permittees to obtain additional bond for repairs or compensation for subsidence damage or restoration or replacement of water supplies if such remedies are not completed within 90 days. The 90-day period can be extended up to one year if the regulatory authority finds that subsidence is not complete and that not all damage has occurred. During the review of Act 54 and the implementing regulations, OSM stated that there was no provision in the Pennsylvania program to increase bonds for subsidence damage and that the bonds that were in place did not cover replacement or restoration of water supplies.

In this submission, PADEP asserts that the current Pennsylvania program is no less effective than the Federal requirements relative to bonding for subsidence damage to structures and land. This position is based upon the way the PADEP addresses bonding for underground mining operations as a result of a court decision; *People United to Save Homes* v. *Department of Environmental Protection*, 1999 EHB 457, *aff'd*, 789 A.2d 319 (Pa. Cmwlth. 2001)) (PUSH decision).

More specifically, 25 Pa. Code 86.150 provides that the minimum amount of bond for bituminous coal mining activities is to be $10,000. Until the PUSH decision, PADEP had been requiring this amount for all underground mining activities. In the PUSH decision, the Environmental Hearing Board found this amount was only to be a minimum, not a uniform figure to be applied across-the-board with every underground mining permit. The Environmental Hearing Board also held that existing factors in 25 Pa. Code 86.149 were to be used in determining the amount of subsidence bond. As a result, PADEP began setting bond amounts based on site-specific conditions. The subsidence bond calculation procedures include the value of land, improvements, and developed water sources and projections of subsidence damage. The bonds are recalculated each time the permit is renewed and each time there is a change in the subsidence control plan area. In addition, Pennsylvania proposes to amend 25 Pa. Code 86.152(a) to change discretionary bond adjustments to mandatory adjustments. The PADEP requirements are supported by guidance dated August 1, 2000, ''Procedures for Calculating Mine Subsidence Bonds,'' and 25 Pa. Code 86.149 (relating to determination of bond amounts).

Although BMSLCA does not contain a specific provision directing PADEP to require bonds to ensure the replacement of affected water supplies, PADEP asserts that it can apply the provisions of 25 Pa. Code 86.168 (relating to terms and conditions for liability insurance) to accomplish the same objective. Section 86.168(c) requires a permittee to have a liability insurance policy. The regulation requires the policy to include coverage for loss or diminution of quantity or quality of public or private sources of water. The liability insurance policy requirement is a minimum $500,000 per occurrence and $1 million aggregate. Also, 25 Pa. Code 86.168(g) provides that a bond or individual insurance policy for each permit may be provided in lieu of liability insurance to cover replacement or restoration of water supplies. PADEP conducts reviews of permittee insurance policies both at the time of permit issuance and yearly to ensure that there is coverage for the replacement of water supplies that may be damaged and in need of replacement at any point during the mining operation. PADEP also notes that OSM has approved insurance as an acceptable means of addressing damages in at least one other State program.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 86.152 as follows:

86.152. Bond adjustments.

(a) The amount of bond required and the terms of the acceptance of the applicant's bond will be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased, or where the cost of future reclamation changes, or where the projected subsidence damage repair liability changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage and does not extend the coverage of a subsidence bond beyond the requirements imposed by sections 5, 5.4, 5.5, and 5.6 of the Bituminous Mine Subsidence and Land Conservation Act.

* * * * *

In this submission, PADEP further proposes that OSM accept the insurance requirements imposed by 25 Pa. Code 86.168(c) as being as effective as the Federal requirements relating to bonding for water supply replacement.

Regulation at 30 CFR 938.16(ddddd). Amendment Required by December 27, 2001 ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove the definition of ''*de minimis* cost increase,'' which appears in 25 Pa. Code 89.5 (relating to definitions).

Discussion: Pennsylvania's regulations incorporate the concept of a *de minimis* cost increase to define a lower threshold below which operators will not be required to compensate for the increased cost of operating and maintaining a replacement water supply. The term is defined in 25 Pa. Code 89.5 and applied in former section 25 Pa. Code 89.145a(f)(1) (now under 89.145a(f)(5)). The term is defined to mean a cost increase that meets one of the following criteria:

(i) Is less than 15% of the annual operating and maintenance cost of the previous water supply that is restored or replaced.

(ii) Is less than $60 per year.

In the December 27, 2001, final rule, OSM disapproved the definition of ''*de minimis* cost increase,'' which appears

in 25 Pa. Code 89.5. OSM reasoned that this definition in combination with the performance standard in 25 Pa. Code 89.145a(f)(1) would allow some increased costs associated with the operation and maintenance of a replacement water supply to be passed along to the landowner or water user. OSM noted that a 15% increase or $60 increase could be excessive depending on the costs of operating and maintaining the original water supply. OSM explained that the intent of the Federal regulation is to ensure that ''[t]he owner or user of the water supply is made whole, and that no additional costs are passed on to the water supply user.'' (60 FR 16726).

During the joint meeting process, PADEP explained that the purpose of the *de minimis* concept was to define a threshold below which it is impossible to tell whether a replacement water supply was more costly to operate and maintain than the original supply. PADEP noted that cost calculations are based on a number of variables and cannot be determined to the exact dollar. The thresholds described in 25 Pa. Code 89.5 represented PADEP's best estimate of where to draw the line and were based on decisions issued by Pennsylvania courts. OSM, however, reiterated its concern that the definition included specific amounts that may or may not be *de minimis* depending on the specific facts of a case.

To resolve this issue, PADEP has decided to amend its regulations so that the provisions relating to *de minimis* cost increases will not apply to EPAct water supplies. The definition and concept will be retained for restored or replacement water supplies that are outside the scope of the Federal regulations. Additional explanations and details regarding PADEP's proposed regulatory amendment are provided under 30 CFR 938.16(pppp) and (uuuuu).

Proposed Resolution: PADEP proposes to retain the definition and concept of a *de minimis* cost increase for application in cases that are outside the scope of the Federal regulations. The performance standard in 25 Pa. Code 89.145a(f) will be amended to clarify that the term does not apply in cases involving EPAct water supplies. Proposed amendments to 25 Pa. Code 89.145a(f) are shown in the response to 30 CFR 938.16(uuuuu).

Regulation at 30 CFR 938.16(eeeee). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to delete the definition of ''fair market value'' from 25 Pa. Code 89.5.

Discussion: The requirement to delete the term fair market value and its associated definition was based on OSM's disapproval of Pennsylvania statutory and regulatory provisions that allow compensation in lieu of water supply replacement. The term ''fair market value'' is used in sections 5.2 and 5.3 of the BMSLCA and 25 Pa. Code 89.152 to establish standards for compensation in cases where affected water supplies cannot be replaced.

In this submission, PADEP asserts that the term fair market value and its associated definition are needed to establish standards for adequate compensation and to conform to Federal requirements relating to situations where water supplies cannot be replaced. As indicated in the discussion under 30 CFR 938.16(nnnn), (oooo), qqqq) and (rrrr), OSM would regard the inability to replace an EPACT water supply as material damage to the property served by the affected water supply and would require the operator to compensate the landowner for the reduction in fair market value. The Department has proposed amendments to 25 Pa. Code 89.152(a)(5) to provide an equivalent remedy for these situations. Section 89.152(a)(5) also uses the term fair market value in describing the required amount of compensation. The term fair market value is needed to demonstrate that Pennsylvania's standard of compensation is no less effective than the Federal standard. PADEP asserts that the definition of ''fair market value'' should be retained.

Proposed Resolution: PADEP is proposing that this explanation satisfies the required amendment in 30 CFR 938.16(eeeee) and that the definition of ''fair market value'' be retained in 25 Pa. Code 89.5.

Regulation at 30 CFR 938.16(fffff). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove the phrase ''securely attached to the land surface'' in the definition of ''permanently affixed appurtenant structures'' in 25 Pa. Code 89.5.

Discussion: In the December 27, 2001, final rule, OSM found that Pennsylvania's definition of ''permanently affixed appurtenant structures'' is less effective than the Federal regulations. The Federal definition of the term ''occupied residential dwelling and structures related thereto'' at 30 CFR 701.5 lists examples of protected facilities. Pennsylvania has adopted a similar listing of protected facilities in its definition of ''permanently affixed appurtenant structures.'' However, in that definition, Pennsylvania requires that these facilities be ''securely attached to the land surface.'' OSM viewed this requirement as a qualification that could potentially exclude some EPAct structures from repair or compensation under Pennsylvania's program.

To address OSM's required amendment, PADEP proposes to amend its regulations to delete the requirement for secure attachment to the land surface for the group of ''permanently affixed appurtenant structures'' that falls within the scope of the Federal regulations. This change will be accomplished by deleting the term and definition in 25 Pa. Code 89.5 and by adding a description to 25 Pa. Code 89.142a(f)(1)(iii). The description in amended 25 Pa. Code 89.142a(f)(1)(iii) is derived from the Federal definition of ''occupied residential dwelling and structures related thereto'' and is intended to include all ''permanently affixed appurtenant structures'' that qualify as EPACT structures. The proposed description does not require secure attachment to the land surface as a qualification for inclusion.

PADEP also proposes to identify a second group of permanently affixed appurtenant structures that are addressed solely under the BMSLCA. Structures in this group derive eligibility for repair and compensation provisions based on their relationship to buildings that are accessible to the public. This group of permanently affixed appurtenant structures is described in 25 Pa. Code 89.142a(f)(1)(i). The proposed description includes that same structure types identified in 25 Pa. Code 89.142a(f)(1)(iii), but retains the requirement for attachment to the land surface. The proposed change preserves an aspect of Pennsylvania's program, which is outside the scope of the Federal regulations.

In this submission, PADEP asserts that the proposed changes will ensure that Pennsylvania's subsidence damage repair and compensation provisions apply to all structures that fall within the scope of the Federal term ''occupied residential dwelling and structures related thereto.'' PADEP proposes that this will satisfy the requirement in 30 CFR 938.16(fffff).

PADEP's Proposed Resolution: In this submission, PADEP is proposing to delete the term ''permanently affixed appurtenant structures'' and its associated definition from 25 Pa. Code 89.5.

PADEP is also proposing to amend 25 Pa. Code 89.142a(f)(1)(i) and (iii) to distinguish between appurtenant structures covered by EPAct and other appurtenant structures covered

exclusively by BMSLCA. The proposed changes are as follows:

89.142a. Subsidence control: performance standards.

* * * * *

(f) Repair of damage to structures.

(1) Repair or compensation for damage to certain structures. Whenever underground mining operations conducted on or after August 21, 1994, cause damage to any of the structures listed in subparagraphs (i)–(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of section 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

(i) Buildings that are accessible to the public including, but not limited to, commercial, industrial and recreational buildings and all structures that are securely attached to the land surface and adjunct to or used in conjunction with these buildings, including, garages; storage sheds and barns; greenhouses and related buildings; customer-owned utilities and cables; fences and other enclosures; retaining walls; paved or improved patios; walks and driveways; septic sewage treatment facilities; inground swimming pools, and lot drainage and lawn and garden irrigation systems.

* * * * *

(iii) Dwellings which are used for human habitation and permanently affixed appurtenant structures or improvements. In the context of this paragraph, the phrase permanently affixed appurtenant structures and improvements includes, but is not limited to, structures adjunct to or used in conjunction with dwellings, such as but not limited to, garages; storage sheds and barns; greenhouses and related buildings; customer-owned utilities and cables; fences and other enclosures; retaining walls; paved or improved patios; walks and driveways; septic sewage treatment facilities; inground swimming pools, and lot drainage and lawn and garden irrigation systems.

* * * * *

Regulation at 30 CFR 938.16(ggggg). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.141(d)(3) to expand its requirement that subsidence control plans include descriptions of the measures to be taken to prevent material damage to dwellings and related structures and noncommercial buildings when mining methods do not result in planned subsidence.

Discussion: Section 89.141(d)(3) requires descriptions of measures to be taken to ensure that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of, public buildings and facilities, churches, schools, hospitals, impoundments with storage capacities of 20 acre-feet or more, bodies of water with volumes of 20 acre-feet or more, and bodies of water and aquifers that serve as significant sources to public water supply systems. It also lists various measures that may be used to comply with this requirement. Section 89.141(d)(3) reflects the provisions of section 9.1(c) of the BMSLCA and is the State counterpart to 30 CFR 817.121(d).

In the December 27, 2001, final rule, OSM stated that this subsection requires that, for each structure and feature, or class of structures and features, described in 25 Pa. Code 89.142a(c) (which includes public buildings and facilities, churches, schools, hospitals, certain sized impoundments and bodies of water, and bodies of water or aquifers which serve as a significant source to a public water supply system), there must be a description of the measures to be taken to ensure that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of, the structures or features. The Federal rule at 30 CFR 784.20(b)(5) requires for non-planned subsidence a description of measures that will be taken to prevent or minimize subsidence and subsidence-related damage. The Federal rule does not limit the descriptions to specific structures or features, while Pennsylvania's regulation does limit the description to specified structures and features. Therefore, OSM noted that to the extent that the description is not all-inclusive (for example, dwellings, buildings accessible to the public, and noncommercial buildings customarily used by the public would not be included), PADEP must amend its program to provide the protection of 30 CFR 784.20(b)(5).

In this submission, PADEP proposes extensive changes to 25 Pa. Code 89.141(d) and 25 Pa. Code 89.142a(d) to address OSM's concern and to more clearly distinguish between requirements pertaining to mining that results in planned subsidence versus mining that does not result in planned subsidence. The proposed amendments establish different approaches to protecting noncommercial buildings, dwellings and related structures (EPAct structures) depending on the type of mining an operator plans to use. If plans involve mining that does not result in planned subsidence, an operator must take measures to prevent subsidence that would cause material damage to EPAct structures. If plans involve mining that is projected to result in planned subsidence, an operator must develop his plans around alternate measures, which are described in the discussion under 30 CFR 938.16(hhhhh).

The proposed amendments also include an editorial change relating to descriptions of measures for protecting public buildings and facilities, churches, schools, hospitals, impoundments with storage capacities of 20 acre-feet or more, bodies of water with volume of 20 acre-ft or more, and aquifers and bodies of water that serve as significant sources to public water supply systems. The amendment deletes the partial list of measures in existing 25 Pa. Code 89.141(d)(3). This change ensures that applicants will consider the full list of measures in 25 Pa. Code 89.142a(c) when preparing plans for mining beneath or adjacent to these structures.

During the joint meeting process, PADEP noted that there is an inconsistency in the Federal regulations at 30 CFR 784.20 with respect to preventing material damage when using methods of mining that do not result in planned subsidence. In describing the contents of subsidence control plans, 30 CFR 784.20(a)(5) indicates that the standard is to ''prevent or minimize'' damage. By contrast, 30 CFR 817.121 (relating to subsidence control performance standards) indicates the standard is to ''prevent'' damage. OSM advised that the requirement to prevent material damage when using methods that do not result in planned subsidence is based on section 516 of SMCRA, which uses the term ''prevent'' and requested that PADEP use this standard in amending its regulations.

PADEP's Proposed Resolution: In this submission, PADEP proposes to address OSM's concerns through amendments to 25 Pa. Code 89.141(d)(3) and 25 Pa. Code 89.142a(d). Proposed changes are as follows:

89.141. Subsidence control: application requirements.

* * * * *

(d) Subsidence control plan. The permit application shall include a subsidence control plan which describes the measures to be taken to control subsidence effects from the proposed underground mining operations. The plan shall address the area in which structures, facilities or features may be materially damaged by mine subsidence. At a minimum, the plan shall address all areas with a 30° angle of draw of underground mining operations which will occur during the 5-year term of the permit. The subsidence control plan shall include the following information:

* * * * *

(3) For each structure and feature, or class of structures and features, described in 25 Pa. Code 89.142a(c) (relating to subsidence control: performance standards), a detailed description of the measures to be taken to ensure that subsidence will not cause

material damage to, or reduce the reasonably foreseeable uses of the structures or features.

(4) A description of the anticipated effects of planned subsidence, if any.

(5) A description of the measures to be taken to correct any subsidence-related material damage to the surface land.

(6) A description of the measures to be taken to prevent irreparable damage to the structures enumerated in 25 Pa. Code 89.142a(f)(1)(iii)–(v), if the structure owner does not consent to the damage.

(7) A description of the monitoring, if any, the operator will perform to determine the occurrence and extent of subsidence so that, when appropriate, other measures can be taken to prevent or reduce or correct damage in accordance with 89.142a(e) and (f).

(8) A description of the measures to be taken to maximize mine stability and maintain the value and reasonably foreseeable use of the surface land.

(9) For EPAct structures other than noncommercial buildings protected under 89.142a(c), a description of the methods to be employed in areas of planned subsidence to minimize damage or otherwise comply with the requirements of 89.142a(d)(1)(i).

(10) For EPAct structures other than noncommercial buildings protected under 89.142a(c), a description of the subsidence control measures to be taken in accordance with 89.142a(d)(1)(ii) to prevent subsidence and subsidence-related damage in areas where underground mining operations are not projected to result in planned subsidence.

(Paragraphs 11 and 12 will be renumbered.)

89.142a. Subsidence control: performance standards.

* * * * *

(d) Protection of certain EPAct structures and agricultural structures.

(1) For EPAct structures other than noncommercial buildings protected under subsection (c):

(i) If an operator employs mining technology that provides for planned subsidence in a predictable and controlled manner, the operator shall take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to the structure, except where one of the following applies:

(A) The structure owner has consented, in writing, to allow material damage.

(B) The costs of such measures would exceed the anticipated cost of repairs and the anticipated damage will not constitute a threat to health or safety.

(ii) If an operator employs mining technology that does not result in planned subsidence in a predictable and controlled manner, the operator shall adopt measures consistent with known technology to prevent subsidence and subsidence-related damage to the extent technologically and economically feasible to the structure. Measures may include, but are not limited to:

(A) Backstowing or backfilling of voids.

(B) Leaving support pillars of coal.

(C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place.

(D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(E) Other measures approved by the Department.

* * * * *

(3) Nothing in paragraphs (1) or (2) shall be construed to prohibit planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.

* * * * *

Regulation at 30 CFR 938.16(hhhhh). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.141(d)(6) to require subsidence control plans to include descriptions of the measures to be taken to minimize material damage to dwellings and related structures and noncommercial buildings when mining methods are projected to result in planned subsidence.

Discussion: Section 25 Pa. Code 89.141(d)(6) requires a description of the measures to be taken to prevent irreparable damage to structures enumerated in 25 Pa. Code 89.142a(f)(1)(iii)–(v) (*i.e.*, occupied residential dwellings and related structures and certain agricultural structures). In the December 27, 2001, final rule, OSM found that while this regulation addresses situations where irreparable damage is predicted, it does not address situations where EPAct structures may suffer material damage. OSM noted that 30 CFR 784.20(b)(5) and (7) require descriptions of measures to prevent or minimize material damage to EPAct structures depending on the type of proposed mining. OSM further stated that the required protection is not provided in other parts of Pennsylvania law or regulation.

To address this difference, OSM directed PADEP to amend 25 Pa. Code 89.141(d)(6) to incorporate the Federal requirements in 30 CFR 784.20(b)(5) and (7). Paragraph (b)(5) requires a description of the measures to be taken to prevent subsidence damage to EPAct structures in situations where mining will not result in planned subsidence. Paragraph (b)(7) requires, with certain exceptions, a description of the measures to be taken to minimize damage to EPAct structures in situations where mining is projected to result in planned subsidence.

In response to OSM's concern, PADEP has proposed extensive amendments to 25 Pa. Code 89.141(d) and 25 Pa. Code 89.142a(d). These changes, which are also discussed under 30 CFR 938.16(ggggg), require subsidence control plans to include descriptions of the measures to be taken when planned subsidence is projected to result in material damage to an EPAct structure. The measures, which are described in 25 Pa. Code 89.142a(d), include taking measures to minimize damage to the extent technologically and economically feasible; obtaining the landowner's consent to allow damage; and evaluating the need for damage minimization measures based on cost, health and safety considerations.

PADEP's Proposed Resolution: In this submission, PADEP is proposing amendments to 25 Pa. Code 89.141(d) and 89.142a(d) that will make Pennsylvania's requirements no less effective than Federal requirements in regard to the protection of EPAct structures. These amendments are presented in the proposed resolution to 30 CFR 938.16(ggggg). PADEP maintains that the proposed amendments will satisfy the required amendment at 30 CFR 938.16(hhhhh).

Regulation at 30 CFR 938.16(iiiii). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(c)(3) (regarding public buildings and facilities, churches, schools, hospitals, impoundments with a storage capacities of 20 acre-feet or more, bodies of water with volumes of 20 acre-feet or more, and aquifers or bodies of water that serve as significant sources for public water supply systems) to make it as effective as 30 CFR 817.121(e), which imposes on the regulatory authority the obligation to require permittees to modify subsidence control plans to ensure the prevention of further material damage in the cases where the initial plan or operator's actions fail and provides the authority to suspend mining until such a plan is approved.

Discussion: Subsection 89.142a(c)(3) states that if the measures implemented by the operator cause material damage to or reduce the reasonably foreseeable use of structures or features listed in paragraph (1), PADEP will impose additional measures to minimize the potential for these effects. In the December 27, 2001, final rule, OSM indicated that 30 CFR 817.121(e) imposes on the regulatory authority the obligation to require a permittee to modify its subsidence control plan to ensure the prevention of further material damage in the cases where the initial plan or the operator's actions fail. In addition, 30 CFR 817.121(e) provides the authority to suspend mining until such a plan is approved. Pennsylvania did not establish that the regulations at 25 Pa. Code 89.142a(c)(3) allow it the discretion to suspend mining until the operator's subsidence control plan ensures the prevention of further

material damage. OSM concluded by indicating that Pennsylvania's regulation merely requires additional measures to minimize the effects, but does not give Pennsylvania the option to stop the mining until it reviews the additional measures and determines that the measures will minimize the effects.

In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(c)(3) to incorporate the provisions requested by OSM. PADEP asserts that these changes will make Pennsylvania's program as effective as the Federal program in dealing with situations where approved measures fail to prevent material damage or reduce the reasonably foreseeable use of public buildings and facilities, churches, schools, hospitals, impoundments with a storage capacities of 20 acre-feet or more, bodies of water with volumes of 20 acre-feet or more, and aquifers or bodies of water that serve as significant sources for public water supply systems. PADEP also notes that the structures or features addressed by this regulation are the same as those addressed by 30 CFR 817.121(d) and (e). PADEP maintains that no changes to the BMSLCA are necessary to accommodate this regulation change.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(c)(3) in the following manner.

89.142a. Subsidence control: performance standards.

* * * * *

(c) Restrictions on underground mining.

* * * * *

(3) If the measures implemented by the operator cause material damage or reduce the reasonably foreseeable use of the structures or features listed in paragraph (1), the Department may suspend mining under or adjacent to these structures or features until the subsidence control plan is modified to ensure prevention of further material damage to these facilities or features.

Regulation at 30 CFR 938.16(jjjjj). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(d) to ensure the prevention of material damage to occupied residential dwellings and community or institutional buildings (*i.e.*, EPAct structures) in areas where mining is not projected to result in planned subsidence.

Discussion: Subsection 89.142a(d) provides that if a proposed mining technique or extraction ratio will result in irreparable damage to certain structures (dwellings, barns, silos, and permanently affixed agricultural structures greater than 500 sq. ft. in area), the operator may not use the technique or extraction ratio unless the building owner, prior to mining, consents to the mining or the operator takes measures to minimize or reduce impacts resulting from subsidence. In the December 27, 2001, final rule, OSM found that the Federal regulations do not provide for an irreparable damage standard and while the provisions of 25 Pa. Code 89.142a(d) are no less effective than the Federal regulations regarding structures in danger of being irreparably damaged, the requirements are less effective in regard to structures that may be materially damaged because it provides no protection for those structures.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.142a(d) to require the prevention of material damage in cases where operators use mining methods that are not projected to result in planned subsidence. PADEP asserts that this will make Pennsylvania's regulations no less effective than the Federal regulations in regard to the protection of EPAct structures.

PADEP's Proposed Resolution: In this submission, PADEP is proposing amendments to 25 Pa. Code 89.142a(d) that it maintains will address the requirement in 30 CFR 938.16(jjjjj). These changes are described in the response to 30 CFR 938.16(ggggg).

Regulation at 30 CFR 938.16(kkkkk). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(f)(1) to secure prompt repair or compensation to landowners. OSM made a similar requirement at 938.16(tttt) in regard to section 5.4 of the BMSLCA.

Discussion: See discussion under 30 CFR 938.16(tttt) in regard to section 5.4 of the BMSLCA.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(f)(1) as shown under 30 CFR 938.16(tttt). PADEP maintains that these proposed changes will also satisfy the requirement in 30 CFR 938.16(kkkkk).

Regulation at 30 CFR 938.16(lllll). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend section 25 Pa. Code 89.142a(f)(1)(iii) to remove the phrase, ''in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application.''

Discussion: This section is similar to section 5.4(a)(3) of the BMSLCA. *See* discussion under 30 CFR 938.16(uuuu).

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.142a(f)(1)(iii) as shown in the proposed resolution to 30 CFR 938.16(uuuu). PADEP asserts that this will also satisfy the required amendment at 30 CFR 938.16(lllll). In order for this change to become effective, PADEP contends that OSM must supersede the language in section 5.4(a)(3) of BMSLCA which serves as a basis for this qualification. The rule proposing to supersede this portion of BMSLCA is located elsewhere in this **Federal Register** issue.

Regulation at 30 CFR 938.16(mmmmm). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.142a(g)(1) to require that all underground mining activities be conducted in a manner consistent with 30 CFR 817.180.

Discussion: Section 89.142a(g)(1) protects utilities from adverse effects caused by ''underground mining.'' In the December 27, 2001, final rule, OSM observed that ''underground mining'' is defined in Pennsylvania's regulations as the extraction of coal in an underground mine. The Federal rule at 30 CFR 817.180 requires that all underground mining activities, not just underground mining, must be planned and conducted in a manner that minimizes damage, destruction or disruption in services provided by utilities. In the December 27, 2001, final rule, OSM found that the Federal rule is more inclusive of the activities that must be conducted in a manner that minimizes damage, destruction or disruption in services.

In response to the required amendment, PADEP is proposing to revise 25 Pa. Code 89.142a(g)(1) to replace the term ''underground mining'' with ''underground mining operations.'' PADEP maintains that this change, in combination with the protections already provided under existing 25 Pa. Code 89.67 (relating to support facilities), defines a scope of coverage equivalent to that in 30 CFR 817.180.

The proposal to replace the term ''underground mining'' with ''underground mining operations'' will extend the scope of 25 Pa. Code 89.142a(g)(1) to include effects arising from any activities that take place in the subsurface parts of an underground mine. The term ''underground mining operations,'' which is defined in 25 Pa. Code 89.5, includes underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting. The term effectively

captures all activities included in paragraph (b) of the Federal definition of ''underground mining activities'' in 30 CFR 701.5.

In this submission, Pennsylvania indicated that its existing regulation at 25 Pa. Code 89.67(b) sets forth utility protection requirements that apply to activities at surface sites used in connection with underground mines. Section 89.67(b) uses the term ''surface mining activities'' to describe the range of activities that fall within the scope of utility protection requirements. The term ''surface mining activities'' is defined in § 86.1 to include all surface activity connected with underground mining. This, in effect, includes all activities that fall within the scope of paragraph (a) of the Federal definition of ''underground mining activities.''

Together, Pennsylvania maintains that the provisions of existing 25 Pa. Code 89.67(b) and the provisions of proposed 25 Pa. Code 89.142a(g)(1) cover all activities included within the scope of the Federal term ''underground mining activities.'' In addition, both 25 Pa. Code 89.67(b) and 89.142a(g)(1) require an operator to conduct activities in a manner that minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; railroads; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department. Pennsylvania maintains that the protection provided by 25 Pa. Code 89.67(b) and 89.142a(g) is therefore as effective as that provided by 30 CFR 817.180.

In this submission, PADEP asserts that the requirement in 30 CFR 938.16(mmmmm) can be fully satisfied by amending § 89.142a(g)(1) to make protection requirements applicable to all ''underground mining operations.''

PADEP's Proposed Resolution: In this submission, PADEP proposes that we accept the following proposed changes to 25 Pa. Code 89.142a(g)(1) as fulfilling the requirement in 30 CFR 938.16(mmmmm).

89.142a. Subsidence control: performance standards.

* * * * *

(g) Protection of utilities.

(1) Underground mining operations shall be planned and conducted in a manner which minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; rail lines; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department.

* * * * *

Regulation at 30 CFR 938.16(nnnnn). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove the phrase from 25 Pa. Code 89.143a(c) that states, ''* * * within 6 months of the date that the building owner sent the operator notification of subsidence damage to the structure * * *'' Additionally, the amendment must remove the phrase, ''within 2 years of the date damage to the structure occurred.'' OSM made a similar requirement at 30 CFR 938.16(xxxx) with regard to section 5.5(b) of the BMSLCA.

Discussion: See discussion and proposed resolution under 30 CFR 938.16(xxxx), including proposed amendments to 25 Pa. Code 89.143a(c).

PADEP's Proposed Resolution: See PADEP's proposed regulatory amendment and OSM supersession action described under 30 CFR 938.16(xxxx). PADEP maintains that these changes satisfy the required amendment at 30 CFR 938.16(nnnnn).

Regulation at 30 CFR 938.16(ooooo). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove the sentences from 25 Pa. Code 89.143a(d)(3) that state, ''* * * within 6 months of the date of issuance of the order. The Department may allow more than 6 months if the Department finds that further damage may occur to the same structure as a result of additional subsidence.'' OSM made a similar requirement at 30 CFR 938.16(yyyy) with regard to section 5.5(c) of the BMSLCA.

Discussion: See discussion under 30 CFR 938.16(yyyy).

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.143a(d)(3) as shown under 30 CFR 938.16(yyyy). PADEP asserts that this satisfies the required amendment at 30 CFR 938.16(ooooo).

Regulation at 30 CFR 938.16(ppppp). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove 25 Pa. Code 89.144(a)(1), which provides a waiver of liability that is inconsistent with Federal regulations.

Discussion: This is the same issue that was raised under 30 CFR 938.16(vvvv) in regard to section 5.4(c) of BMSLCA. In this submission, PADEP agreed to restrict this waiver so it cannot be raised in cases involving EPAct structures.

PADEP's Proposed Resolution: See proposed regulatory amendment and OSM supersession described under 30 CFR 938.16(vvvv). PADEP asserts that this satisfies the required amendment under OSM Rule 30 CFR 938.16(ppppp).

Regulation at 30 CFR 938.16(qqqqq). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(a)(1) to address three concerns regarding the performance of premining water supply surveys.

Discussion: Section 25 Pa. Code 89.145a(a)(1) establishes requirements relating to the performance of premining water supply surveys. In the December 27, 2001, final rule, OSM had three concerns regarding the requirements of this section: (1) It provides that survey information must only be obtained to the extent that it can be collected without extraordinary efforts or the expenditure of excessive sums of money; (2) It allows premining surveys to be delayed until mining advances within 1,000 feet of a water supply; and (3) It does not indicate how Pennsylvania's premining survey requirements comply with 30 CFR 784.20(a)(3) relating to the submission of survey results for all EPAct water supplies at the time of permit application.

Regarding limitations on collection of premining survey information, OSM observed that 25 Pa. Code 89.145a(a)(1) provides that survey information is required only to the extent that it can be collected without extraordinary efforts or expenditures of excessive sums of money. OSM further observed that the Federal regulations require the collection of survey information without regard to the level of effort or expense involved in obtaining the information. Based on its analysis, OSM directed PADEP to amend 25 Pa. Code 89.145a(a)(1) to clarify that the requirement to collect survey information to the extent that collection can be accomplished without extraordinary efforts or expenditures of excessive sums of money, is only applicable when it applies to inconveniencing landowners.

In this submission, PADEP proposes to address OSM's requirement by amending 25 Pa. Code 89.145a(a)(1) to replace the condition relating to ''extraordinary efforts or excessive sums of money'' with a condition relation to ''excessive inconvenience to the landowner.'' Under the amended regulation, an operator would be required to collect all survey information listed in subparagraphs (i)–(v) to the extent that collection could be accomplished without excessive inconvenience to a property owner. The proposed amendment would relieve an

operator of the obligation to collect information that would clearly result in an excessive inconvenience to a landowner. An example of an excessive inconvenience would be the need to demolish part of a dwelling to access a well for water level measurement. Lesser inconveniences, such as the need to pump a well for several hours or the need to disconnect treatment systems for purposes of quality sampling, would not normally qualify as excessive.

Regarding the concern on use of the 1,000-foot distance parameter, OSM disapproved the provision allowing mining to advance to within 1,000 feet of a water supply before the completion of the premining survey. OSM reasoned that mining-related effects could occur at distances greater than 1,000 feet and that delaying surveys to the time mining advances to within the 1,000-foot distance could result in data that does not accurately reflect premining conditions.

In this submission, PADEP also proposes to address OSM's concern by amending 25 Pa. Code 89.145a(a)(1) to remove the 1,000-foot criterion and clarify the requirement to collect premining survey information prior to the time a water supply is susceptible to mining-related effects. The determination of when surveys must be completed will be determined by PADEP technical staff based on information in the permit application, PADEP database information relating to the distances at which impacts have been documented to occur, and the reviewer's knowledge of conditions in the general area. Sampling distances specific to each mine and, if appropriate, to individual areas within a mine, will be established by permit condition.

Regarding the concern relating to delayed premining surveys, OSM also directed PADEP to demonstrate that Pennsylvania's premining survey requirements were in compliance with its guidance regarding delayed water supply surveys. This guidance was issued in a memorandum to the Regional Directors dated February 9, 1998, titled ''Timing of Presubsidence Surveys,'' and in March 9, 1999, letters to IMCC and Tri-State Citizens Mining Network (March 1999 letters). It provided that baseline data collected at the time of permit application must be sufficient to develop the probable hydrologic impact determination (PHC) and cumulative hydrologic impact assessment (CHIA) and that States may use the regulatory program amendment process to identify what additional information required under 30 CFR 784.20(a)(3) must be submitted at the time of permit application and which, if any, could be collected at a time closer to when mining would actually occur. OSM committed to giving consideration to approving State program amendments that identify water supply information required under 30 CFR 784.20(a) which could be collected closer to the time when mining actually occurs instead of being submitted at the time of permit application. Finally, OSM required that States must demonstrate, through the regulatory program amendment process for any delayed water supply surveys, that those analyses would be completed sufficiently in advance of mining to avoid any adverse effect to the water supply.

OSM's March 1999 letters were written to clarify OSM's view that a program amendment that assures that analysis of water supply data is completed sufficiently in advance of mining could be approved to provide data that isn't affected by mining. PADEP's proposed modification of 25 Pa. Code 89.145a(a)(1), removes the requirement that premining surveys be conducted prior to mining advancing within 1000 feet of a water supply and replaces it with a requirement that the premining survey be conducted prior to the time a water supply is susceptible to mining-related effects. PADEP maintains that this makes its program no less effective than the Federal requirements.

As an additional means of complying with the OSM guidance, PADEP proposes to apply the requirements of 25 Pa. Code 89.34 (relating to hydrology), 25 Pa. Code 89.35 (relating to prediction of hydrologic consequences), and 25 Pa. Code 89.36 (relating to protection of the hydrologic balance) to ensure that appropriate drinking, domestic and residential water supplies are sampled to adequately determine the hydrologic consequences at large and to identify those water supplies that may be adversely affected. Collectively, PADEP states that these information gathering requirements correspond to Federal counterpart requirements in 30 CFR 784.14(b)(1) and (e). PADEP asserts that the sample information collected and submitted with the application as baseline information satisfies the requirement for identifying the samples that will be collected at the time of permit application in accordance with OSM's March 1999 letters. PADEP asserts that the proposed language, ''premining surveys shall be conducted prior to the time a water supply is susceptible to mining related effects,'' satisfies OSM's March 9, 1999, letters' requirement that the State identify the samples that can be collected at a time closer to when mining will occur. In addition, PADEP contends that it satisfies the requirement that the surveys be completed ''sufficiently in advance of mining to avoid any adverse effects to the water supply.''

In this submission, PADEP asserts that the determination made under 25 Pa. Code 89.35 together with the samples collected during the baseline information collection effort and the presubsidence survey process provide the information required by 30 CFR 784.20(a)(3); a survey of the drinking domestic and residential water supplies that may be adversely affected.

In addition, PADEP maintains that its new language that ''premining surveys shall be conducted prior to the time a water supply is susceptible to mining related effects' satisfies OSM's March 9, 1999, requirement that the State demonstrate through the program amendment process that the delayed analyses would be completed sufficiently in advance of mining to avoid any adverse effects to the water supply.

In this submission, PADEP asserts that the proposed changes to 25 Pa. Code 89.145a, in combination with its proposal to gather appropriate premining information using the provisions of 25 Pa. Code sections 89.34, 89.35 and 89.36, will make Pennsylvania's premining survey requirements no less effective than the Federal requirements.

PADEP's Proposed Resolution: In this submission, Pennsylvania is proposing the following changes to 25 Pa. Code 89.145a(a)(1):

89.145a. Water supply replacement: performance standards.

(a) Water supply surveys.

(1) The operator shall conduct a premining survey and may conduct a postmining survey of the quantity and quality of all water supplies within the permit and adjacent areas, except when the landowner denies the operator access to the site to conduct a survey and the operator has complied with the notice procedure in this section. Premining surveys shall be conducted prior to the time a water supply is susceptible to mining-related effects. Survey information shall include the following information to the extent that it can be collected without excessive inconvenience to the landowner:

(i) The location and type of water supply.

(ii) The existing and reasonably foreseeable uses of the water supply.

(iii) The chemical and physical characteristics of the water, including, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, hardness, total coliform, acidity, alkalinity and sulfates. An operator who obtains water samples in a premining or

postmining survey shall utilize a certified laboratory to analyze the samples.

(iv) The quantity of the water.

(v) The physical description of the water supply, including the depth and diameter of the well, length of casing and description of the treatment and distribution systems.

(vi) Hydrogeologic data such as the static water level and yield determination.

* * * * *

Regulation at 30 CFR 938.16(rrrrr). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(b) to require the ''prompt'' restoration or replacement of water supplies and to clarify, if necessary, that the phrase ''satisfy the water user's needs and the demands of any reasonably foreseeable uses'' is consistent with the actual use and the reasonably foreseeable use of the supply, regardless of whether the current owner has demonstrated plans for the use.

Discussion: Regarding the issue of prompt restoration/replacement, OSM determined that in the December 27, 2001, final rule, that Pennsylvania's regulations on water supply restoration and replacement do not specify that operators must fulfill their obligations in a ''prompt'' manner. OSM found that the absence of this standard made Pennsylvania's water supply replacement provisions less effective than those in section 720(a)(2) of SMCRA and 30 CFR 817.41(j). The Federal statute and regulations require permittees to promptly replace drinking, domestic or residential water supplies affected by underground mining operations.

In this submission, PADEP has stated that it is appropriate for operators to fulfill their water supply restoration and replacement obligations as promptly as possible to minimize inconvenience to landowners and to limit the amount of liability that may accrue from unresolved water supply claims. PADEP has reviewed the applicable provisions of BMSLCA and stated that it found nothing that would interfere with requirements for prompt restoration or replacement. PADEP, therefore, proposes to address OSM's concern by amending 25 Pa. Code 89.145a(b) to incorporate a requirement for ''prompt'' action.

Regarding reasonably foreseeable uses, in the December Rule, OSM expressed concern about Pennsylvania's requirement that permanently restored or replacement water supplies must be adequate to serve the ''reasonably foreseeable uses'' of the original water supply. OSM observed that 25 Pa. Code 89.145a(b) provides that a restored or replacement water supply must be adequate to serve the landowner's premining uses or any reasonably foreseeable uses, implying that an operator may select from one of two options. OSM also noted that 25 Pa. Code 89.145a(f)(3) addresses the ''reasonably foreseeable use'' standard using slightly different language—*i.e.*, ''the water user's needs and the demands of any reasonably foreseeable uses.'' Finally, OSM noted a letter in which PADEP described ''reasonably foreseeable uses'' as ''any foreseeable uses the landowner or water user had intended to develop.'' OSM clarified that Pennsylvania's program must address all reasonably foreseeable uses and that the scope of this term cannot be limited to the documented plans of the current landowner.

In this submission, PADEP decided to address OSM's concern by amending 25 Pa. Code 89.145a(b) to require that restored or replacement water supplies must be adequate to serve the premining uses of the water supply and any reasonably foreseeable uses of the water supply. PADEP also affirms that it will not limit its application of the phrase ''reasonably foreseeable uses'' to include only those uses that can be documented by the landowner. PADEP will act to ensure that consideration is given to all drinking, domestic and residential uses that are reasonably foreseeable and within the capacity of the premining water supply.

PADEP asserts that these proposed changes make Pennsylvania's water supply replacement requirements no less effective than Federal counterpart requirements.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.145a(b). The amended language reads as follows:

89.145a. Water supply replacement: performance standards.

* * * * *

(b) Restoration or replacement of water supplies. When underground mining activities conducted on or after August 21, 1994, affect a public or private water supply by contamination, diminution or interruption, the operator shall promptly restore or replace the affected water supply with a permanent alternate source which adequately serves the premining uses of the water supply and any reasonably foreseeable uses of the water supply. The operator shall be relieved of any responsibility under The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. sections 1406.1–1406.21) to restore or replace a water supply if the operator demonstrates that one of the provisions of 25 Pa. Code 89.152 (relating to water supply replacement: relief from responsibility) relieves the operator of further responsibility. This subsection does not apply to water supplies affected by underground mining activities which are covered by Chapter 87 (relating to surface mining of coal).

* * * * *

Regulation at 30 CFR 938.16(sssss). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(e)(1) to assure the prompt supply of temporary water to all landowners whose water supplies have been affected by underground mining operations regardless of whether the water supplies are within or outside of the area of presumptive liability.

Discussion: Section 25 Pa. Code 89.145a(e)(1) provides that:

If the affected water supply is within the rebuttable presumption area and the rebuttable presumption applies and the landowner or water user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water supply user or the Department, which ever occurs first.

In the December 27, 2001, final rule, OSM found this regulation to be less effective than Federal regulations that require the prompt provision of temporary water in all cases where EPAct water supplies are affected by underground mining operations with no limiting conditions. OSM observed that 25 Pa. Code 89.145a(e) did not provide for the prompt provision of temporary water in cases where the affected water supply was outside the rebuttable presumption area or cases where the operator rebutted the presumption of liability by demonstrating denial of access to perform a premining survey. OSM was also concerned that the rebuttal of the presumption in combination with the inability of the property owner or PADEP to come forth with premining data could relieve an operator of the obligation to provide temporary water.

PADEP acknowledges that existing 25 Pa. Code 89.145a(e) only addresses the provision of temporary water in cases where water supply effects are subject to the rebuttable presumption of section 5.2(c) of the BMSLCA. Section 89.145(e) reflects the provisions of section 5.2(a)(2) of the statute, which is similarly focused on situations where the rebuttable presumption applies.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.145a(e) to include a paragraph that specifically addresses the provision of temporary water supplies when EPAct water supplies are affected by underground mining activities. This new requirement will apply regardless of the location of the affected water

supply with respect to the rebuttable presumption area or the operator's rebuttal of the presumption of liability. It clarifies an operator's obligation to promptly provide temporary water when it finds, or when PADEP finds, that effects are due to the operator's underground mining and the affected water supply is an EPAct water supply.

PADEP bases this amendment on the statutory provisions of section 5.1(a)(1) and 5.2(a)(3) of the BMSLCA. Section 5.1(a)(1) establishes the basic requirement to restore or replace an affected water supply, which PADEP interprets to include the prompt provision of temporary water. Section 5.2(a)(3) authorizes PADEP to take action to require temporary water in any case where temporary water is not provided within 24 hours of the time effects are reported to the operator. PADEP notes that the actions authorized by section 5.2(a)(3) are not subject to the rebuttable presumption of liability.

PADEP further affirms that it will apply the requirements of 25 Pa. Code 89.34, relating to groundwater inventory information, and 25 Pa. Code 89.35, relating to predictions of hydrologic impacts, to ensure the collection of premining quality and quantity information for all EPAct water supplies that may be affected during the term of the permit. PADEP states that this information will be collected at the time of permit application or permit renewal, or prior to the time an EPAct water supply is susceptible to mining related effects to ensure that premining information is available for all EPAct water supplies prior to the time of impact. PADEP notes that the data collection requirements in 25 Pa. Code 89.34 and 25 Pa. Code 89.35 are equivalent to those in 30 CFR 784.14.

PADEP asserts that the proposed regulatory amendment in combination with the proposed expansion of groundwater survey requirements will make Pennsylvania's requirements relating to the provision of temporary water no less effective than those of the Federal program.

PADEP's Proposed Resolution: In this submission, PADEP proposes to revise 25 Pa. Code 89.145a(e) in the following manner.

89.145a. Water supply replacement: performance standards.

(e) Temporary water supplies.

(1) If the affected water supply is within the rebuttable presumption area and the rebuttable presumption applies and the landowner or water user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water supply user or the Department, whichever occurs first.

(2) An operator shall promptly provide a temporary water supply if the operator or the Department finds that the operator's underground mining activities have caused contamination, diminution or interruption of an EPAct water supply and the landowner or water user is without a readily available alternate source of water. This requirement applies regardless of whether the water supply is located within or outside the rebuttable presumption area.

* * * * *

Regulation at 30 CFR 938.16(ttttt). Amendment Required by the December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(e)(2) to require the restoration of water quantity in temporary water supplies to the same level as permanent water supplies, as noted in 25 Pa. Code 89.145a(f)(3).

Discussion: Subsection 89.145a(e)(2) requires temporary water supplies to meet the requirements of paragraph (f)(2) (relating to the quality of replacement water supplies) and to provide a sufficient amount of water to meet the water supply user's premining needs. In the December 27, 2001, final rule, OSM's concern was that the Pennsylvania program would only require temporary water supplies to provide a sufficient amount of water necessary to meet the water supply user's premining needs and not include reasonably foreseeable needs.

PADEP proposes to address OSM's requirement by amending former paragraph (e)(2), which is paragraph (e)(3) under the current proposal, to delete the reference to premining water needs. Amended paragraph (e)(3) will require temporary water supplies to meet all needs of an affected water user. This will ensure that all of a water user's premining and reasonably foreseeable needs are satisfied and will make the quantity requirements for temporary water supplies equivalent to those for permanently restored or replacement water supplies. In making this change, PADEP wishes to clarify that temporary water requirements would not extend to needs that exceed the capacity of the premining water supply.

PADEP asserts that the proposed revision to 25 Pa. Code 89.145a(e) will satisfy the requirement in 30 CFR 938.16(ttttt).

PADEP's Proposed Resolution: In this submission, PADEP proposes that OSM accept the revision to 25 Pa. Code 89.145a(e)(2) (paragraph (3) after preceding revision).

89.145a. Water supply replacement: performance standards.

* * * * *

(e) Temporary water supplies.

* * * * *

(3) The temporary water supply provided under this subsection shall meet the requirements of paragraph (f)(2) and provide a sufficient amount of water to meet the water supply user's needs.

* * * * *

Regulation at 30 CFR 938.16 (uuuuu). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to revise 25 Pa. Code 89.145a(f)(1)(v) to make it clear that cost increases associated with the operation and maintenance of a restored or replacement water supply may not be passed on to the water user.

Discussion: As explained in discussions under 30 CFR 938.16(pppp) and (ddddd), PADEP proposes to amend 25 Pa. Code 89.145a(f) to address OSM's concern. PADEP is proposing amendments to 89.145a(f) to specifically address the operation and maintenance costs of EPAct water supplies. The amendments require that, in the case of an EPAct water supply, the restored or replacement water supply shall cost no more to operate and maintain than the previous water supply. The amendments further provide that any increased costs associated with the operation and maintenance of an EPAct water supply are the responsibility of the mine operator. The amendments also allow an operator to satisfy its responsibility for increased costs by compensating the landowner or water user by a one-time payment in an amount which covers the present worth of the increased annual operations and maintenance cost for a period agreed to by the operator and the landowner or water user. Amended 25 Pa. Code 89.145a(f)(5)(i) mirrors the Federal requirement in regard to the operation and maintenance costs of EPAct water supplies.

The proposed amendments to 25 Pa. Code 89.145a(f) retain the allowance of a *de minimis* cost increase for replacement water supplies that are outside the scope of SMCRA and the Federal regulations. The retention of this provision preserves Pennsylvania law to the maximum extent possible.

PADEP maintains that the proposed changes to 25 Pa. Code 89.145a(f) will make Pennsylvania's provisions relating to the cost of restored and replacement water supplies no less effective than Federal counterpart provisions and will satisfy the requirement in 30 CFR 938.16(uuuuu).

PADEP's Proposed Resolution: PADEP proposes to amend 25 Pa. Code 89.145a(f) in the following manner:

89.145a. Water supply replacement: performance standards.

* * * * *

(f) Adequacy of permanently restored or replaced water supply. A permanently restored or replaced water supply shall include any well, spring, municipal water supply system or other supply approved by the Department, which meets the criteria for adequacy as follows:

(1) Reliability, maintenance and control. A restored or replaced water supply, at a minimum, shall:

(i) Be as reliable as the previous water supply.

(ii) Be as permanent as the previous water supply.

(iii) Not require excessive maintenance.

(iv) Provide the owner and the user with as much control and accessibility as exercised over the previous water supply.

* * * * *

(5) Cost to landowner or water user. A restored or replacement water supply shall meet the following cost criteria:

(i) The restored or replacement water supply for an affected EPAct water supply shall not cost the landowner or water user more to operate and maintain than the previous water supply. Operation and maintenance costs of the replacement water supply which exceed the operation and maintenance costs of the previous water supply are the responsibility of the operator. Upon agreement by the operator and the landowner or water user, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance cost for a period agreed to by the operator and the landowner or water user.

(ii) The restored or replacement water supply for an affected water supply, which does not qualify as an EPAct water supply, shall not have operation and maintenance costs that exceed those of the previous water supply by more than a *de minimis* cost increase. If the operation and maintenance costs of the restored or replacement water supply are more than a *de minimis* cost increase, the operator shall provide for the permanent payment of the increased operating and maintenance cost of the restored or replacement water supply.

* * * * *

Regulation at 30 CFR 938.16(vvvvv). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(f)(3)(i) and (ii), if necessary, to ensure that the phrase ''satisfy the water user's needs and the demands of any reasonably foreseeable uses'' is consistent with the actual use and the reasonably foreseeable uses.

Discussion: OSM's December 27, 2001, final rule conditionally approved the Pennsylvania program with regard to the use of the ''adequate'' standard for water quantity of replacement supplies based upon statements made by PADEP during the rulemaking process. OSM remained concerned about statements indicating PADEP's intent to limit reasonably foreseeable uses to those of the current owner/supply user as documented by a plan.

In this submission, PADEP proposes to address OSM's concern by affirming that it will consider all reasonably foreseeable drinking, domestic and residential uses when evaluating the adequacy of restored EPAct water supplies or replacements for EPAct water supplies. PADEP further affirms that evaluations will be based on the location and characteristics of the property as well as the apparent and documented needs of the current water user. An example cited by PADEP would be a situation where one person resided in a three-bedroom house with a premining water supply capable of serving the needs of four people. In the event of impacts, PADEP stated that it would require a replacement water supply capable of serving the needs of four people and that the reasonably foreseeable use determination would focus on the property's premining capacity to house and provide sufficient water for four people. The replacement liability would not be limited by the fact that the property had only one resident at the time of impact. In this case, PADEP noted that the final determination regarding reasonably foreseeable uses could be based on observation alone without the need for any specific documentation from the landowner.

In this submission, PADEP also notes that determinations of adequacy will also include consideration of the capacity of the premining water supply, including the delivery system. An example provided by PADEP would be where two people resided in a four-bedroom house with a premining water supply capable of serving only two people. In this case, the reasonably foreseeable use determination would account for the fact that capacity of the house exceeded the capacity of the premining water supply. In this situation, PADEP stated that it would require the operator to provide a replacement water supply capable of serving two people.

PADEP notes that 25 Pa. Code 89.145a(a)(1)(ii) requires a mine operator to gather information regarding the existing and reasonably foreseeable use of a water supply at the time of the premining survey. This ensures that mine operators will gather information regarding reasonably foreseeable uses prior to affecting a water supply.

PADEP asserts that this affirmation satisfactorily addresses OSM's concern in regard to the reasonably foreseeable use of restored EPAct water supplies or replacements for EPAct water supplies. PADEP does, however, reserve the authority to require documented plans in cases that do not involve EPAct water supplies or agricultural water supplies.

PADEP's Proposed Resolution: In this submission, PADEP is proposing that there is no need to amend the regulations. PADEP agrees that operators must identify and account for all existing and reasonably foreseeable uses of a water supply when providing a replacement; not just those of the current owner or those documented in a plan.

Regulation at 30 CFR 938.16(wwwww). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.146a(c) to the extent the timeframes for PADEP investigations are longer than those in Pennsylvania's approved citizen complaint procedures.

Discussion: This issue is discussed under 30 CFR 938.16(kkkk) in regard to section 5.2(b) of BMSLCA. Section 5.2(b) was the basis for the investigation timeframes in 25 Pa. Code 89.146a(c)(1).

In this submission, PADEP proposes to revise 25 Pa. Code 89.146a(c) to impose on itself an obligation to report water supply problem investigations to claimants within 10 days of completing the investigation.

PADEP's Proposed Resolution: See proposed revisions to 25 Pa. Code 89.146a(c) described under 30 CFR 938.16(kkkk). PADEP maintains that this satisfies the required amendment under 30 CFR 938.16(wwwww).

Regulation at 30 CFR 938.16(xxxxx). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.152(a) to remove paragraph (2), which provides a release of liability when water supply impacts are due to underground mining activities that took place more than three years prior to the onset of water supply problems.

Discussion: See discussion under 30 CFR 938.16(mmmm).

PADEP's Proposed Resolution: In this submission, PADEP is not proposing any changes in response to 30 CFR 938.16(xxxxx) for reasons discussed under 30 CFR 938.16(mmmm).

Regulation at 30 CFR 938.16(yyyyy). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code 89.152(a) to remove paragraph (4), which provides a release of liability when water supply problems are reported more than two years after the date of occurrence.

Discussion: See discussion under 30 CFR 938.16(jjjj) in regard to section 5.1(b) of the BMSLCA. PADEP has agreed to changes that will eliminate the two-year statute of limitations on filing claims involving EPAct water supplies. These changes will be accomplished through amendments to 25 Pa. Code 89.152(a) and through an OSM s action superseding section 5.1(b) to the extent it applies to EPAct water supplies.

PADEP's Proposed Resolution: See proposed regulatory amendment and OSM supersession action described under 30 CFR 938.16(jjjj). PADEP contends that these changes satisfy the required amendment under 30 CFR 938.16(yyyyy).

Regulation at 30 CFR 938.16(zzzzz). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to remove 25 Pa. Code 89.152(a)(5)(i), which provides a release of liability in cases where operators have addressed their water supply replacement obligations through a property purchase or by compensating a landowner for the resultant reduction in fair market value of the affected property.

Discussion: See discussion under 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr) regarding compensation in lieu of water supply replacement. PADEP has agreed to changes that will limit the conditions under which an EPAct water supply claim can result in compensation. PADEP proposes to amend 25 Pa. Code 89.152(a) to establish specific conditions that must be satisfied in situations where EPAct water supplies will not be restored or replaced. In order for the proposed regulatory amendments to become effective, PADEP maintains that OSM must supersede conflicting provisions in sections 5.2(g) and (h) of the BMSLCA.

PADEP's Proposed Resolution: PADEP proposes to address OSM's requirement through amendments to 25 Pa. Code 89.152(a). PADEP also asserts that OSM must supersede the provisions of sections 5.2(g) and (h) of the BMSLCA to the extent these provisions would prevent PADEP from requiring the restoration or replacement of EPAct water supplies. These changes are described in detail in the response to 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr), and PADEP maintains they will serve to satisfy the requirement in 30 CFR 938.16(zzzzz), as well. The proposal to partially supersede sections 5.2(g) and (h) appears in a separate rulemaking in this **Federal Register** issue.

Regulation at 30 CFR 938.16(aaaaaa). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM required Pennsylvania to amend 25 Pa. Code 89.152a(5)(ii) to remove that portion of the section allowing compensation in lieu of restoration or replacement of affected water supplies. Additionally, the amendment must make it clear that agreements to replace a water supply or provide for replacement of an alternate supply of water must meet the requirements established in the Federal definition of ''replacement of water supply'' at 30 CFR 701.5.

Discussion: See discussion under 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr) regarding compensation in lieu of water supply replacement.

PADEP's Proposed Resolution: In this submission, PADEP proposes to address OSM's requirement through amendments to 25 Pa. Code 89.152 as described in the discussion under 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr).

Regulation at 30 CFR 938.16(bbbbbb). Amendment Required by December 27, 2001, ***Federal Register*** *Notice:* OSM directed Pennsylvania to amend 25 Pa. Code sections 89.141(d), 89.141(d)(9), 89.142a(a), 89.142a(f)(1), 89.142a(f)(2)(i), 89.142a(h)(1), 89.142a(h)(2), 89.142(a)(i)(1), 89.143a(a), 89.143a(d)(1), 89.143a(d)(2), 89.143a(d)(3), 89.155(b)(1) and (2) and 89.155(c) to be no less stringent than section 720(a) of SMCRA. This amendment required using the term ''underground mining operations,'' rather than ''underground mining'' as used by PADEP.

Discussion: In the December 27, 2001, final rule, OSM noted that several sections of the regulations implementing Act 54 use the term ''underground mining'' rather than ''underground mining operations'' as used in the Federal regulations. OSM noted that these sections require a description of the impacts of underground mining on surface features, structures and facilities and provide performance standards to remedy those impacts. Section 720(a) of SMCRA requires underground coal mining operations to comply with those requirements. The Federal term ''underground coal mining operations'' is more expansive than Pennsylvania's term ''underground mining,'' that is defined in 25 Pa. Code 89.5 to be the extraction of coal. The Federal definition of underground coal mining activities describes underground operations as underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage and blasting. Thus, in regard to the aforementioned regulations, the only activity that must meet the environmental requirements of Chapter 89 Subchapter F (relating to subsidence control and water supply replacement.) is coal extraction, while under SMCRA, all underground operations must meet the environmental requirements.

In this submission, PADEP is proposing to address OSM's concern by amending 25 Pa. Code sections 89.141(d), 89.141(d)(9), 89.142a(a), 89.142a(f)(1), 89.142a(f)(2)(i), 89.142a(h)(1), 89.142a(h)(2), 89.142a(i)(1), 89.143a(a), 89.143a(d)(1), 89.143a (d)(2), 89.143a(d)(3) to incorporate the term ''underground mining operations.'' PADEP asserts that these changes will make the respective parts of Chapter 89 no less effective than Federal counterpart requirements.

PADEP is, however, proposing to leave 25 Pa. Code sections 89.155(b)(1) and (2) and 89.155(c) unchanged. These requirements pertain to notifications, which operators must provide to overlying property owners, utilities and government entities, to inform them of planned mining. OSM was concerned that activities such as development activities and blasting would not be cause for operators to notify these parties. However, PADEP has found that all underground mining activities that OSM would be concerned with would be the subject of PADEP's notification procedures because these activities are part of the process of extraction of coal in an underground mine (see definition of the term, ''underground mining'' at 25 Pa. Code 89.5). Therefore, property owners, utilities, and political subdivisions would be notified of these activities as part of the requirements of 25 Pa. Code sections 89.155(b)(1) and (2) and 89.155(c). PADEP contends that these requirements do not make Pennsylvania's notification requirements any less effective than Federal counterpart requirements. Accordingly PADEP argues that there is no need to amend 25 Pa. Code sections 89.155(b)(1) and (2) or 89.155(c) to incorporate the term ''underground mining operations.''

PADEP's Proposed Resolution: In this submission, PADEP proposes that OSM accept the following changes to 25 Pa. Code Chapter 89. (Note that section 25 Pa. Code 89.141(d)(9) has been re-designated (d)(11) based on other proposed changes. Also note use of term ''operations'' in newly proposed 25 Pa. Code 89.141(d)(10)).

89.141 Subsidence control: application requirements.

* * * * *

(d) Subsidence control plan. The permit application shall include a subsidence control plan that describes the measures to be taken to control subsidence effects from the proposed underground mining operations. The plan shall address the area in which structures, facilities or features may be materially damaged by mine subsidence. At a minimum, the plan shall address all areas within a 30° angle of draw of underground mining operations which will occur during the 5-year term of the permit. The subsidence control plan shall include the following information:

* * * * *

(11) A description of the measures which will be taken to maintain the value and foreseeable uses of perennial streams which may be impacted by underground mining operations. The description shall include a discussion of the effectiveness of the proposed measures as related to prior underground mining operations under similar conditions.

* * * * *

89.142a. Subsidence control: performance standards.

(a) General requirements. Underground mining operations shall be planned and conducted in accordance with the following:

* * * * *

(f) Repair of damage to structures.

(1) Repair or compensation for damage to certain structures. Whenever underground mining operations conducted on or after August 21, 1994, causes damage to any of the structures listed in subparagraphs (i)-(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of 25 Pa. Code 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

* * * * *

(2) Amount of compensation.

(i) If, rather than repair the damage, the operator compensates the structure owner for damage caused by the operator's underground mining operations, the operator shall provide compensation equal to the reasonable cost of repairing the structure or, if the structure is determined to be irreparably damaged, the compensation shall be equal to the reasonable cost of its replacement except for an irreparably damaged agricultural structure identified in paragraph (1)(iv) or (v) which at the time of damage was being used for a different purpose than the purpose for which the structure was originally constructed. For such an irreparably damaged agricultural structure, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before the damage occurred if the operator can affirmatively prove that the structure was being used for a different purpose than the purpose for which the structure was originally constructed.

* * * * *

(g) Protection of utilities.

(1) Underground mining operations shall be planned and conducted in a manner which minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; rail lines; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department.

* * * * *

(h) Perennial streams.

(1) Underground mining operations shall be planned and conducted in a manner which maintains the value and reasonably foreseeable uses of perennial streams, such as aquatic life; water supply; and recreation, as they existed prior to coal extraction beneath streams.

(2) If the Department finds that the underground mining operations have adversely affected a perennial stream, the operator shall mitigate the adverse effects to the extent technologically and economically feasible, and, if necessary, file revised plans or other data to demonstrate that future underground mining operations will meet the requirements of paragraph (1).

(i) Prevention of hazards to human safety.

(1) The Department will suspend underground mining operations beneath urbanized areas; cities; towns; and communities and adjacent to or beneath industrial or commercial buildings; lined solid and hazardous waste disposal areas; major impoundments of 20 acre-feet (2.47 hectare-meters) or more; or perennial streams, if the operations present an imminent danger to the public.

* * * * *

89.143a. Subsidence control: procedure for resolution of subsidence damage claims.

(a) The owner of a structure enumerated in 25 Pa. Code 89.142a(f)(1) (relating to subsidence control: performance standards) who believes that underground mining operations caused mine subsidence resulting in damage to the structure and who wishes to secure repair of the structure or compensation for the damage shall provide the operator responsible for the underground mining with notification of the damage to the structure.

* * * * *

(d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining operations caused the subsidence damage to the structure and provide the results of its investigation to the property owner and mine operator within 10 days of completing the investigation.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining operations and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Department may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

* * * * *

Further, PADEP recommends that OSM accept its explanation that 25 Pa. Code 89.155(b)(1) and (2) and 89.155(c) are no less effective than the Federal regulations and need no modification.

As noted earlier in this proposed rule, PADEP is proposing several amendments to Chapters 86 and 89 that were not specifically required by OSM. These changes are summarized below:

Definitions of EPACT Structures and EPACT Water Supplies

PADEP is proposing to add definitions of the terms ''EPAct structures'' and ''EPAct water supplies'' under 25 Pa. Code 89.5 (relating to definitions). These terms are used in various information and performance standards to refer to structures and water supplies covered under section 720(a) of SMCRA. The proposed definitions are derived from descriptions in section 720(a) of SMCRA and the definitions of the terms ''drinking, domestic or residential water supply'' and ''occupied residential dwelling and structures related thereto'' in 30 CFR 701.5. PADEP maintains that the proposed definitions effectively encompass all structures and water supplies covered by Federal subsidence damage repair and water supply replacement provisions.

The proposed definitions are as follows:

89.5. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

EPAct structures—Structures that are subject to repair and compensation requirements under section 720(a) of the Federal Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*). The term includes:

(a) Noncommercial buildings.

(ii) Dwellings.

(iii) Structures adjunct to or used in conjunction with dwellings, including, but not limited to, garages; storage sheds and

barns; greenhouses and related buildings; customer-owned utilities and cables; fences and other enclosures; retaining walls; paved or improved patios; walks and driveways; septic sewage treatment facilities; inground swimming pools, and lot drainage and lawn and garden irrigation systems.

EPA Act water supplies—Water supplies that are subject to replacement under section 720(a) of the Federal Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*), including drinking, domestic or residential water supplies in existence prior to the date of permit application. The term includes water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. It does not include wells and springs that serve only agricultural, commercial or industrial enterprises except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

* * * * *

Scope of Subsidence Bonds

PADEP is proposing two changes to its bonding regulations in addition to those proposed in response to 30 CFR 938.16(ccccc). These changes are intended to clarify that the scope and period of liability of subsidence bonds will not change as a result of other regulatory amendments proposed in response to the OSM requirements.

One proposed change is an amendment to 25 Pa. Code 86.151(b)(2) (relating to the period of liability of subsidence bonds). This change involves replacing the undefined term ''mining and reclamation operation'' with ''underground mining operations''—a term defined in 25 Pa. Code 89.5. This change is intended to avoid confusion over whether the final 10-year period of bonded liability starts upon completion ''underground mining operations'' or upon completion of ''underground mining activities.'' This is an important distinction since the completion of underground mining operations is marked by the reclamation of the last shaft or drift opening, while the completion of underground mining activities is marked by the stabilization of the post closure mine pool, which usually occurs several years or decades after the completion of underground mining operations. The proposed amendment ties the start of the final 10-year period to the completion of underground mining operations, consistent with section 6(b) of BMSLCA.

Another proposed change is an amendment to 25 Pa. Code 86.152(a) (relating to bond adjustments). The proposed amendment adds a provision at the end of subsection (a) clarifying that the requirement to periodically re-evaluate and adjust bonds is not a basis for extending the coverage of subsidence bonds beyond the requirements of sections 5, 5.4, 5.5, and 5.6 of the BMSLCA. This provision, which is based on section 6(b) of BMSLCA, clarifies that subsidence bonds are to be evaluated and adjusted based on the projected costs of repairing land and structure damage and not on costs arising from other regulatory obligations, such as the requirement to perform surface reclamation and the requirement to replace affected water supplies.

PADEP maintains that the proposed amendments will not make Pennsylvania's bonding requirements less effective than the Federal bonding requirements. As explained in the response to 30 CFR 938.16(ccccc), Pennsylvania asserts its subsidence bonding requirements are as effective as those in 30 CFR 817.121(c)(5) in terms of assuring the availability of adequate funds for the repair of EPAct structures and land. The proposed changes to 25 Pa. Code 86.151(b)(2) will maintain the status quo regarding the period during which subsidence bonds must be maintained and will not result in a termination of liability prior to the time OSM would terminate jurisdiction over an underground mining operation. Further, since PADEP relies on other types of financial assurance to ensure the replacement of affected water supplies, it maintains there is no need to address these liabilities through subsidence bonds.

The proposed amendments to 25 Pa. Code 86.151(b)(2) and 86.152(a) are as follows:

86.151. Period of liability.

(a) Liability under bonds posted for a coal surface mining activity shall continue for the duration of the mining activities and its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit and for 5 additional years after completion of augmented seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area.

(b) Liability under bonds posted for the surface effects of an underground mine, coal preparation activity or other long-term facility shall continue for the duration of the mining operation or use of the facility, its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit, and for 5 years thereafter, except for:

(1) The risk of water pollution for which liability under the bond shall continue for a period of time after completion of the mining and reclamation operation. This period of time will be determined by the Department on a case-by-case basis.

(2) The risk of subsidence from bituminous underground mines for which liability under the bond shall continue for 10 years after completion of the mining and reclamation operation underground mining operations.

86.152. Bond adjustments.

(a) The amount of bond required and the terms of the acceptance of the applicant's bond will be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased, or where the cost of future reclamation changes, or where the projected subsidence damage repair liability changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage and does not extend the coverage of a subsidence bond beyond the requirements imposed by sections 5, 5.4, 5.5, and 5.6 of the Bituminous Mine Subsidence and Land Conservation Act.

Description of Features Protected Under 25 Pa. Code 89.142a(c)

PADEP is proposing to amend 25 Pa. Code 89.142a(c)(1) to make an editorial correction. The correction involves changing the term ''surface features'' to ''features'' in paragraph (1). The term ''features'' is more appropriate in this instance because it refers to both surface water bodies and aquifers enumerated in subparagraphs (c)(1)(iv)–(v). Since aquifers are not usually considered surface features, it is more appropriate to use the term ''features'' to refer to this group. PADEP maintains that the proposed change will not make Pennsylvania's regulations less effective than Federal counterpart regulations. The proposed amendment to 25 Pa. Code 89.142a(c) is as follows:

89.142a. Subsidence control: performance standards.

* * * * *

(c) Restrictions on underground mining.

(1) Unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of the structures and features listed in subparagraph (i)–(v), no underground mining shall be conducted beneath or adjacent to:

(i) Public buildings and facilities.

(ii) Churches, schools and hospitals.

(iii) Impoundments with a storage capacity of 20 acre-feet (2.47 hectare-meters) or more.

(iv) Bodies of water with a volume of 20 acre-feet (2.47 hectare-meters) or more.

(v) Bodies of water or aquifers which serve as significant sources to public water supply systems.

* * * * *

Support Facilities Located Underground

PADEP is proposing to amend the definition of ''underground mining operations'' and paragraph (ii) of the definition of ''underground mining activities'' to replace the term ''underground support facilities'' with

''support facilities located underground.'' The proposed changes are intended to clarify that the term ''underground mining operations'' refers only to those operations that take place in the subsurface parts of an underground coal mine. These changes will eliminate the possibility that ''underground mining operations'' could be construed to include operations at a surface support facility, such as a coal storage site, bathhouse or mine drainage treatment plant. This change is necessary to clarify the scope of the term ''underground mining operations'' which will be inserted in many information and performance standards in response to OSM requirements. PADEP contends that these changes will not make Pennsylvania's definition of ''underground mining operations'' less inclusive than the Federal definition (see paragraph (b) of the definition of ''underground mining activities'' in 30 CFR 701.5).

The proposed changes are as follows:

86.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Underground mining activities includes the following:

* * * * *

(ii) Underground operations such as underground construction, operation, and reclamation of shafts, adits, support facilities located underground, in situ processing, and underground mining, hauling, storage and blasting.

* * * * *

89.5. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Underground mining activities includes the following:

* * * * *

(ii) Underground operations such as underground construction, operation, and reclamation of shafts, adits, support facilities located underground, in situ processing, and underground mining, hauling, storage and blasting.

* * * * *

Underground mining operations—Underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting.

* * * * *

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. PA–143'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearings, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 7, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. You do not need to attend both public hearings. We will consider all comments received at either of the public hearings.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society

and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that the Pennsylvania program does not regulate surface coal mining and reclamation operations on Indian lands. Therefore, changes to the Pennsylvania program have no effect on federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–23986 Filed 9–18–03; 12:01 pm]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–141–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and notice of public hearing on a proposed action.

SUMMARY: We are proposing to supersede portions of Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) because they are inconsistent with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In this proposed rule, we are asking for comments regarding the proposed supersession. In a separate proposed rulemaking also published today, we are asking for comments on changes Pennsylvania is proposing to make to its regulations related to the implementation of BMSLCA as well as clarifications to those regulations. We will be holding public hearings on both the proposal for superseding certain provisions of BMSLCA, as noted below, and Pennsylvania's proposed changes to its regulations on the dates indicated under **DATES**. Pennsylvania will also be holding public hearings on its proposed changes to its regulations. In order to accommodate those who wish to speak at both Pennsylvania's and our public hearings, the hearings will be held on the same days and at the same locations, but at different times.

This document gives the times and locations that the Pennsylvania program is available for your inspection, the comment period during which you may submit written comments on this proposed action, and the procedures that we will follow for the public hearings.

DATES: We will accept written comments on this proposal until 4 p.m., e.s.t., October 22, 2003. We will hold public hearings on the proposal on October 15, 2003, at the Best Western University Inn in Indiana, Pennsylvania,

at 3 p.m. and at 7 p.m. and on October 16, 2003, at the Holiday Inn Meadow Lands in Washington, Pennsylvania, at 3 p.m. and at 7 p.m. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 7, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Field Office Director at the address listed below.

You may review copies of the Pennsylvania program, this proposal, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

George Rieger, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, E-mail: *grieger@osmre.gov*

Joseph P. Pizarchik, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, PO Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036, E-mail: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Proposed Action
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Action

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), we are proposing to supersede portions of the following sections of BMSLCA as detailed below: 5.1(b)(52 P.S. 1406.5a(b)), 5.2(g)(52 P.S. 1406.5b(g)), 5.2(h)(52 P.S. 1406.5b(h)), 5.4(a)(3)(52 P.S. 1406.5d(a)(3)), 5.4(c)(52 P.S. 1406.5d(c)), 5.5(b)(52 P.S. 1406.5e(b)).

Section 5.1(b). We are proposing to supersede section 5.1(b) to the extent it would apply to water supplies covered under section 720 of SMCRA. Section 5.1(b) provides that:

(b) A mine operator shall not be liable to restore or replace a water supply under the provisions of this section if a claim of contamination, diminution or interruption is made more than two years after the supply has been adversely affected.

Section 5.2(g). We are proposing to supersede section 5.2(g) of BMSLCA to the extent that it would remove an operator's liability to restore or replace a water supply covered under section 720 of SMCRA. Section 5.2(g) provides that:

(g) If an affected water supply is not restored or reestablished or a permanent alternate source is not provided within three years, the mine operator may be relieved of further responsibility by entering into a written agreement providing compensation acceptable to the landowner. If no agreement is reached, the mine operator, at the option of the landowner, shall:

(1) purchase the property for a sum equal to its fair market value immediately prior to the time the water supply was affected; or

(2) make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and at the time payment is made; whereupon the mine operator shall be relieved of further obligation regarding contamination, diminution or interruption of an affected water supply under this act. Any measures taken under sections 5.1 and 5.3 and this section to relieve a mine operator of further obligation regarding contamination, diminution or interruption of an affected water supply shall not be deemed to bar a subsequent purchaser of the land on which the affected water supply was located or any water user on such land from invoking rights under this section for contamination, diminution or interruption of a water supply resulting from subsequent mining activity other than that contemplated by the mine plan in effect at the time the original supply was affected.

Section 5.2(h). We are proposing to supersede section 5.2(h) of BMSLCA to the extent it would bar Pennsylvania from requiring the restoration or replacement of a water supply covered under section 720 of SMCRA. Section 5.2(h) provides that:

(h) Prior to entering into an agreement with the mine operator pursuant to subsection (g), the landowner may submit a written request to the department asking that the department review the operator's finding that an affected water supply cannot reasonably be restored or that a permanent alternate source, as described in subsection (i), cannot reasonably be provided. The department shall provide its opinion to the landowner within sixty days of receiving the landowner's request. The department's opinion shall be advisory only, including for purposes of assisting the landowner in selecting the optional compensation authorized under subsection (g). The department's opinion shall not prevent the landowner from entering into an agreement with the mine operator pursuant to subsection (g), and such opinion shall not serve as the basis for any action by the department against the mine operator or create any cause of action in a third party, provided the operator otherwise complies with subsection (g).

Section 5.4(a)(3). We are proposing to supersede the portion of section 5.4(a)(3) of BMSLCA that states, ''in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application,'' to the extent it excludes structures covered under Section 720 of SMCRA from repair or compensation requirements. This provision is proposed to be superseded because it may exclude certain structures from the repair and compensation provisions of SMCRA.

Section 5.4(a)(3) provides that:

5.4. Restoration or compensation for structures damaged by underground mining.

(a) Whenever underground mining operations conducted under this act cause damage to any of the following surface buildings overlying or in the proximity of the mine:

* * * * *

(3) Dwellings used for human habitation and permanently affixed appurtenant structures or improvements in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application; or

* * * * *

Section 5.4(c). We are proposing to supersede section 5.4(c) of BMSLCA where it would relieve an operator's liability to repair or compensate for damage to a structure covered under

section 720 of SMCRA. Section 5.4(c) provides that:

(c) A mine operator shall not be liable to repair or compensate for subsidence damage if the mine operator, upon request, is denied access to the property upon which the building is located to conduct premining and postmining surveys of the building and surrounding property and thereafter serves notice upon the landowner by certified mail or personal service, which notice identifies the rights established by sections 5.5 and 5.6 and this section, the mine operator was denied access and the landowner failed to provide or authorize access within ten days after receipt thereof.

Section 5.5(b). We are proposing to supersede the portion of section 5.5(b) of BMSLCA that reads, ''All claims under this subsection shall be filed within two years of the date damage to the building occurred'' where it would apply to a structure covered under section 720 of SMCRA. Section 5.5(b) provides that:

(b) If the parties are unable to agree within six months of the date of notice as to the cause of the damage or the reasonable cost of repair or compensation, the owner of the building may file a claim in writing with the Department of Environmental Resources, a copy of which shall be sent to the operator. All claims under this subsection shall be filed within two years of the date damage to the building occurred.

We are proposing to supersede the provisions of BMSLCA as noted above because we have previously determined that these provisions are inconsistent with SMCRA or the Federal regulations based on the reasons cited under ''Director's Findings'' in a notice of final rulemaking published in the **Federal Register** on December 27, 2001 (66 FR 67010) and because Pennsylvania did not propose revisions to the statute. This action is also needed to resolve litigation between Pennsylvania and OSM. In subsequent discussions with OSM, Pennsylvania expressed concern that without this action, there may be conflicts with new State rulemaking, which is needed to satisfy some of the required amendments of 30 CFR 938.16. Therefore, to alleviate Pennsylvania's concerns and as part of the measures to resolve the litigation, we are proposing to supersede those provisions as noted above.

Please note that we are proposing to supersede only the provisions of the BMSLCA to the extent noted above in this notice. The superseded provisions, as noted above, cannot be implemented or enforced by any party as they would apply to a water supply or structure covered by section 720 of SMCRA. However, this proposal will not change the way Pennsylvania or OSM enforce the provisions of BMSLCA or SMCRA in Pennsylvania unless or until it becomes final. To meet the enforcement requirements of section 720 in Pennsylvania, enforcement occurred through a combination of State enforcement of BMSLCA and direct Federal enforcement as described in the July 28, 1995, **Federal Register** (60 FR 38685). Pennsylvania's enforcement of BMSLCA and our direct enforcement continued from July 28, 1995, up to December 27, 2001, and continues as described in the December 27, 2001, final rule. A complete discussion of enforcement of the section 720 provisions of SMCRA in Pennsylvania and the relationship of the decisions made in the December 27, 2001, final rule to those enforcement provisions can be found in Section VI. Effect of Director's Decision in that final rule (66 FR 67061).

In a separate rulemaking located elsewhere in this **Federal Register** issue, Pennsylvania has submitted new regulations and supplemental information to OSM which will include enforcement of those areas of the program that have been superseded. We intend to coordinate the effective date of the final rule notice announcing the superseded provisions with Pennsylvania's rulemaking process regarding its new regulations to insure that there are no gaps in enforcement of Pennsylvania's program. The full text of the December 27, 2001, final rule is available for you to read at the locations listed above under **ADDRESSES.**

III. Public Comment Procedures

We are now soliciting comments on this proposal to supersede the portions of BMSLCA as noted above. If we receive no evidence demonstrating why these portions should not be superseded, we will publish a final notice to effect the supersession of the provisions by Federal law. This action, if taken, will require Pennsylvania to operate and enforce its approved program as if the superseded provisions did not exist.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. PA–141–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearings

If you wish to speak at the public hearings, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 7, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearings provide us with a written copy of his or her comments. The public hearings will continue on the specified dates until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearings after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. You do not need to attend both public hearings. We will consider all

comments received at either of the public hearings.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on the analysis prepared for the OSM regulations implementing the provisions of the Energy Policy Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the analysis prepared for the OSM regulations implementing the provisions of the Energy Policy Act.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the analysis prepared for the OSM regulations implementing the provisions of the Energy Policy Act.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 2003.

Glenda Owens,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 03–23985 Filed 9–9–03; 8:45 am]

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Federal Register

Monday,
September 22, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Remanded Determination of Status for the Sacramento splittail (*Pogonichthys macrolepidotus*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018–AH73]

Endangered and Threatened Wildlife and Plants; Notice of Remanded Determination of Status for the Sacramento splittail (*Pogonichthys macrolepidotus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; revised determination.

SUMMARY: On January 6, 1994, we, the U.S. Fish and Wildlife Service (Service) proposed to list the Sacramento splittail (*Pogonichthys macrolepidotus*), a fish species native to central California, as a threatened species under the Endangered Species Act of 1973, as amended (Act). We published a final rule to list the species as threatened on February 8, 1999. Our final decision to list the Sacramento splittail was subsequently challenged in the cases *San Luis & Delta-Mendota Water Authority* v. *Anne Badgley, et al.* and *State Water Contractors, et al.* v. *Michael Spear, et al.* On June 23, 2000, the Federal Eastern District Court of California found our final rule to be unlawful and on September 22, 2000, remanded the determination back to us for a re-evaluation of our final decision. However, because the District Court did not vacate our previous final decision, the decision remained in place until we issued a new determination. After a thorough review and consideration of all the best scientific and commercial information available, we are removing the Sacramento splittail from the list of threatened species. In accordance with the Administrative Procedure Act, the Service has determined that this rule relieves an existing restriction, and good cause exists to make the effective date of this rule immediate.

EFFECTIVE DATE: In compliance with the Federal Eastern District Court of California order, this rule is effective September 22, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final decision, are available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Wayne White (*see* **ADDRESSES**), (telephone: 916/414–6600; facsimile: 916/414–6713). Information is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (hereafter referred to as splittail) is a fish species native to central California and represents the only extant species in its genus in North America. We have previously discussed the taxonomic history of the splittail along with the physical description of the taxon in our final listing rule (64 FR 5963). Please refer to that document for a detailed discussion of these subjects. It is our intent, in this document, to reiterate and discuss only those topics directly relevant to this decision.

To assist the reader in understanding terminology used in this determination, we have provided below several terms with their corresponding definitions as they are used in this document. As used in this determination, the term ''Delta'' refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanislaus and San Joaquin Rivers at the southeast corner and Chipps Island in Suisun Bay at the southwest corner. The term ''Estuary,'' as used in this determination, refers to tidal waters contained in the Sacramento and San Joaquin Rivers, the Delta, and San Pablo and San Francisco bays. ''Export facilities,'' as used in this determination, refers to the Bureau of Reclamation (USBR) Central Valley Project (CVP) and the California Department of Water Resources (CDWR) State Water Project (SWP) water export facilities in the South Delta.

Splittail are native to California's Central Valley. Historically, splittail were found as far north as Redding on the Sacramento River (Rutter 1908). Splittail were also found in the tributaries of the Sacramento River as far as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908). Along the San Joaquin River, historic distribution is unclear. Girard (1854) reported two *Pogonichthys* species in the San Joaquin River. These reports do not make a distinction between which of the two species was found at particular locations on the San Joaquin River. In the southern Central Valley, Tulare Lake was likely to have supported many native fish species, including splittail (Moyle 1976) but has since been drained and reclaimed. Splittail were present within Buena Vista and Kern Lakes (Moyle 2002), both of which are reclaimed.

Some researchers (Sommer *et al.* (1997)) indicate that splittail still occur, at least during optimal conditions, through as much as 78 percent of their former range in terms of river reaches. However, others (Moyle and Yoshiyama 1992) believe the species appears to be restricted to a small portion of its former range, with dams and diversions preventing access to upstream habitat in large rivers and streams beyond the valley floor (Moyle and Yoshiyama 1992). The State of California indicates that splittail still occur in a large portion of its range (80% in the Sacramento, and 70% in the San Joaquin). There appears to be consensus that at least 20% and possibly more of the species range has been reduced. Baxter (2001b) found that the range of the splittail extends away from the Delta, though detections on the periphery of its range appear to be part of a single, mobile, Sacramento and San Joaquin River/Bay-Delta population that includes fish from the Napa and Petaluma River systems. Their distribution in the Estuary suggests that brackish water may characterize optimal rearing habitat for fish greater than 75 millimeters (mm) (3.0 inches (in)) standard length (SL) (Moyle *et al.* 2001). Suisun Marsh includes the largest areal extent of shallow water habitat available to the splittail and likely has the greatest concentrations of the species.

Splittail are relatively long-lived and larger fish may be 8 to 10 years old (Moyle 2002). Splittail reach about 110 mm (4.3 in) SL in their first year, 170 mm (6.6 in) SL in their second year, and 215 mm (8.4 in) SL in their third year (Moyle 2002). Male and female splittail may mature by the end of their second year (Daniels and Moyle 1983), but some males mature in their first year and some females do not mature until their third year (Caywood 1974).

The largest females can produce over 250,000 eggs per year (Daniels and Moyle 1983). Other and more current estimates of splittail fecundity have shown high variability and occasionally, lower numbers. Caywood (1974) found a mean of 165 eggs per mm (6.5 in) of SL of fish sampled and reported a maximum of 100,800 eggs in one female. Daniels and Moyle (1983) observed approximately 17,500 to 266,000 eggs per female splittail. Feyrer and Baxter (1998) found a mean of 261 eggs per mm (10.2 in) of SL and estimated maximum fecundity at 150,000 eggs. Bailey *et al.* (1999) examined fish held for a considerable time in captivity and found that

fecundity ranged from 24,753 to 72,314 eggs per female, which agrees with Caywood's (1974) observations.

Although primarily a freshwater species, splittail can tolerate salinities as high as 10 to 18 parts per thousand (ppt) (Moyle 1976; Moyle and Yoshiyama 1992). Salinity tolerance in splittail increases in proportion to length; adults can tolerate salinities as high as 29 ppt for short periods (Young and Cech 1996). Splittail populations fluctuate annually, depending on spawning success, which is well correlated with freshwater outflow and the availability of shallow water habitat with submerged vegetation (Daniels and Moyle 1983; Sommer *et al.* 1997). Fish typically reach sexual maturity by the end of their second year. The onset of spawning is associated with rising water levels, increasing water temperatures, and increasing day length. Peak spawning occurs from February through May, although records of spawning exist for late January to early July (Wang 1986). In some years, most spawning may take place within a limited period of time. For instance, in 1995, a year of high spawning activity, most splittail spawned over a short period in April, even though larval splittail were captured from February through early July (Moyle *et al.* 2001). Within each spawning season older fish reproduce first, followed by younger individuals (Caywood 1974).

Splittail spawning occurs over flooded vegetation in tidal freshwater and brackish water habitats of estuarine marshes and sloughs and slow-moving, shallow reaches of large rivers. Observations of splittail spawning have indicated spawning at depths of less than 1.5 meters (m) (4.9 feet (ft)) in the Cosumnes River floodplain (Moyle *et al.* 2001), and at depths of less than 2 m (6.6 ft) in Sutter Bypass (Moyle *et al.* 2001). Sommer and Harrell (1999) postulated that individual splittail may not spawn in the year following a successful effort.

Splittail larvae remain in shallow, weedy areas close to spawning sites for 10 to 14 days and move into deeper water as they mature and swimming ability increases (Wang 1986; Sommer *et al.* 1997). Bailey (1994) has documented that splittail eggs hatch in 3 to 5 days at 18.5 degrees centigrade (°C), (65.3 degrees Fahrenheit (°F)). Bailey (1994) also found that at 5 to 7 days after hatching, the yolk sac is absorbed and the diet begins to include small rotifers. Moyle *et al.* (2001) states that splittail of 20 to 25 mm (0.8 to 1.0 in) total length (TL) ''* * * are essentially small juveniles, capable of fairly active swimming'' and that 4 to 5 weeks post-hatch are required to reach this size class.

It is speculated that Suisun Marsh is the likely late stage rearing area for juvenile splittail hatched and reared in the extensive spawning habitat found within the Yolo Bypass, as a hydrologic connection apparently exists between these waters (N. Monsen, unpubl. data referenced in Moyle *et al.* 2001). Splittail use of Suisun Marsh varies with outflow (Baxter 1999a).

Splittail are benthic foragers. In Suisun Marsh, adults feed primarily on opossum shrimp (*Neomysis mercedis,* and presumably, non-native shrimp species of the genus *Acanthomysis* as well), benthic amphipods (*Corophium* spp.), and other small crustaceans, although detrital material makes up a large percentage of their stomach contents (Daniels and Moyle 1983). In the Delta, clams, crustaceans, insect larvae, and other invertebrates also are found in the adult diet. More recently, research has indicated a shift in adult splittail diet towards the non-native Asiatic clam (*Potamocorbula amurensis*) in Suisun Marsh.

Historically, *Eurytemora affinis,* the native euryhaline copepod, has been the most important food for larval fishes in the Estuary. Three non-native species of euryhaline copepods (*Sinocalanus doerrii, Pseudodiaptomus forbesi,* and *Pseudodiaptomus marinus*) became established in the Delta between 1978 and 1987 (Carlton *et al.* 1990), while native *E. affinis* populations have declined since 1980. It is not known if the non-native species have displaced *E. affinis* or whether changes in the estuarine ecosystem now favor *S. doerrii* and the two *Pseudodiaptomus* species. Meng and Orsi (1991) reported that *S. doerrii* is more difficult for larval striped bass to catch than native copepods because it is fast swimming and has an effective escape response. It is not known if this difference in copepod swimming and escape behavior has affected the feeding success of young splittail. Zeug *et al.* (2002) and Hieb (2002) reported a high abundance of an introduced, predatory Palaemonid shrimp (*Exopalaemon modestus*) in the Yolo Bypass and Delta. It is not known what effect(s) this invasive species will have on the trophic (food) pyramid of the estuary, though Moyle (2002b) speculates it is likely to prey on mysid shrimp and thus, may compete with splittail for food. Juvenile feed mainly on plankton composed of small animals (zooplankton), and then small crustaceans and insect larvae as body size increases.

Predators of splittail include striped bass (*Morone saxatilis*), largemouth bass (*Micropterus salmoides*) and other centrarchids, and other native and non-native piscivores (Moyle 1976, Moyle 2002a). Introduced, non-native benthic foragers such as shokihaze goby (*Tridentiger barbatus*), chameleon goby (*T. trigonocephalus*), and yellowfin goby (*Acanthogobius flavimanus*), may feed on splittail eggs. Introduced planktivorous, threadfin shad (*Dorosoma petenense*) and inland silverside (*Menidia beryllina*), compete directly with larval and juvenile splittail for food. Other non-native cyprinids, such as golden shiner (*Notemigonus crysoleucas*), red shiner (*Notropis lutrensis*), and fathead minnow (*Pimephales promelas*) are also likely to compete with splittail. In recent years, splittail have been found most often in slow moving sections of rivers, sloughs, and in dead end sloughs (Moyle 1976, Daniels and Moyle 1983). Reports from the 1950's, however, mention Sacramento River spawning migrations and catches of splittail during fast tides in Suisun Bay (Caywood 1974). Current accounts place splittail as far upstream as the Red Bluff Diversion Dam on the Sacramento River (Baxter 1999a). Splittail have been recorded in recent times from within Salt Slough and at the Merced River confluence on the San Joaquin River, and within the Napa and Petaluma Rivers (Baxter 1999a, 1999b; USACE 2002a, 2002b).

Splittail are frequently found in areas subject to flooding because they require flooded vegetation for spawning and rearing. Historically, the major flood basins (*e.g.*, Colusa, Sutter, American, and Yolo basins; Tulare, Buena Vista, and Kern lakes) distributed throughout the Sacramento and San Joaquin valleys provided spawning and rearing habitat. These flood basins have all been reclaimed or modified for flood control purposes (*i.e.* as bypasses), and much of the floodplain area adjacent to the rivers is now inaccessible behind levees. The Yolo Bypass may approximate some of the Yolo Basin's former role, and the Butte Creek, Butte Sink, Sutter Bypass system remains somewhat intact. Meng and Moyle (1995) reported that the core distribution of splittail extends from Suisun Bay and Marsh through the western Delta.

The Yolo and Sutter bypasses and the Cosumnes River floodplain serve as important splittail spawning and early rearing habitat (Sommer *et al.* 1997), as they approximate the large, open, shallow water areas which have been extensively reduced. The Yolo and Sutter bypasses provide good habitat for fish, particularly splittail, when flooded for several weeks in March and April. To provide the best spawning

conditions for splittail, water must remain on the bypasses until fish have completed spawning, and larvae are able to swim out on their own, during the draining process. The Cosumnes River also possesses natural and restored floodplain features. This river is unique in that it is not dammed and the hydrograph is relatively natural. The contributions made by this habitat are somewhat limited by the fact that the Cosumnes River watershed is lower in elevation than most adjacent rivers. It is therefore somewhat less dominated by the extended spring peak flow characteristic of a higher altitude watershed with greater snowmelt potential.

In summary, the current distribution of splittail habitat is certainly reduced at least 20% and may be much more reduced in extent from that which may have historically been present. Clearly, perhaps the largest portion of the splittail's habitat is contained in the natural and newly restored floodplains of the Cosumnes River, managed floodplains such as the Yolo and Sutter bypasses, disjunct segments adjacent to the Sacramento and San Joaquin rivers and in lower reaches of their respective tributaries.

In years where the Yolo and Sutter bypasses are not sufficiently inundated, splittail spawning is confined primarily to the natural and newly restored floodplains of the Cosumnes River and the margins of rivers and other floodplain features that are inundated at lower river stages. These areas likely represent only a fraction of the area which was historically subject to inundation; levees preclude access to reclaimed floodplains and basins. There are indications, based on presence of larvae and juveniles, that spawning in the Sacramento River occurs relatively far upstream at Colusa (Baxter 1999a; 1999b). Splittail appear to utilize the San Joaquin River in wet years when appreciable runoff exceeds the capacity for storage and diversion of runoff. The Tuolumne, Cosumnes, Feather, American, Napa, and Petaluma rivers, and numerous other smaller waters support splittail spawning activity. Early indications are that the Napa River may contain a robust subpopulation of splittail (USACE 2002a, 2002b).

Abundance

Seven sampling programs capture splittail frequently enough to allow the calculation of useful abundance indices. These programs are: (1) CDFG's Fall Midwater Trawl (Fall MWT); (2) CDFG's San Francisco Bay Midwater Trawl (Bay Study MW); (3) CDFG's San Francisco Bay Otter Trawl (Bay Study OT); (4) University of California (UC) Davis's Suisun Marsh Otter Trawl (Suisun Marsh OT); (5) Service's Chipps Island Trawl survey (Chipps Is. Trawl); (6) fish salvage operations (which repatriate fish taken from water intake screens) at the CVP Tracy Fish Collection Facility (CVP); and (7) fish salvage at the SWP Skinner Delta Fish Protective Facility in the south Delta (SWP).

Four other sampling programs provide additional splittail information but the data are insufficient to support useful indices. These are: (1) Service's Delta Beach Seine Survey; (2) CDFG's Summer Townet Survey; (3) U.S. Army Corps of Engineers' (USACE) Napa River Survey; and (4) CDFG's Creel Census.

Surveys Employed in Abundance Analyses

The data available even today on splittail abundance are not optimal. There are a number of survey programs which generate data, each of which have more or less limiting factors. This has made analysis of the status of the species based on this survey data problematic. Descriptions of all fisheries sampling programs that routinely detect splittail follow, and are differentiated into two categories: those that were used in the calculation of abundance indices and those that were not.

Fall Midwater Trawl Survey

The Fall MWT was initiated by CDFG in 1967 to sample striped bass, a non-native sport fish. In addition to striped bass, CDFG has maintained records of other fish species captured in the samples in most years. This monitoring program currently samples 100 sites from San Pablo Bay in the west to Rio Vista on the lower Sacramento River and to Stockton on the San Joaquin River. Data are collected from September through December using a midwater trawl with a 3.7 square m (39.8 square ft) wide mouth. Unlike the summer townet survey, the Fall MWT survey catches all splittail size classes, although larger fish are more likely to evade capture. Catches of splittail are generally low in number because splittail generally reside and feed on the channel bottom. Furthermore, splittail apparently use shallow (less than 6 m (19.7 ft)) and near-shore waters to a higher degree than open channels. The Fall MWT does not sample edge waters, and the proportion of samples in shallow water stations varies by region: 20 of 35 stations in San Pablo Bay; 1 of 18 in Carquinez Strait; 8 of 25 in Suisun Bay/Marsh; and 1 of 38 in the Delta. A monthly abundance index for splittail captured by the Fall MWT is calculated by grouping the samples by area (17 areas) and then calculating an area weighted average catch from each area; the index is the sum of these area weighted mean catches. The annual Fall MWT Index is the sum of the four monthly indices. Splittail lengths were not recorded until 1975, so for data collected prior to 1975, Young Of Year (YOY) (age 1) fish could not be differentiated from other age classes. Fall MWT data from 1967 through 2002 was used in our abundance analysis.

San Francisco Bay Studies

The San Francisco Bay Studies sample waters west of the Delta seaward to south San Francisco Bay using both a midwater trawl (Bay Study MWT) and an otter trawl (Bay Study OT) (Baxter 1999a). These programs capture relatively few splittail, but are still considered important because they involve two types of sampling equipment and frequent sampling (Baxter 1999a). Much of the sampling takes place in San Francisco Bay in deep water channels that are not characteristic splittail habitat. Monthly indices are calculated as the sum of regional volume-weighted average catch per 10,000 cubic meters (m^3) (353,147 cubic feet (cf)) for the Bay Study MWT and the sum of regional area-weighted average catch per 10,000 m^3 (353,147 cf) for the Bay Study OT (Sommer *et al.* 1997). During the 1997 index period, the Bay Study MWT collected only one YOY, and the Bay Study OT collected none at index stations. The tremendous variability in this survey's catch is likely due to the rare or limited occurrence of individuals splittails at the periphery of its range, which would result in limited detectability during sampling. Splittail can be expected to be captured in San Francisco and San Pablo bays only during time of infrequent, high outflow, when captures appear to increase for all net-based gear types. San Francisco Bay Studies data from 1980 through 2002 was used in our abundance analysis.

Suisun Marsh Otter Trawl

The Suisun Marsh OT surveys began in 1979 and are conducted by the University of California (UC) Davis as part of a long-term study of the ecology of the entire fish community of the marsh. Data from the 1979 survey have been excluded from our abundance analysis as greater sampling effort was employed in 1979 than in all subsequent years (Dr. Peter Moyle, pers. comm.). The survey is funded by California Department of Water Resources (CDWR) in part to determine if management actions in Suisun Marsh are affecting fish communities. The program samples 21 sites monthly in

nine sloughs with an otter trawl that drags along the bottom and samples much of the water column in the shallow sloughs. In small sloughs, the trawl samples much of the cross sectional area; in large sloughs, the sampling fraction is smaller. A monthly abundance index is calculated as mean catch per trawl. The annual abundance index is calculated as the mean of the monthly index values (Sommer *et al.* 1997). While the splittail catches are dominated by YOY, the sampling also consistently catches larger fish. In this regard, the Suisun Marsh OT sampling of splittail is perhaps the most thorough of the various sampling programs. Splittail collection in the Marsh is enhanced by reduced gear avoidance in narrow, relatively shallow sloughs sampled as part of the monthly survey. In such conditions, the net samples a larger proportion of the channel cross sectional area than in any other survey. Larger sizes of splittail, however, apparently become progressively less vulnerable to the trawls, a limitation shared by all trawl-based surveys. Spawning occurs only sporadically in the marsh, and in most years YOY recruit from upstream in the Sacramento River, including the bypasses (Sommer *et al.* 1997). Recent modeling studies indicate that the Yolo Bypass, a major spawning and nursery area, may be hydrologically connected to Suisun Marsh (N. Monsen, Stanford University, unpubl. data) so juvenile trends in the marsh are likely to be heavily influenced by upstream production in the Yolo Bypass during those years when inundated for a sufficient period of time. Suisun Marsh Otter Trawl data from 1980 through 2001 was used in our abundance analysis.

Chipps Island Survey

The U.S. Fish and Wildlife Service conducts a sampling program for juvenile salmon in the deep water channel near Chipps Island at the western terminus of the Delta. A midwater trawl is pulled at the surface in ten 20 minute hauls per day during May and June (Sommer *et al.* 1997). Data are compiled to produce an index based on the catch per hour of trawling for the months of May and June combined (Sommer *et al.* 1997). The program was initiated in 1975, but data before 1979 must be viewed with some caution as many splittail were not measured (Baxter 1999a); as only data related to the number of splittail caught were recorded. Length data from 1987 through 1993 was recorded such that determinations of age from the data cannot be done, and is therefore inadequate to calculate age-specific abundance indices. The Age 0 index reached minor peaks in 1982 and 1986, declined to low levels during the 1987–1992 drought (based on total splittail catch), then increased sharply to a record level in 1995; minor peaks occurred in 1998 and 2000, and remaining data tracked water year variability. For Age 1 splittail, the Chipps Island index for the period 1976 to 2001 shows high variability.

The Chipps Island trawl seems to sample splittail best in high outflow years when all age groups are more vulnerable to trawls due to increased turbidity, as is likely true for all gear types and surveys. It is, however, difficult to discern actual abundance from year biases, and turbidity can be high at Chipps Island regardless of outflow. Regardless, because the trawl captures fish only in the top couple of meters (or yards) of water in open channels, relatively low numbers of the benthic-foraging splittail are caught. The indices are probably less precise at low population levels due to the infrequent captures of splittail, a characteristic shared by all surveys. The Chipps Island Survey data from 1976 through 2002 was used in our abundance analysis.

Central Valley and State Water Project (CVP and SWP) Fish Salvage

The CVP and SWP operate fish screening facilities to divert fish away from the pump intakes into holding facilities where they are counted, measured, and released. Data collection takes place at two hour intervals when the pumps are operating. Consequently, the fish salvage operations provide the highest number of splittail caught per survey, but the number of data points (annual indices) is comparable to the other surveys. All splittail age groups are collected, the surveys do not suffer from gear avoidance by fish, and sampling locations do not vary over time. Reliable CVP data and SWP data both start in 1979. The salvage abundance index is calculated based on the total number of fish salvaged divided by the volume of water pumped (Sommer *et al.* 1997). However, the pumps are not operated as sampling programs *per se* so the amount of ''sampling'' is related to the amount of water exported, which in turn is related to the amount of water available, water demand, and, in recent years, changes in pump operations to protect migratory salmon, splittail, and delta smelt (*Hypomesus transpacificus*) and to maintain appropriate salinities in Suisun Bay and Marsh. Also, the Salvage index does not address catch per volume per unit time. Lacking a time factor, the Salvage index may not adequately describe the differential variability in catch that may occur as approach velocities at Clifton Court Forebay (SWP) or Old River (CVP) change.

Unlike the CVP and SWP salvage, several surveys do not account for the volume per unit time sampled. Trawl data, presented as fish captured per volume of water sampled, do not describe the trawl speed, or the perceived trawl approach speed when pulled against a current. Seine indices are expressed as catch of fish per haul and do not include factors for catch per unit volume and/or per unit time. Seines are employed at sites with low water velocities, but variation in velocity within and between sampling locations likely exists. Trawls and seines may be more effective when employed through higher velocity waters; splittail may be more vulnerable to capture when already navigating swifter currents. Trawls, seines, and pumps therefore share a common difficulty in expressing catch per unit volume per unit time. Each of these techniques may also differentially detect splittail under turbid conditions. The pumps differ from trawling and seining, however, in that the pumps may differentially entrain (collect) weak swimming juvenile and fatigued post-spawn adult splittail as velocities towards the facilities vary. Regardless of boat or current speed, or turbidity, trawls and seines do not draw fish towards them, whereas the pumps may. The SWP catch also does not account for the predation that occurs in the Clifton Court Forebay, nor the latent mortality that may occur when salvaged fish are released.

Comparisons between CVP and SWP salvage and other sampling operations have to be made with caution. Nevertheless, the general patterns are similar to other studies, with diminished catches of both adults and juveniles during periods of drought and large catches of juveniles following wet winters. The CVP and SWP fish salvage data from 1979 through 2002 was used in our abundance analysis.

Surveys Not Employed in Abundance Analyses

US Fish and Wildlife Service Beach Seine Survey

The survey provides the broadest geographical coverage of all of the sampling programs but is focused on outmigrating juvenile salmonids. The beach seine primarily captures YOY splittail but any fish less than 25 mm (1 in) long are not identified. The limited data show low catches of splittail during

dry years and higher catches during wet years, reinforcing the concept of a strong outflow-production relationship. This general relationship may, however, be due to other factors. For example, turbidity may be higher in high outflow years, thus rendering fish more vulnerable to capture.

Summer Townet Survey

The CDFG summer townet survey began in 1959 to provide an index of striped bass abundance. It samples YOY fish twice monthly at 30 sites using oblique tows in mid-channel. Starting and ending dates vary from year to year. Sample sites are located throughout the Delta, Suisun Bay, and San Pablo Bay. Data for species other than striped bass were not regularly recorded until after 1962, but were also not recorded in 1966, 1967, and 1968 (Sommer *et al.* 1997). The survey catches only low numbers of YOY splittail, presumably because it focuses on pelagic (open water) habitats while splittail are benthic in orientation. Not surprisingly, splittail catch varies widely and the index reflects only gross changes in YOY splittail abundance. The index peaked in 1982, was low during the 1987 to 1992 drought years, and abruptly rebounded in 1995 and 1998 (Baxter 1999a, 1999b).

Napa River Survey

This survey exists in association with a flood control and ecosystem restoration project in the Napa River. It is performed by consultants under contract to USACE, and involves a range of sampling techniques including beach seine, purse seine, otter trawl, fyke nets, and a 20 mm (0.8 in) size class surveys. The Napa River Survey began sampling in March 2001 and has detected splittail (USACE 2002a, 2002b) but the data are too recent and of too short a term (two years, including 2002 unpublished data) to be useful for an abundance index. The survey is scheduled to be completed in 2007 or 2008, after 7 years of data collection. Additionally, the Napa River is less well understood in terms of relationships between outflow, splittail habitat, and splittail production, than are the Central Valley rivers and the Delta. As such, the variables employed in our current analysis of abundance and trend (*see* Abundance section, below) cannot be applied to this distinct river system at this time.

California Department of Fish and Game Creel Census

CDFG collects creel census data in association with the Sacramento River System Angler Survey. This survey was initially conducted from August, 1989, to December, 1994, and was resumed in 1999 and 2000. Adult splittail catch data were only recorded during 1991 through 1994, and in 1999 and 2000. This survey collected angler count, fishing effort and fish catch information on the Sacramento River from Redding to Carquinez Bridge year round with the same effort, 4 week days and 4 weekend days per month per section, so changes in catch can reflect fish presence related to angler effort.

To reflect only the presence of migrating fish, Baxter (2001b) analyzed only catch data from Garcia Bend (RKM 80 (RM 50)) and upstream. Creel census data from 1991 through 1994 indicated a total annual catch of 114, 266, 498, and 110 splittail, respectively. The 1999 and 2000 censuses yielded an annual catch of 103 and 232 splittail, respectively. These catches represent 96 days of survey effort each year and are useful primarily to help establish the periods in which adult splittail migrate upstream. No abundance indices were calculated by any agency, organization, or individual from these data, as they fail to meet the criteria established by Meng and Moyle (1995) and are generally considered inadequate to the task of quantifying splittail abundance.

Survey Summary

All fish sampling methods may inherently suffer from a selection bias. This bias results from the particular method and must be considered when interpreting results. Because none of the surveys were designed specifically to monitor splittail populations, the survey equipment, survey locations, and sampling frequency must all be taken into consideration when interpreting the data. All the survey methodologies appear to sample young of the year (YOY) most effectively. As a result conclusions regarding YOY abundance appear to be the most accurate and reliable. Combined information from all survey efforts suggest that some successful reproduction occurs every year, but large numbers of young are produced only during years of relatively high outflow (wet years). This suggests that the majority of adult fish in the population result from spawning in wet years and lowest numbers are produced during drought years. The distribution and timing of YOY in the surveys also indicates that most spawning takes place in the bypasses, rivers or upper Delta, although some sporadic spawning also takes place in Suisun Marsh. It must be recognized, however, that YOY abundance may not be an entirely accurate indicator of adult abundance because there exists no observed stock-recruitment relationship (relationship between the number of adult fish and the number of offspring typically expected to join the adult population) in splittail (Sommer *et al.* 1997; Moyle 2002). Consequently, YOY abundance may not describe the current of future population sizes or trends.

Abundance Trend Analyses

We initially evaluated and analyzed the aforementioned data series using a method published by Meng and Moyle (1995) in the Transactions of the American Fisheries Society. This method was used during the initial status review for the splittail and was again employed during the development of the proposed rule to list the splittail (59 FR 862). This same method was replicated during the development of the final listing rule published on February 8, 1999, (64 FR 5963) using abundance data provided and updated by CDFG, CDWR, and UC Davis. The Meng and Moyle (1995) methodology (*see* 66 FR 2828 for complete description of methods) has been superceded by more current models employed by CDFG, and was not used to help us make this final determination. Further, this removal does not discuss the more recently available analytical methods such as permutation-based exact calculations of p-values for stratified (as opposed to unstratified) Mann-Whitney U-tests, as appeared in the August 17, 2001, notice (66 FR 43145) where we presented an updated statistical analysis of abundance data for the Sacramento splittail and requested comments on it. While these stratified Mann-Whitney U-tests represented an improvement on what essentially remained a Meng and Moyle (1995) statistical approach, and presented a major alternative to the categorical (*i.e.*, ''before'' and ''after'') approaches of both Meng and Moyle (1995) and Sommer *et al.* (1997), substantive scientific and statistical issues raised during the August 17, 2001, (66 FR 43145) public comment period resulted in our using an alternative statistical analysis to help us make this final determination. The following details the history and findings of the current analysis.

In an August 17, 2001, notice (66 FR 43145) we presented an updated statistical analysis of abundance data for the Sacramento splittail and invited public comments on the analysis and data, in specific technical review of the information. We concurrently sought peer review on the statistical analysis from five subject-area experts affiliated with a total of five agencies and organizations. Requests for peer review

were sent to: (1) Dr. Peter B. Moyle of UC Davis, Davis, California; (2) Dr. Charles H. Hanson of Hanson Environmental, Inc., Walnut Creek, California; (3) Randall D. Baxter of CDFG, Central Valley/Bay-Delta Branch, Stockton, California; (4) Michael Chotkowski of the USBR, Mid-Pacific Region, Sacramento, California; and (5) Ted R. Sommer of CDWR, Environmental Services Office, Sacramento, California.

Following careful consideration of comments received from numerous respondents to the August 17, 2001, notice, including those provided through the peer review process, we concluded that the abundance indices and Multiple Linear Regression (MLR) model jointly developed and submitted by CDFG (2001) and USBR (2001), hereafter referred to as the CDFG/USBR MLR Model, provided the best scientific data (method) available, for statistically evaluating temporal trends of splittail abundance information. The CDFG/USGS MLR Model thus superceded the permutation-based exact calculations of p-values for stratified (as opposed to unstratified) Mann-Whitney U-tests.

On March 21, 2002, (67 FR 13095), we reopened the public comment period (67 FR 13095;67 FR 15337) to solicit comments on the CDFG/USBR MLR Model. We again sought peer review on the statistical analysis from the five individuals identified above. We have retained the CDFG/USBR MLR Model, albeit in a slightly modified form, after consideration of all public comments received, inclusive of this and preceding comment periods.

The CDFG/USBR MLR Model includes HYDROLOGY and TIME (year) as independent variables and ABUNDANCE INDICES as the dependent variable. We consider this statistical approach superior to the previous practice of using Mann-Whitney U tests (Meng and Moyle 1995; Sommer *et al.* 1997) because it does not require arbitrarily dividing an inherently continuous data set into ''before'' and ''after'' categories (*see* previous discussion of this issue in the August 17, 2001, notice; 66 FR 43145). We consider the CDFG/USBR MLR Model superior to the polynomial regression model presented in the August 17, 2001, notice (66 FR 43145) because existing abundance index monitoring programs have not been conducted for a sufficient duration to provide for reasonably conclusive application of the polynomial model (as concluded in the August 17, 2001, notice (66 FR 43145)). We also support use of the CDFG/USBR MLR Model because of the facility with which it can be applied to all sets of splittail age class data from all seven applicable abundance monitoring data sets (Fall MWT, Bay Study OT, Bay Study MWT, Chipps Island, Suisun Marsh, CVP salvage, and SWP salvage). The seven surveys include a total of 20 discrete sets of age-specific abundance monitoring data. These 20 datasets consist of the 2 age classes (0 and 1 or more) for the Suisun OT, in addition to the 3 age classes (0, 1, and 2 or more) for each of the other 6 surveys.

The CDFG/USBR MLR Model explicitly controls for potential confounding effects of hydrological year type, the factor that is nearly unanimously viewed as the single strongest predictor of splittail year class strengths (*e.g.*, Moyle *et al.* 2001), by utilizing the number of days total delta inflow (DAYFLOW, California Department of Water Resources' mathematical hydrology model) exceeds 1,557 cubic meters per second (cms) (55,000 cubic feet per second (cfs)) during the February through May spawning/rearing period as a predictor (independent variable). The 1,557 cms (55,000 cfs) variable was selected because it approximates the critical inflow value above which Delta floodplains, especially the key splittail spawning area in the Yolo Bypass, become inundated. The 1,557 cms (55,000 cfs) variable thus captures the existence of appreciable bypass and spawning habitat inundation. This is conceptually comparable, yet superior, to the stratified Mann-Whitney U tests presented in the August 17, 2001, notice (66 FR 43145), which also controlled for hydrological year type. There is, however, one potentially important assumption associated with the CDFG/USBR MLR Model that remains untested, and that concerns the assumption of a lack of interaction between the HYDROLOGY and TIME variables. In essence, the CDFG/USBR MLR Model assumes that the long term probabilities of high and low flow water years are random.

Discussion of CDFG/USBR MLR Model results

The results addressed in this discussion differ somewhat from those published previously (67 FR 13095) due to the inclusion of new data for 2001 and 2002 in some of the indices as it has become available (see discussion of each survey, above). We also removed from the analysis data taken for the Suisun OT in 1979, based on comments received from the USBR (2002) indicating that differing survey protocols were used in 1979 as compared to other years.

The question of how to analyze the less-than-optimal data we have on splittail was vexing. In large part we have accepted the statistical model provided to us by CDFG and USBR. However, while our approach was generally consistent with theirs, there are two major differences. First, we used all 20 data sets weighted equally; whereas the BOR and CDFG recommended that the data sets be weighted by their relative importance. Second, we accepted a 20 percent risk that we would wrongly conclude there is a downward trend in the population for each of the 20 data sets in order to reduce the risk that we would fail to detect a trend if, in fact, one exist. We used this approach in order to ensure our assumptions were conservative. The effect was to establish a ''worse-case'' scenario with respect to the status of the populations when we conducted our threats analysis. As a result, our interpretation of the model results differs from theirs.

Our model results indicate that fifteen of twenty data sets have a downward trend, more downward trending data sets than we would expect based on chance. Typically, statisticians decide whether such trends are ''statistically significant'' or not. Interpreting the model results using the classic statistical standard (p # 0.05) for determining significance, we find that five of the fifteen downward trends are statistically significant. CDFG and USBR believe that this result is insufficient to make a determination that the splittail is declining in abundance. By adopting the more relaxed standard (p # 0.20), we increase the likelihood that a significant result will be identified, a conservative approach. Taking this approach (p # 0.20), we find nine significant downward trending data sets and two significant upward trending data sets. We believe that the existing data sets constitute the best available scientific information and that our more conservative approach indicates a number of significant declining splittail population trends exist. Coupled with the CDFG and USBR results, we have bracketed the range of possibility regarding the population status of the species as a whole. We believe this range is the best context for us to use when we conduct our threats analysis.

We fully concur with the statements of various respondents that abundance monitoring data for splittail have methodological weaknesses of one sort or another; none of the surveys were designed specifically to rigorously measure splittail population numbers (see Moyle *et al.* 2001; Meng and Moyle 1995; and Sommer *et al.* 1997 for

descriptions of surveys). However, existing data sets do constitute the best available scientific information for the species.

While our conservative approach to analyzing that information is more likely to produce results indicating that significant declining splittail population trends exist, we believe that using this ''worst case'' scenario in analyzing the impacts reported in the section entitled Summary of Factors Affecting the Species is most likely to result in a listing finding that is robust.

Because we have chosen to adopt the CDFG/USBR MLR Model jointly submitted by CDFG and USBR (as our primary basis for abundance analyses), and are no longer using our analysis in our August 17, 2001 notice (66 FR 43145), specific comments on our analysis in our August 17, 2001 notice (66 FR 43145) will not be addressed in the section entitled Summary of Comments and Recommendations.

Previous Federal Action

On February 8, 1999, we published a final rule listing the splittail as threatened under the Act (64 FR 5963). Please refer to the final rule for a discussion of Federal actions prior to the publication of the final rule. At the time of our final determination of threatened status for the splittail, the splittail population had declined in both numbers and range and was primarily threatened by changes in water flow and water quality resulting from the export of water from the Sacramento and San Joaquin Rivers, periodic prolonged drought, loss of shallow water habitat, introduced aquatic species, and agricultural and industrial pollutants.

Subsequent to the publication of the final rule, plaintiffs in the cases San Luis & *Delta-Mendota Water Authority* v. *Anne Badgley,° et al.* and State Water Contractors, *et al.* v. *Michael Spear, et al.* commenced action in the Federal Eastern District Court of California, challenging the listing of the splittail as threatened, alleging various violations of the Act and of the Administrative Procedure Act (5 U.S.C 551 *et seq.*), specifically that we: (1) Failed to use the best scientific and commercial data available; (2) ignored all pre-1980 and post-1992 data available and that we used only selected data from the 1980 to 1992 period; (3) did not publish a summary of the available data, which data we considered, and the relationship between the data and our decision on the final rule; and (4) promulgated the final rule in a manner that was arbitrary, capricious, and not in accordance with law, in that the splittail did not meet the definition of a threatened species as set forth in the Act.

On June 23, 2000, the Court rendered summary judgment in the two cases in favor of the plaintiffs, finding that our promulgation of the final rule listing the splittail as threatened was unlawful. On September 22, 2000, the court remanded the determination of whether or not the splittail is a threatened or endangered species to us. The court ordered us to re-evaluate our final determination and publish a new finding within 6 months of the date of the remand order, and kept the rule in effect during that period. The court used its equitable powers to retain the protections of the Act for the species during the remand of the rule to the Service.

On January 12, 2001, we reopened the comment period for 30 days to seek information regarding the splittail's status, abundance and distribution, as well as information regarding issues identified by the District Court in its June 23, 2000, judgment (66 FR 2828). At that time, we were subject to a court-ordered deadline of March 22, 2001. On March 16, 2001, we received an extension from the District Court until June 22, 2001, so that we could reopen the comment period. Subsequent to that extension, we reopened the comment period for the second time since the remand, from May 8, 2001 to June 7, 2001 (66 FR 23181). On June 28, 2001, we received an additional extension from the court so that the comment period could be reopened and we could have additional time to obtain reviews of the revised statistical analyses which we employed in response to prior comments. The comment period was then opened on August 17, 2001 (66 FR 43145); while the court ordered decision date was established as January 31, 2002. We later received an additional extension from the court until October 15, 2002, so that we could seek comments on the MLR Model submitted by CDFG and USBR during the August 17, 2001, comment period. On March 21, 2002, we reopened the comment period for the fourth time since the remand (67 FR 13095) and on April 1, 2002, we corrected the duration of the comment period to reflect 60 days (67 FR 15337). On October 31, 2002, we received an additional extension from the court so that the comment period could be reopened for a fifth time since the remand (67 FR 66344) to solicit comments on the revised statistical analysis we had done, as described in our March 21, 2002 document (67 FR 13095). Finally, on February 28, 2003, the court approved a joint stipulation requiring us to submit our final determination to the **Federal Register** for publication on or before September 15, 2003. This final determination is in compliance with that joint stipulation agreement.

Summary of Comments and Recommendations

During the five comment periods following the remand, we contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. We have requested that all interested parties submit factual reports or information that might contribute to the development of a final determination. In addition, we have invited public comment through the publication of notices in various newspapers. We published notice of the January 12, 2001, reopening of the comment period in the *Sacramento Bee, Fresno Bee* and *Contra Costa Times* newspapers. For the May 8, 2001, notice, we invited public comment through publication of notices in the *Antioch Ledger-Dispatch, the Marysville Appeal-Democrat,* the *Fresno Bee,* and the *Sacramento Bee.* For the August 17, 2001, reopening notice we invited public comment through publication of notices in the *Marysville Appeal-Democrat,* the *Fresno Bee,* and the *Sacramento Bee.* An electronic mail address for submission of comments was provided in the May 8, 2001, and August 17, 2001, notices and was posted on the Sacramento Fish and Wildlife Office's official web site. For the March 21, 2002 reopening notice, we invited public comment through publication of notices on March 27, 2002, in the *Marysville Appeal-Democrat,* the *Sacramento Bee,* and the *Fresno Bee.* An electronic mail address was not provided for the March 21, 2002, reopening due to uncertainties regarding our internet access. An electronic mail address was, however, provided with our April 1, 2002, correction, and with our October 31, 2002, reopening. We also sent out notices of each reopening of the comment period to all parties on a mailing list for Sacramento splittail information.

During the five comment periods opened since the remand, we received a total of 33 written comment letters representing 1 Federal agency, 2 State agencies, 2 local governments, and 13 private individuals or organizations. We reviewed all comments received for substantive issues and new information regarding the status of the Sacramento splittail. Of the comments we received, only 3 supported listing. Information contained in these comments was reviewed to determine if it raised any

new substantive issues that had not been raised in comments previously submitted, and subsequently addressed in this final determination.

The following is a summary of comments we received during the 197 days associated with the five comment periods opened since the remand of the final listing rule. For additional information on comments received during three previous comment periods before the current litigation, please see the previous final listing rule (64 FR 5963). Substantive comments and information raised or provided during the public comments periods have either been incorporated directly into this notice or addressed below.

Peer Review

As previously discussed in the above abundance section, we requested 5 biologists to provide scientific review of the proposed listing of the splittail as threatened. Technical data provided by the peer reviewers have been incorporated into or addressed in this document, while other issues raised by the peer reviewers are addressed below.

Peer Reviewer Comment 1: A peer reviewer cited the ''White Paper'' (Moyle *et al.* 2001) for splittail as raising the possibility that abundance may not be a reliable measure of population status for the splittail.

Our Response: We acknowledge that abundance may not be the most reliable measure of population status, but assert that it is the best scientific measure available. The utility of abundance as a measure of splittail population status is reflected in its continued use by the scientific community including researchers (Meng and Moyle 1995, Sommer *et al.* 1997) and agencies (CDFG, CDWR, USBR).

Peer Reviewer Comment 2: A peer reviewer cited the ''White Paper'' (Moyle *et al.* 2001) for splittail as reporting a tentative population model result that stated, ''* * * a long series of dry years is unlikely to drive the splittail to extinction, even if the population is greatly reduced.'' Another peer reviewer asserted that if the splittail were truly going extinct, all surveys would show a decline.

Our Response: A species warrants listing as threatened under the Act if is in danger of becoming endangered in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). It is possible for the splittail to be undergoing threats or declines in a significant portion of its range without declines showing in all surveys. Alternatively, threats to the splittail may support listing even in the absence of our ability to document current population declines. However, even considering our conservative analysis of the apparent splittail population declines and the threats analysis, we believe the conservation elements of the California State and Federal cooperative program (CALFED) and the Central Valley Project Improvement Act (CVPIA) programs adequately mitigate for these threats (please refer to Summary of Factors Affecting the Species section for a detailed discussion of CALFED and the CVPIA).

Peer Reviewer Comment 3: A peer reviewer submitted comments that included an analysis using a modified version of Meng and Moyle's (1995) pre-decline and post-decline method. The peer reviewer also divided the data by year class and used data available from all years and requested we consider these analyses.

Our Response: As discussed earlier in this notice, we acknowledge that there are other methods by which to analyze the available data, but that we have now employed an analysis using the CDFG/USBR MLR Model data series to describe population trends of the splittail. We refer the peer reviewer to our Abundance section for a discussion of our most recent statistical analysis of the species population trends.

Peer Reviewer Comment 4: A peer reviewer criticized us for evaluating the results of the CDFG/USBR MLR Model for all 20 data series of splittail abundance index data, instead of limiting the evaluation to the nine data series that the respondents view as most representative of overall splittail populations. Another peer reviewer stated that Bay Study OT and Fall MWT data were more indicative of splittail abundance trends, rather than the trends made evident by data collected at the SWP Salvage facilities, Chipps Island, and in Suisun Marsh, which the respondent felt were narrow in geographic scope.

Our Response: We note that these and other respondents have previously criticized us, while employing different analysis, for not treating all 20 data series equally and for not including all available data series in statistical evaluations of abundance trends. We refer the commentor to the section entitled Abundance for a discussion of our treatment of the data series.

Peer Reviewer Comment 5: A peer reviewer reiterated his assessment that the statistical evidence for a declining trend in splittail abundance is weak, and cited an analysis that asserted that evidence for a time trend in 7 of 20 data series is not a compelling factor in determining that declines exist. The peer reviewer specifically cited Manly (2002) which states ''The Service claims that lack of power to detect a trend gives a reason for using a 20 [percent] level of significance in assessing whether or not there is evidence of a trend with individual series. This then allows [the Service] to claim evidence for a trend for 7 of the 20 series. Although this sounds impressive, it is less so when it is realized that by chance alone 4 of the 20 series (*i.e.,* 20 [percent] of them) are expected to give a significant result if this level of significance is used.'' The peer reviewer also asserted that the weak nature of the MLR Model regression coefficients will be demonstrated with the calculation of splittail abundance indices for 2000, 2001, and 2002 and their inclusion into the models.

Our Response: Using the most recent data, our analysis now indicates that 9 of 20 indices show significant negative trends at the 20 percent level of significance, while 2 of 20 show significant positive trends at that significance level. As we noted earlier in the analysis, we achieved these results by a conscious choice of a variable that accepted a higher risk of incorrectly identifying downward trends in population in order to take a conservative position in our threats analysis.

Peer Reviewer Comment 6: A peer reviewer criticized our acceptance of the ''sign'' (*i.e.,* positive or negative) results of the CDFG/USBR MLR Model coefficients at face value because in most cases (16 of 20) the true signs (*i.e.,* positive or negative) were just as likely to be positive as negative.

Our Response: We cannot apply the respondent's reasoning to the available data. The p-value for a coefficient is what statistical analysis has indicated it should be; simply because a given p-value does not rise to the level of 95 percent significance criterion, does not indicate that the p-value automatically reverts to 50 percent.

Peer Reviewer Comment 7: It was noted by a peer reviewer that in half the CDFG/USBR MLR Model runs the dependent variable was significantly non-normal and that as a consequence probability statements will be ''slightly'' in error.

Our Response: We believe that the peer reviewer's comment is correct. This type of error alone, however, would not necessarily invalidate our evaluations of the signs and magnitudes of the regression coefficients. The error would have to be of a nature that creates bias. The peer reviewer did not provide any statistical or other argument to explain why such error would necessarily result

in bias. The unknown statistical effects of non-normality in half the model runs constitutes just the sort of uncertainty that leads us to be cautious about giving undue weight to any conclusions regarding the abundance index data for splittail.

Peer Reviewer Comment 9: A peer reviewer believes that the extended drought of 1984 to 1992 created only a perception of decline and that it was the ''* * * accidental juxtaposition of a series of wet, strong splittail years with a series of dry, weak years that prompted [our] interest in the first place.''

Our Response: We disagree with the peer reviewer's claims that the period of extended drought has been ignored, as well as with the contention that the splittail's drought-driven declines are the sole factor under consideration in our determination. We first note that the period of continuous drought is considered by most authoritative sources to have begun in 1987 (Moyle *et al.* 2001; Baxter 1999a; Sommer *et al.* 1997), not 1984 as reported by the respondent. We note, however, that 1985 and 1986 were dry years (Cannon 2001 in prep.).

The declines noted during the 1987 to 1992 drought were the likely result of a paucity of spawning habitat being available. The drought decreased the amount of floodplain (*i.e.* Yolo Bypass and mainstem river margins) available for spawning and thus, spawning output was lower. Low splittail population densities were aggravated by the CVP and SWP's diversion of a greater proportion of water from the Delta than in prior years; fish were entrained at the facilities and the entrapment zone (location where fish become vulnerable to the export facilities' effect on currents in the Delta), was located well upstream of Suisun Marsh in increasingly suboptimal habitat. These events are described in detail in our February 8, 1999, final listing rule (64 FR 5963).

The basis for the peer reviewer's claim that we are disproportionately concerned with splittail declines noted during the 1984 (or 1987) to 1992 drought is unclear. True, the ''accidental juxtaposition'' of wet and dry years resulted in abundance data that appeared to illustrate a precipitous drop in the splittail population. There are, however, up to 10 years of pre-drought as well as up to 8 to 10 years of post-drought data. The data collected during six years of continuous drought are but a subset of the nearly 20 years of extant splittail data. The splittail's relatively long life span and resilience following unfavorable conditions renders the declines exhibited during a discrete drought unlikely to influence the analytical findings from an ever-lengthening period of record. Most importantly, we now employ the CDFG/USBR MLR Model, which explicitly controls for potential confounding effects of hydrological year type. The respondent's concern would be more applicable to abandoned analytical techniques. The arbitrary pre- and post-decline cut point approach of Meng and Moyle (1985) was driven by trends noticed during the 1987 to 1992 drought, as was a formerly touted alternative analysis that involved the use of 1987 (the beginning of the drought) as a cut point (Sommer *et al.* 1997) for determining percent declines.

We also disagree with the contention that the 1987 to 1992 drought serves as the only factor which triggered our investigations of the splittail's status. Our interest in the splittail was prompted initially by the statement in Daniels and Moyle (1983) that the splittail's and delta smelt's ''* * * abundance could decline rapidly if environmental conditions become unfavorable for them, possibly making them candidates for listing as threatened species.'' We subsequently included the Sacramento splittail as a category 2 candidate species for possible future listing as endangered or threatened in the January 6, 1989, Animal Notice of Review (54 FR 554). The candidate category system was abandoned on February 28, 1996 (61 FR 7457), and species meeting the definition of the former category 2 (such as splittail) were no longer considered candidates. Our administrative proceedings on splittail resumed on November 5, 1992, when we received a petition from the Natural Heritage Institute to add the Sacramento splittail to the List of Endangered and Threatened Wildlife and to designate critical habitat for this species in the Sacramento and San Joaquin Rivers and associated estuary.

Peer Reviewer Comment 10: A peer reviewer, in response to our March 21, 2002 (67 FR 13095) notice, believed that we should not have adopted the CDFG/USBR MLR Model which was jointly submitted in CDFG's and USBR's respective peer review and comment letters. The CDFG/USBR MLR Model was advocated by its submitting agencies as an approach superior to our Meng and Moyle (1985) method utilized in our 1994 proposed listing (59 FR 862) and 1999 final listing (64 FR 5963) rules, the polynomial regression technique discussed in our August 17, 2001 (66 FR 43145) notice, or the Sommer *et al.* (1997) technique formerly forwarded by CDFG and CDWR.

Our Response: We agree that USBR's submission was labeled *A Sample Alternative Model of Sacramento Splittail Abundance.* However, USBR (2001) included no language in their agency comment letter and peer review submission to suggest their intent was to have us retain the polynomial regression analysis (66 FR 43145), revert to the Meng and Moyle (1985) analysis, adopt the Sommer *et al.* (1997) analysis, or employ any other analytical technique until the CDFG/USBR MLR Model and results reached a greater state of refinement.

To the contrary, USBR's peer review and comment letter states, ''Results presented in Table 1, include actual p-values for the Service's inspection.'' (USBR 2001). To advocate we abandon the model is to advocate we abandon analysis of p-values. Furthermore, USBR scientifically derived and submitted multiple conclusions in their peer review and comment letter, such as, ''In summary, the results [of the CDFG/USBR MLR Model] presented here clearly indicate that hydrologic variability strongly affects YOY splittail indices, and also affects some adult indices in succeeding years as cohorts propagate through the population.'' (USBR 2001). These conclusions were not accompanied by any disclaimers that the conclusions should be disregarded because the model was not yet sufficiently developed or that the conclusions should not be applied to the review of the splittail's population trends.

The CDFG/USBR MLR Model was also submitted to us by CDFG. Consistent with the USBR peer review and comment letter, CDFG also derived and submitted multiple conclusions based on the specific runs of the CDFG/USBR MLR Model that the USBR is now criticizing us for accepting. CDFG advocated the use of the CDFG/USBR MLR Model (as submitted) in their peer review and comment letter (CDFG 2001) with the statement, ''Our response is composed of two parts: a discussion of individual analyses presented in our August 17, 2001, notice (66 FR 43145), and a summary of the results of a multiple regression analysis [the CDFG/USBR MLR Model] that we believe is more useful in evaluating trends in survey indices.'' Again, consistent with the USBR's peer review and comment letter, CDFG's peer review and comment letter did not qualify any of the conclusions they derived from the CDFG/USBR MLR Model with disclaimers about the inappropriateness of employing the model.

We independantly evaluated the structure and findings of the CDFG/

USBR MLR Model and determined that it represented the best available scientific and commercial information. We retain our conclusions regarding our analysis and meta-analysis of the model's results, regardless of its developers' current desire to secondarily qualify its application.

Peer Reviewer Comment 11: A peer reviewer commented that it was unclear whether we had independently re-derived the CDFG/USBR MLR Model results submitted jointly by CDFG and USBR.

Our Response: We did not independently re-derive those results. We accepted the results presented in CDFG (2001) and USBR (2001) at face value, as they were developed by subject area experts within CDFG and USBR during a peer review and public comment process.

Peer Reviewer Comment 12: A peer reviewer believed that our that our statement, ''* * * [the] traditional [alpha-value] criteria assume a much higher standard of statistical power than the splittail data are able to meet * * *'' in our March 21, 2002, notice (67 FR 13095) is erroneous.

Our Response: We agree with the peer reviewer that in a strictly literal sense, the choice of an alpha-value criterion can be made without any regard for statistical power. However, in practice, researchers are concerned with both type I error (determined by the choice of an alpha value) and type II error (directly related to the statistical power of a study). When conducting our analysis, we made a conscious choice to use the more conservative nontraditional approach of using an alpha value of 0.20.

Peer Reviewer Comment 13: A peer reviewer asserted that the purpose of statistical hypothesis testing in the case of the MLR Model is to decide whether trends do or do not exist, not to evaluate gradients of reliability in evaluating trends.

Our Response: The CDFG/USBR MLR Model is a probabilistic approach to examining time trends, it is not a categorical ''either/or'' approach (as the respondent appears to assert). We chose to evaluate the probabilities associated with competing hypotheses concerning the abundance status of splittail. It is for this reason that we stated that all trends, not just trends meeting an arbitrary traditional confidence criterion (95 percent confidence, or alpha-value of 0.05) were evaluated.

Peer Reviewer Comment 14: A peer reviewer believes that a trawl's declining catch efficiency for adult splittail as compared to juvenile and YOY rendered trawl surveys less likely to reflect trends and stated that adult and juvenile indices should not be combined. The peer reviewer also suggested that Bay Study OT and Fall MWT were more representative measures of abundance.

Our Response: While we concur that declining catch efficiency may be a characteristic of trawls, we do not agree that it should be used to exclude a trawl survey's data. Declining catch efficiency within a given trawl survey is expected to be uniform from year to year, thus rendering inter-annual analysis valid. Although an age bias will make data series for older age-class fish less sensitive for detecting change, it will not produce a long-term directional bias (*i.e.,* we have no reason to believe that the capture efficiency for older age class splittail is becoming progressively worse over time). Thus, any trends in the older age class data series with a substantive p-value can be viewed to be roughly as accurate and reliable as for the Age-0 class of splittail showing trends at comparable p-values.

We also concur that trawls' declining catch efficiency does preclude the combination of age class data. We report each index separately herein and do not combine adult and juvenile indices other than for meta-analytical purposes. We also acknowledge that, in certain situations, adult abundance for different age classes (of adults) is combined and reported because the data are collected in that manner, *i.e.,* salvage data are reported as Age-1 and as Age-2 and greater with no differentiation made for individuals greater-than Age-2 classes. Situations such as this represent a relict of the sampling methodology but remain the best available information. We continue to believe that as long as the degree of age-based capture bias is constant over a survey period, all age classes should show approximately the same trends, and that combining age classes for meta-level statistical analyses is not problematic.

We reiterate that the Suisun Marsh OT, which combines an efficient, bottom trawling technique with focused surveys in a small habitat at the core of the splittail's range, is the most likely to detect a trend and likely suffers from less sampling inefficiency than the Bay Study OT (low detection of splittail at periphery of range) and Fall MWT (unlikely to detect benthic fish and does not sample shallow water or near-shore areas).

Peer Reviewer Comment 15: A peer reviewer asserted that the peer review process for scientific publications doesn't necessarily ensure that published papers are unbiased, scientifically sound, and without errors. The *Transactions of the American Fisheries Society* does not use the double-blind method for peer review. This issue was raised in regards to our past use of the Meng and Moyle (1995) methodology to determine splittail abundance.

Our Response: We agree with this assertion. Each piece of scientific work, whether a peer reviewed published paper or an unpublished, unreviewed, draft report, must be objectively evaluated for the scientific merit of its content alone. Peer reviewed publication provides no guarantee of scientific merit. The test of time, following publication, provides the ultimate measure of scientific merit. Indeed, subsequent iterative examination of the splittail's status has resulted in our abandonment of Meng and Moyle (1995), Sommer *et al.,* (1997) and our permutation-based exact calculations of p-values for stratified (as opposed to unstratified) Mann-Whitney U-tests (66 FR 43145).

Peer Reviewer Comment 16: A peer reviewer claimed we ignored the draft ''White Paper'' published by Moyle *et al.* (2001, in prep.)

Our Response: We use the various findings and hypotheses found in the draft and revised White Paper (Moyle *et al.* 2001 in prep.) extensively throughout this document.

Peer Reviewer Comment 17: A peer reviewer stated that the range of the splittail is wider than was previously thought.

Our Response: The greater range of the splittail was acknowledged in the January 12, 2001, notice (66 FR 2828). The above Background section of this final document contains a discussion of the range of the splittail.

Peer Reviewer Comment 18: Several peer reviewers felt that we should not classify the Yolo and Sutter bypasses as a threat to the splittail, as we did in the January 12, 2001, reopening of comment period (66 FR 2828), based primarily upon the data found in Sommer *et al.* (1997) and Sommer (2001a). The bypasses have demonstrated the capability of producing large numbers of splittail when inundated. One peer reviewer also felt that the bypasses cannot be considered a threat simply because the conditions could be better. Another peer reviewer claimed that current operations in the bypasses do not harm splittail or their habitat. Another peer reviewer felt that the bypasses are not to be considered a threat because even though their splittail habitat conditions are not optimal, they are still sufficient to provide substantial benefits to the species. Finally, another peer reviewer

stated that the Yolo and Sutter bypasses are a ''net benefit'' to the splittail in that without their existence, the species might not have persisted to the present day.

Our Response: We have determined, based on consideration of scientific data and information provided by respondents, that the Yolo and Sutter bypasses are not, in and of themselves, a threat to the splittail. Our reevaluation of this issue is discussed in Factor E of the section entitled Summary of Factors Affecting the Species.

Peer Reviewer Comment 19: A peer reviewer felt that our determination that the Sutter and Yolo bypasses would require inundation for at least 30 continuous days between March and April in order for them to be considered a beneficial splittail spawning habitat was inaccurate and could affect water supply and flood management.

Our Response: We have not proposed inundation of the bypasses for any specific interval, duration, or frequency. Rather, we have speculated that the bypasses would have their greatest benefits to splittail if they became inundated at a frequency and duration that as closely as possible mimics the natural, precipitation-driven hydrograph. The reference to 30 days is a statement regarding how the inundation patterns of the bypasses at times do not meet the life history requirements of the splittail. Inundation of bypasses in dry years would reduce the effects of drought on the splittail. We also speculate that if the bypasses were inundated at a frequency and duration that as closely as possible mimics the natural, precipitation-driven hydrograph, then the numbers of non-native fish would be reduced, as non-native fishes favor ponded and continuously inundated habitats.

Peer Reviewer Comment 20: A peer reviewer believed that full implementation of the CALFED Program would preclude the need to list the splittail and indicated that over $10 million had been spent on actions that could improve conditions for splittail.

Our Response: We refer the peer reviewer to the section entitled Summary of Factors Affecting the Species.

Peer Reviewer Comment 21: A peer reviewer asserted that the age-based capture bias argues against combining data from different age groups.

Our Response: We assume this comment refers to the pooling of data series from all age classes for meta-level statistical evaluation. We believe that as long as the degree of age-based capture bias is constant over a survey period, all age classes should show about the same trends, and that combining age classes for meta-level statistical analysis will not be a problem.

State Agencies

We received comments from the following California State agencies: Department of Fish and Game (CDFG) and Department of Water Resources (CDWR). Technical data provided by the CDFG and CDWR have been incorporated into or addressed in this document, while other issues raised by State agencies are addressed below:

State Agency Comment 1: CDFG submitted comments that included an analysis using a modified version of Meng and Moyle's (1995) pre-decline and post-decline method. CDFG also divided the data by year class and used data available from all years and requested we consider these analyses.

Our Response: As discussed earlier in this notice, we acknowledge that there are other methods by which to analyze the available data, but that we have now employed an analysis using the CDFG/USBR MLR Model data series to describe population trends of the splittail. We refer CDFG to our Abundance section for a discussion of our most recent statistical analysis of the species population trends.

State Agency Comment 2: CDFG reiterated their assessment that the statistical evidence for a declining trend in splittail abundance is weak. CDFG cited an analysis that asserted that evidence for a time trend in 7 of 20 data series is not a compelling factor in determining that declines exist. CDFG specifically cited Manly (2002) which states ''The Service claims that lack of power to detect a trend gives a reason for using a 20 [percent] level of significance in assessing whether or not there is evidence of a trend with individual series. This then allows [the Service] to claim evidence for a trend for 7 of the 20 series. Although this sounds impressive, it is less so when it is realized that by chance alone 4 of the 20 series (*i.e.,* 20 [percent] of them) are expected to give a significant result if this level of significance is used.'' CDFG also asserted that the weak nature of the MLR Model regression coefficients will be demonstrated with the calculation of splittail abundance indices for 2000, 2001, and 2002 and their inclusion into the models.

Our Response: As we note in our earlier analysis we made a conscious decision to use the more conservative, nontraditional 0.20 alpha for analysis purposes.

State Agency Comment 3: CDWR claimed we ignored the ''White Paper'' published by Moyle *et al.* (2001).

Our Response: We agree with and use many of the various findings and hypotheses found in the draft and revised White Paper (Moyle *et al.* 2001) extensively throughout this document. We believe that the White Paper is a useful resource and contributes to the knowledge on splittail biology. The paper has been referenced throughout this document.

State Agency Comment 4: CDWR stated that the hypothetical analytical model presented at the January 29, 2001, CALFED Bay-Delta Program (CALFED Program) Splittail Science Conference and described in the White Paper (Moyle *et al.,* 2001) indicates that the splittail, even during severe and lengthy drought, is unlikely to be driven to extinction.

Our Response: We ultimately arrive at the same conclusion as Dr. Moyle, that the splittail is unlikely to be driven to extinction. However, at this point we are unwilling to accept that premise solely on the basis of the White Paper. To date, there remains no proven scientific method for determining the current splittail population size primarily because no extant survey was designed specifically to monitor splittail populations or to determine their absolute numbers. Further, the splittail exhibits relatively wide variation in annual abundance in response to prevailing hydrologic conditions; it is likely that the population size exhibits appreciable year to year variability which would confound size estimates.

Calculating the current population's risk of and/or time to extinction would require estimates of absolute population size, rate of decline, and minimum viable or sustainable population size, none of which currently exist in a scientifically defensible form. Moreover, it must also be noted that the statutory and regulatory standard for ascertaining threatened status is not to determine whether or why a species will become extinct in the near future, but if, pursuant to section 3(19) of the Act, it ''* * * is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range''. An endangered species, pursuant to section 3(19) of the Act, is that ''* * * which is in danger of extinction throughout all or a significant portion of its range * * *''. Our analysis, including a nontraditional conservative approach to estimating population trends examines the factors identified in the Act and in fact we find that the splittail does not warrant listing at this time.

State Agency Comment 5: CDWR felt that we should not classify the Yolo and Sutter bypasses as a threat to the

splittail, as we did in the January 12, 2001, reopening of comment period (66 FR 2828), based primarily upon the data found in Sommer *et al.* (1997) and Sommer (2001a). The bypasses have demonstrated the capability of producing large numbers of splittail when inundated.

Our Response: We have determined, based on consideration of scientific data and information provided by respondents, that the Yolo and Sutter bypasses are not, in and of themselves, a threat to the splittail. Our reevaluation of this issue is discussed in Factor E of the section entitled Summary of Factors Affecting the Species.

State Agency Comment 6: CDWR felt that our determination that the Sutter and Yolo bypasses would require inundation for at least 30 continuous days between March and April in order to for them to be considered a beneficial splittail spawning habitat was inaccurate and could affect water supply and flood management.

Our Response: We have not proposed inundation of the bypasses for any specific interval, duration, or frequency. Rather, we have speculated that the bypasses would have their greatest benefits to splittail if they became inundated at a frequency and duration that as closely as possible mimics the natural, precipitation-driven hydrograph. The reference to 30 days is a statement regarding how the inundation patterns of the bypasses at times do not meet the life history requirements of the splittail. Inundation of bypasses in dry years would reduce the effects of drought on the splittail. We also speculate that if the bypasses were inundated at a frequency and duration that as closely as possible mimics the natural, precipitation-driven hydrograph, then the numbers of non-native fish would be reduced, as non-native fishes favor ponded and continuously inundated habitats.

State Agency Comment 7: CDWR commented that our classification of the Yolo Bypass as a threat in the January 12, 2001, notice (66 FR 2828) would undermine potential ecosystem restoration actions that would benefit the splittail.

Our Response: In this notice, we determine that the Sutter and Yolo bypasses are not in and of themselves threats.

State Agency Comment 8: CDWR objected to our statements regarding the entrainment risks present in the bypasses based upon Sommer *et al.*'s (1997) findings that entrainment is not a significant threat within the bypasses. It is thought that the splittail's evolutionarily-derived ability to emigrate prior to stranding reduces the risk of stranding. CDWR also felt that the magnitude of the entrainment threats presented by the bypasses was overestimated when we cited in the January 12, 2001, notice (66 FR 2828), the death of a number of juvenile splittail in an approximately 0.8 hectare (ha) (2 acre (ac)) borrow pit as statistically-significant and that the classification of ''natural sinks'' as a threat was in error.

Our Response: We have considered these data and now agree that entrainment in the Yolo Bypass is less than was originally thought. Information presented at the January 29, 2001, CALFED Splittail Science Conference indicates that a modest degree of topographic variability within an inundated area may be beneficial, as it may create a diversity of flow patterns and velocities which in turn may allow juvenile splittail to evade predation and forage more effectively during egress.

State Agency Comment 9: CDWR believed that full implementation of the CALFED Program would preclude the need to list the splittail and indicated that over $10 million had been spent on actions that could improve conditions for splittail.

Our Response: We refer CDWR to the section entitled Summary of Factors Affecting the Species.

Other Public Comments and Responses

We address other substantive comments and accompanying information in the following summary. Relatively minor editing changes and reference updates suggested by commenters have been incorporated into this document, as appropriate.

Comment 1: The court directed that we provide a more thorough response to the California Resources Agency comments, specifically comments submitted by CDFG and CDWR in July 1998. The court also directed that we address the perceived biases from the Meng and Moyle (1995) method. We also received specific comments on issues related to prior statistical analyses of abundance.

Our Response: We have adopted a multiple linear regression approach proposed by CDFG and U.S. Bureau of Reclamation (USBR). CDFG, in comments submitted in association with the August 17, 2001, comment period, stated: ''Although CDFG reported Mann-Whitney U test results in previous comments (February 8, 2001), we now suggest greater reliance on a multiple regression approach to trend analysis, described in a following section of our comments. We no longer support use of the Mann-Whitney U procedure of time trend analysis.'' CDWR, in comments also submitted under the August 17, 2001, comment period, stated: ''A more defensible alternative would be to develop a multivariate model incorporating the effects of both flow and time.'' CDWR also made reference to the USBR application of regression techniques, which also were provided in USBR's comments. We have considered the CDFG, CDWR, and USBR recommendations to employ a multivariate, regression based model and have incorporated an analysis using the CDFG/USBR MLR Model data series as described in the section entitled Abundance. We will therefore forego providing responses to specific comments on the perceived bias of the Meng and Moyle (1995) and alternate methodologies previously employed because our analytical tools have been upgraded to utilize the modified methodology employed by CDFG and USBR.

The CDFG/USBR MLR Model provided in CDFG and USBR comments addresses the shortcomings of other methods, thus allowing our analysis using the CDFG/USBR MLR Model data series to supercede abundance analyses based upon methods appearing in prior rules. In combination with meta-analyses to analyze the distribution of MLR Model results across the 20 indices, statistical inferences based on the CDFG/USBR MLR data series are informative.

Our analysis using the CDFG/USBR MLR Model data series incorporates the results of seven surveys (Fall MWT, Bay Study OT, Bay Study MWT, Chipps Island, Suisun Marsh OT, CVP salvage, and SWP salvage), and includes separate indices of YOY, age 1 (juvenile) and age 2+ (adult) age class abundance. The independent examination of abundance of all age classes throughout these surveys helps mediate discrepancies among survey results, discrepancies that are a likely indication that splittail populations are not very evenly distributed over space and time and/or that different sampling methodologies are not very comparable. The model also does not require uninterrupted data; all available data from each survey's period of record is included. Further, our analysis controls for the confounding effects of hydrology, and involves no inherent or intentional bias towards either wet or dry water year types. Strict adherence to uniformity among all data series is also inconsistent with the precautionary nature of section 4 of the Act.

We recognize a distinct danger in controlling for hydrological effects in our analyses, because systematic

changes in hydrological regimes, due to human manipulation or long term climate change, could just as feasibly be a causative factor as a confounding source of ''noise.'' If systematic changes in hydrological regimes were occurring, it would not be prudent to control for that factor. Our since-superceded polynomial regression analysis of abundance data (See Abundance section of the August 17, 2001, notice) controlled for influences of hydrological cycles without discarding hydrology as a potential directional factor determining long term trends of splittail abundance. We expect that the polynomial regression analysis presented in the August 17, 2001, notice may eventually inform the understanding of the effects of changed hydrology on the splittail, once the future, cumulative hydrologic analyses for potential water development projects have been developed by the responsible agencies.

Comment 2: The court directed us to show the relationship between the data used in our decision-making analysis and the original final rule and how we reached the conclusion that the splittail was threatened.

Our Response: We have provided a more detailed analysis in the section entitled Summary of Factors Affecting the Species. The threats to the species have also been summarized in an additional section entitled Conclusion Regarding Abundance, Distribution, and Factors Affecting the Species. We have also included in the Abundance section of this notice a discussion of our most recent statistical analysis of the species population trends.

Comment 3: Several respondents cited the draft White Paper (Moyle *et al.* 2001 in prep) for splittail as reporting a tentative population model result that stated, '' * * * a long series of dry years is unlikely to drive the splittail to extinction, even if the population is greatly reduced.''

Our Response: A species warrants listing as threatened under the Act if is in danger of becoming endangered in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). It is possible for the splittail to be undergoing threats or declines in a significant portion of its range without declines showing in all surveys. Alternatively, threats to the splittail may support listing even in the absence of our ability to document current population declines. Finally, we believe the conservation elements of the California State and Federal cooperative program (CALFED) and the Central Valley Project Improvement Act (CVPIA) programs adequately mitigate for these threats (refer to Factor A for a detailed discussion of the CALFED program and the CVPIA programs).

Comment 4: A respondent informed us that CDFG re-analyzed the striped bass egg and larval survey and found that splittail spawn in the mainstem of the Sacramento River, especially in dry years. This indicates that splittail occur in the Sacramento River upstream from the Delta.

Our Response: CDFG and our survey results confirm that splittail use river margin habitat in the mainstem Sacramento River. Indeed, recent indications are that river margin habitat is where splittail spawning occurs through periods of drought.

Comment 5: A respondent stated that young of the year (YOY) abundance was at near record levels in 2000, thus inferring the splittail is not in decline.

Our Response: Data presented in the Spring 2001 *Interagency Ecological Program Newsletter* (Baxter 2001a), provided as an attachment to public comment submitted on this rulemaking, do indicate that splittail spawning was highly successful in 2000. This spike of juvenile fish is to be expected given the relatively wet conditions of 2000, and the splittail's ability to exploit suitable habitat when available. Also, YOY are generally the most reliably sampled fish in any given survey, since their raw abundance is temporarily high and YOY splittail are likely less effective at evading sampling equipment. Population level conclusions drawn from such a spike must be made with caution because, though extremes in YOY abundance appear to be reflected in 2 to 3 year subsequent adult abundances, the splittail appears to exhibit no stock-recruitment relationship (Sommer *et al.* 1997). Possible reasons for the lack of a stock-recruitment relationship may be variation in female growth, survivorship and fecundity from such causes as inter- and intra-annual hydrologic variation, environmental contaminants, years of non-spawning, predation, etc., which may be exerting independent or synergistic influences on recruitment of splittail into the population. Regardless of cause, large portions of YOY fail to survive to the adult, spawning population age class. Juvenile abundance may therefore be inadequate to fully describe the size of the standing or future adult populations and may also be inadequate to describe the ability of the population to persist. Population abundance cannot be accurately predicted based upon examination of juvenile abundance alone.

We currently support use of the CDFG/USBR MLR Model because of the facility with which it can be applied to all sets of splittail age class data from all seven applicable abundance monitoring data sets (a total of 20 discrete sets of age-specific abundance monitoring data). This approach therefore includes consideration of YOY splittail without granting undue analytical weight to any single survey or age class or inappropriately combining different survey equipment types. Regardless of the strengths and weaknesses of year 2000 YOY abundance, these data were considered in our analysis using the CDFG/USBR MLR Model data series (*see* our Abundance section for a discussion of our most recent statistical analysis of the species population trends).

Comment 6: The Court and numerous commenters requested that we address and clarify the issue of splittail resiliency and that the species may be able to withstand drought and produce high numbers of young of year (YOY) during wet periods.

Our Response: We concur that splittail are a resilient species and that they can reproduce effectively in wet years. Sacramento splittail populations fluctuate annually depending upon the availability of shallow water habitat with submerged vegetation (Daniels and Moyle 1983). Meng and Moyle (1995) and Sommer *et al.* (1997) have found that splittail year-class abundance is positively correlated with freshwater outflow occurring during the species' late winter and spring spawning season. The evolutionary strategy of the splittail therefore appears to be one of opportunism, whereby the population collectively invades and exploits spawning habitats if and when they become available. Historically, this resilience is likely to have maintained the population of splittail through extended droughts. This resilience also has allowed the splittail to persist in spite of the significant loss of habitat that has occurred since the species was first described by Ayres.

Comment 7: A respondent wished to know why the Bay Study and CVP and SWP salvage data showed an increase in splittail abundance, and the commenter requested that we explain the variation in the study results.

Our Response: This comment pertains to the Meng and Moyle (1995) methodology employed in our previous analyses of splittail population. We refer the respondent to our Abundance section for a discussion of our most recent statistical analysis of the species population trends.

We believe that trends noted in the Bay Study are likely due to the large numbers of YOY fish that were collected during certain wet years. High outflows may transport juveniles from the Estuary to locations where Bay Study samples are collected. It is unclear what happens to these fish once they are transported to these areas. Fish transported to San Pablo Bay may survive to join, if not sustain, the Napa River and Petaluma River and Marsh subpopulations. Once located in these areas, it is not known what contribution is made to the Central Valley population as a whole.

In regard to trends in CVP and SWP salvage data, we believe that these too are driven by seasonal variation in hydrology. Though it is true that hydrology and production are strongly correlated, and that salvage would be expected to rise as populations rise, there are concerns with the data's application (see discussion of surveys under Abundance section, above).

In the case of splittail salvage, entrainment is likely influenced by the rate, or volume per unit of time, of export. As stated before, salvage data are expressed as fish captures per acre foot and lack a time value. At higher rates of export, splittail are likely to be disproportionately entrained because of higher velocities in the channels adjoining or approaching the facilities and thus, abundance could be overestimated. All sampling gears may be more effective at capturing splittail during high outflows due to increased velocity and turbidity, but only the pumps have the ability to draw fish towards them at different rates. The rate at which fish may become pulled towards the pumps cannot be described using existing data. Differing rates of export also introduce variability, which cannot be discerned without a time factor. Salvage data, as mentioned previously, do not effectively sample a large extent of the splittail population, as fish reared in the Sacramento River and/or Yolo Bypass are likely to largely avoid the pumps. Salvage data do however collect the largest number of splittail of any survey.

Comment 9: Several respondents cited an analysis that took issue with us for adopting a non-traditional alpha-value of 0.20 (instead of 0.05) for evaluating results of the CDFG/USBR MLR Model.

Our Response: Available literature customarily demands a rigid adherence to the traditional alpha value of 0.05. In this particular analysis, we chose to take a far more conservative approach in terms of how we evaluated the splittail's abundance. Accordingly, we used the non-traditional alpha value of 0.20. We believe while unusual it is conservative, and results in a more robust determination of whether the species should be listed.

Comment 10: Several respondents cited an analysis that criticized our treatment of separate surveys of splittail abundance indices as statistically independent.

Our Response: We followed a long established practice in the peer-reviewed literature on splittail of treating these surveys as statistically independent (*e.g.*, Meng and Moyle 1995; Sommer *et al.* 1997) including papers repeatedly cited by the respondents in previously submitted comments. We accept at face value Manly's (2002) conclusion that an analysis of corrections among residuals provides evidence for some degree of interdependence among the different sets of survey data (Manly 2002:4–6). We also accept at face value Manly's (2002) attempt to correct our meta-analysis of survey results to account for the interdependence in the data sets. We have consistently stated that the abundance index data for splittail suffer from several fundamental inadequacies that make them far from ideal for decision-making purposes (an opinion with which the respondents and their statistical consultant concur (Manly 2002:3,8)).

Comment 11: Several respondents criticized us for evaluating the results of the CDFG/USBR MLR Model for all 20 data series of splittail abundance index data, instead of limiting the evaluation to the nine data series that the respondents view as most representative of overall splittail populations.

Our Response: We note that these and other respondents have previously criticized us, while employing different analysis, for not treating all 20 data series equally and for not including all available data series in statistical evaluations of abundance trends.

We are aware of no other party who has rigorously evaluated abundance index data (*e.g.*, Sommer *et al.* 1997; Meng and Moyle 1995; Moyle *et al.* 2001 in prep.) that has deemed it appropriate to limit the evaluation to the nine data series favored by the respondents. Further, CDFG and USBR elected to include all 20 data series in the CDFG/USBR MLR Model applications submitted to us as part of earlier comments.

We disagree with the respondent's suggestion that only data from a select group of nine survey indices that sample a wide geographic area (we assume the respondent is referring to three age classes each of the Bay Study MWT, Bay Study OT, and Fall MWT) should be given greater weight for making population-scale determinations. Weighting such a select group of surveys necessarily could require inappropriately combining their indices. The nine surveys are a composite of appreciably different gear types, some of which suffer from the same detection limitations as were used by other respondents to advocate against accepting certain other surveys. Mid-water trawling is an inappropriate match to splittail habitat preferences and other aspects of splittail biology, so even geographically extensive mid-water surveying would not necessarily be any more representative of overall splittail populations than geographically more restricted surveys better matched to splittail biology.

We disagree with respondents' claims that Bay Study MWT, Bay Study OT, and Fall MWT data are more indicative of splittail abundance trends than are those found in data collected at the SWP and CVP salvage facilities, Chipps Island, and in Suisun Marsh because they each suffer from gear or location difficulties. We postulate that each of these surveys is, to varying degrees, unsuited to the task of assessing splittail abundance. The Bay Study OT employs the efficient otter trawling technique but only infrequently captures splittail; surveys are conducted on the periphery of the species' range. The Bay Study MWT employs an inefficient (at capturing splittail) mid-water trawl. The Fall MWT fails to sample near-shore areas and the benthos (bottom), where splittail are most likely to occur. The Fall MWT does not sample shallow waters; in Suisun Bay/Marsh 8 of 25 sites are shallow, 1 of 38 in the Delta are shallow. We acknowledge that the Chipps Island Survey is a midwater trawl of deep channels and that it too would suffer from a similar bias. The CVP and SWP salvage data may suffer from an unquantifiable differential entrainment based on export rates (*see* Abundance section, above).

We also do not believe it is necessarily correct to infer that the wider geographical coverage of the nine surveys in question, alone, is sufficient to guarantee that those surveys are more representative of overall splittail populations. The Bay Study MWT, Bay Study OT, and Fall MWT are geographically wider in distribution, but given that estuarine conditions are specifically managed to maintain optimum habitat conditions within Suisun Marsh, the wider survey areas of the Bay Study MWT, Bay Study OT, and Fall MWT are not likely to contribute to a more informed trend analysis. Surveys need not cover large areas if a fixed

point is likely to result in detection of an appreciable number of individuals of a migratory species; splittail are as likely to arrive at a static survey point in a key location as they are to be captured by a mobile survey of varied habitats.

We understand the respondent's logic in formulating a hypothesis that the nine surveys in question might be most representative of the overall splittail population due to geography, but note that at this point such an opinion is only a working hypothesis with no actual data available to either support or refute it. Until such data become available, we believe it is most conservative to follow the practice of evaluating all the data series rather than combining or rejecting discrete sets. We continue to believe that, of the individual indices, the Suisun Marsh Otter Trawl should be the most appropriate sampling method because it samples core splittail habitat, utilizes an effective, bottom-trawling gear, and samples a greater relative proportion of the habitat at the sampling site.

Comment 12: A respondent claimed we employed ''Shifting approaches to the splittail listing'' in regard to statistical testing of available data.

Our Response: Since we have published one listing notice for the splittail, on February 8, 1999 (64 FR 5963), we assume that this respondent is actually referring to our evolving evaluations of data relevant to the issue of whether the splittail should be listed or not, as have appeared in the January 12, 2001 (66 FR 2828); May 8, 2001 (66 FR 23181); August 17, 2001 (66 FR 43145); and March 21, 2002 (67 FR 13095); and October 31, 2002 (67 FR 66344), notices reopening public comment periods.

It is common practice in science to continually formulate and revise hypotheses in response to new information. We have applied this scientific process during the review of the splittail's status, as have certain respondents (*i.e.* CDFG, CDWR, USBR). The evolving results of our various statistical analyses and the background information describing the bases for those analyses have each appeared in successive notices. Notices are solicitations for public comment and information, not final agency actions. As a result of new scientific information and comments received during the many comment periods, we have updated our analytical methodology based on the best scientifically and commercially available information. Note also that neither we, nor respondents, have advocated nor implemented a return to the superceded techniques used by Meng and Moyle (1995), Sommer *et al.* (1997), or the permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests, published on August 17, 2001 (66 FR 43145).

Comment 13: A respondent claimed that we were incorrect in departing significantly from the analysis of CDFG and USBR.

Our Response: We did not depart at all from the statistical analysis provided by CDFG and USBR in the form of the CDFG/USBR MLR Model. We have fully accepted the model results submitted by CDFG and USBR. We have noted earlier in our analysis where we have departed from the CDFG and BOR analysis and our reasons for doing so.

Comment 14: Several respondents stated that the extended drought of 1984 to 1992 created only a perception of decline and that it was the ''* * * accidental juxtaposition of a series of wet, strong splittail years with a series of dry, weak years that prompted [our] interest in the first place.''

Our Response: We disagree with the respondent's claims that the period of extended drought has been ignored, as well as with the contention that the splittail's drought-driven declines are the sole factor under consideration in our determination. We first note that the period of continuous drought is considered by most authoritative sources to have begun in 1987 (Moyle *et al.* 2001; Baxter 1999a; Sommer *et al.* 1997), not 1984 as reported by the respondent. We note, however, that 1985 and 1986 were dry years (Cannon 2001 in prep.).

The declines noted during the 1987 to 1992 drought were the likely result of a paucity of spawning habitat being available. The drought decreased the amount of floodplain (*i.e.* Yolo Bypass and mainstem river margins) available for spawning and thus, spawning output was lower. Low splittail population densities were aggravated by the CVP and SWP's diversion of a greater proportion of water from the Delta than in prior years; fish were entrained at the facilities and the entrapment zone (location where fish become vulnerable to the export facilities' effect on currents in the Delta), was located well upstream of Suisun Marsh in increasingly suboptimal habitat. These events are described in detail in our February 8, 1999, final listing rule (64 FR 5963).

The basis for the respondent's claim that we are disproportionately concerned with splittail declines noted during the 1984 (or 1987) to 1992 drought is unclear. True, the ''accidental juxtaposition'' of wet and dry years resulted in abundance data that appeared to illustrate a precipitous drop in the splittail population. There are, however, up to 10 years of pre-drought as well as up to 8 to 10 years of post-drought data. The data collected during six years of continuous drought are but a subset of the nearly 20 years of extant splittail data. The splittail's relatively long life span and resilience following unfavorable conditions renders the declines exhibited during a discrete drought unlikely to influence the analytical findings from an ever-lengthening period of record. Most importantly, we now employ the CDFG/USBR MLR Model, which explicitly controls for potential confounding effects of hydrological year type. The respondent's concern would be more applicable to abandoned analytical techniques. The arbitrary pre- and post-decline cut point approach of Meng and Moyle (1985) was driven by trends noticed during the 1987 to 1992 drought, as was a formerly touted alternative analysis that involved the use of 1987 (the beginning of the drought) as a cut point (Sommer *et al.* 1997) for determining percent declines.

We also disagree with the contention that the 1984 to 1992 drought serves as the only factor which triggered our investigations of the splittail's status. Our interest in the splittail was prompted initially by the statement in Daniels and Moyle (1983) that the splittail's and delta smelt's ''* * * abundance could decline rapidly if environmental conditions become unfavorable for them, possibly making them candidates for listing as threatened species.'' We subsequently included the Sacramento splittail as a category 2 candidate species for possible future listing as endangered or threatened in the January 6, 1989, Animal Notice of Review (54 FR 554). The candidate category system was abandoned on February 28, 1996 (61 FR 7457), and species meeting the definition of the former category 2 (such as splittail) were no longer considered candidates. Our administrative proceedings on splittail resumed on November 5, 1992, when we received a petition from the Natural Heritage Institute to add the Sacramento splittail to the List of Endangered and Threatened Wildlife and to designate critical habitat for this species in the Sacramento and San Joaquin Rivers and associated estuary.

Comment 15: A respondent questioned how the data collected relate to a conclusion that the species is threatened. We had not provided analyses of population level outcomes that could be linked to threats analyses. Another respondent believed that our threats analysis is speculative,

imprecise, and meaningless absent any data or analysis concerning population level effects and that the threats analysis does not show why the species is threatened because of the factors, as required under section 4 of the Act

Our Response: We refer the respondent to the sections entitled Summary of Factors Affecting the Species and Conclusion Regarding Abundance, Distribution, and Factors Affecting the Species. We believe that the splittail does not qualify for threatened status at this time based on our analysis of the threats.

Comment 16: Several respondents asserted that the peer review process for scientific publications doesn't necessarily ensure that published papers are unbiased, scientifically sound, and without errors. The *Transactions of the American Fisheries Society* does not use the double-blind method for peer review. This issue was raised in regards to our past use of the Meng and Moyle (1995) methodology to determine splittail abundance.

Our Response: We agree with this assertion. Each piece of scientific work, whether a peer reviewed published paper or an unpublished, unreviewed, draft report, must be objectively evaluated for the scientific merit of its content alone. Peer reviewed publication provides no guarantee of scientific merit. The test of time, following publication, provides the ultimate measure of scientific merit. Indeed, subsequent iterative examination of the splittail's status has resulted in our abandonment of Meng and Moyle (1995), Sommer *et al.*, (1997) and our permutation-based exact calculations of p-values for stratified (as opposed to unstratified) Mann-Whitney U-tests (66 FR 43145).

Comment 17: Several respondents claimed we ignored the ''White Paper'' published by Moyle *et al.* (2001)

Our Response: We agree with and use the various findings and hypotheses found in the draft and revised White Paper (Moyle *et al.* 2001) extensively throughout this document. We believe that the draft White Paper is a useful resource and contributes to the knowledge on splittail biology, though it has not yet been finalized. The paper has been referenced throughout this document.

Comment 18: A respondent requested that we acknowledge that the Interagency Ecological Program (IEP) provides oversight for fisheries data collection.

Our Response: We concur that the IEP has oversight of the various fishery programs. However, various agencies collect the data for the surveys mentioned previously in this document. CDFG conducts the Fall Midwater Trawl, summer townet, and the Bay study; we conduct the beach seine and Chipps Island Survey; UC Davis conducts the Suisun Marsh OT, and USBR and CDFG collect the salvage and creel census data.

Comment 19: A respondent felt the 2000 Service beach seine survey data supported the respondent's earlier comments that splittail were not declining. The respondent stated that new insights include: (1) YOY abundance was at a near record level in 2000; (2) distribution data show that in years of low spring outflow (*e.g.*, 1992, 1994, and 1997), the largest catches of young splittail occurred upstream in the Sacramento River, upstream of many sampling programs; and (3) splittail spawn and recruit even in dry years.

Our Response: YOY abundance for a species with naturally high juvenile mortality does not necessarily equate with high recruitment. The respondent's statement that distributional data show that in years of low spring outflow (*e.g.* 1992, 1994, and 1997), the largest catches of young splittail occurred upstream in the Sacramento River, is inaccurate for two of the three years referenced, and faulty conclusions are drawn from the data.

Water year 1992 exhibited similar abundances of splittail in upper Sacramento River and Far North Delta locations, and moderate abundance overall. Water year 1994 did exhibit relatively higher abundance in upstream locations, but abundance was low throughout all locations. Water year 1997 was wet, not dry as stated by the respondent. Also, regardless of being a wet year, water year 1997 exhibited low splittail abundance in all locations. Further, we expect that YOY spawned higher in the Sacramento River to suffer higher mortality, relative to fish spawned in the Delta, as they migrate downstream through progressively-worsening habitat conditions to rejoin the core population. Increased mortality among splittail spawned upstream may explain why YOY tend to be captured less frequently in downstream trawl-based surveys in certain dry years. The final statement, that splittail spawned upstream exhibit successful spawning and recruitment in dry years, is not supported by survey data. While spawning success can be inferred from YOY abundance, YOY fish do not necessarily recruit to the adult population. There is some evidence that high or low YOY abundance is correlated, with a two to three year time lag, with adult abundance. For this reason, YOY abundance cannot be excluded entirely. Our we believe our analysis using the CDFG/USBR MLR Model data series (see section entitled Abundance) incorporates all applicable YOY and adult abundance data, though excludes the beach seine due to its lack of a reliable catch per unit time indicator (seine hauls do not accurately account for time, or unit area per time sampled). Beach seine data are best employed with regard to the splittail for determining range and timing of occurrence.

Comment 20: A respondent stated that while splittail are able to persist in a few key areas, such as Suisun Marsh and the lower Sacramento River, during periods of low flow, the relatively smaller populations would be vulnerable to a large scale disaster (*e.g.*, toxic spill), habitat loss, entrainment mortality, reduced outflows, non-native species predation, and contaminants.

Our Response: We refer the respondent to the section entitled Summary of Factors Affecting the Species.

Comment 21: The respondent stated that the court requested that we provide: (1) An estimate of the current population size of the splittail; (2) determine whether or why the current populations size is inadequate to prevent extinction in the near future; (3) determine the rate of population decline of splittail; and (4) identify the minimum viable population size. In addition, a respondent stated that the hypothetical analytical model presented at the January 29, 2001, CALFED Bay-Delta Program (CALFED Program) Splittail Science Conference and described in the White Paper (Moyle *et al.*, 2001) indicates that the splittail, even during severe and lengthy drought, is unlikely to be driven to extinction.

Our Response: There remains no proven scientific method for determining the current splittail population size primarily because no extant survey was designed specifically to monitor splittail populations or to determine their absolute numbers. Further, the splittail exhibits relatively wide variation in annual abundance in response to prevailing hydrologic conditions; it is likely that the population size exhibits appreciable year to year variability which would confound size estimates.

Calculating the current population's risk of and/or time to extinction would require estimates of absolute population size, rate of decline, and minimum viable or sustainable population size, none of which currently exist in a scientifically defensible form. Moreover, it must also be noted that the statutory and regulatory standard for ascertaining

threatened status is not to determine whether or why a species will become extinct in the near future, but if, pursuant to section 3(19) of the Act, it ''* * * is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range''. An endangered species, pursuant to section 3(19) of the Act, is that ''* * * which is in danger of extinction throughout all or a significant portion of its range * * *''.

As stated above, analytical techniques do not exist to determine the rate of splittail population decline with current splittail data. Again, the absence of survey methodologies specifically designed to monitor splittail populations is a limiting factor in determining rate of decline. An estimate of splittail population decline, in the form of an exponential decay model, was included by in our August 17, 2001, notice (66 FR 43145) but was not used in this document because of respondents' concerns that it is insufficient to describe the interactions in a complex aquatic ecosystem. Further our exponential decay model relied upon the results of the CDFG Mann-Whitney U test results. The CDFG Mann-Whitney U test results have since been superceded by the CDFG/USBR MLR Model. Lastly, there exists no method to determine the splittail's minimum viable population because, again, no current survey was designed specifically to monitor splittail population size.

Since the publication of the Final Rule listing the splittail as threatened, a hypothetical analytical model was developed and presented at the January 29, 2001, CALFED Bay-Delta Program (CALFED) Splittail Science Conference. The model is described in detail in the White Paper (Moyle *et al.*, 2001). Service staff attended the aforementioned conference and are aware of the model. A second review draft was provided to us on June 18, 2001.

We believe that the model is, at present, only a tool for testing existing hypotheses and for generating new hypotheses. Certain findings may be interpreted to support listing and others may counter it, but we have determined that neither is sufficiently robust to be included in this final document. Indeed, once refined by the incorporation of more accurate data, the model may be useful for determining those mitigation and restoration efforts likely to have the greatest benefit to the splittail.

Comment 22: A respondent claimed that any decline evident in the Suisun Marsh OT data, or in any other survey demonstrating a decline, might be due to a shift in the splittail's distribution, rather than a decline in numbers.

Our Response: Data do suggest that splittail shift their distribution in response to salinity conditions, and that they are quick to respond and move into an area when conditions become favorable (see Background section). However, we believe our survey information is robust enough to detect a decline (see Abundance section)

Comment 23: One respondent objected to our determination in the January 12, 2001, notice (66 FR 2828), that rock revetment, or riprap, as it presently exists or is proposed, would have any significant impact upon the splittail.

Our Response: While a general dismissal of riprap and other types of levee and bank protection is likely overly broad, the application of riprap and other bank treatments that has occurred throughout the splittail habitat has resulted in the decreases in habitat that have led to this examination of the status of the species. Bank protection can be placed on levees and riverbanks without damaging habitat, but it must be done so with explicit considerations for the habitat needs of the affected species. Our analysis in this rule accepts that premise as part of our underlying review of the CALFED and CVPIA contemplated actions.

Comment 24: A respondent asked if we would address the impacts of boating and other activities affecting near-shore habitat.

Our Response: The impacts of boating are not considered a significant source of habitat loss. In many regions of the Delta, wave wash is a natural phenomenon related to winds crossing areas of great fetch (open areas). The splittail evolved with the effects of wave wash within near-shore habitat.

Comment 25: One respondent differed with the determination in our January 12, 2001, notice (66 FR 2828), that California's variable Mediterranean climate is a threat to native fish, and contended instead that it favors native fish over non-native fish. The respondent also stated that the splittail had evolved subject to the vagaries of California's climate and was adapted to survive them.

Our Response: Our notice stated that ''The variability of California's Mediterranean climate *exacerbates the threats* (emphasis added) * * *'' to the splittail. The Mediterranean climate includes periods of extended normal and above-normal precipitation but may also include periods of extended drought. Splittail evolved under these conditions and are adapted to them. We agree with the respondent that the splittail had evolved subject to the variability of California's climate and has adapted to survive this variability.

Comment 26: One respondent stated that pesticide application is not a threat to the splittail because no data were presented to support the assumption that pesticides bioaccumulate in fish to the point of causing morbidity, mortality, or reduced reproduction. Several respondents took similar exception to our statements regarding the need for pesticide use on crops to be assessed and possibly regulated. The respondent also claimed pesticides were no more of an environmental problem within the bypasses than in other areas and that there was no reason to justify separate or additional regulatory programs that would apply only to the bypasses. A respondent stated that pesticides may be present, but that they have been flushed from the bypasses prior to spawning. Another respondent stated that much of the pesticide loading in the Yolo Bypass was due to runoff from upstream sites.

Our Response: Please see our discussion under threats. In general, there are findings that have heightened our concern regarding these substances. However, there is little data on the direct affects to splittail.

Comment 27: A respondent felt that we were inconsistent when it was stated in the January 12, 2001, reopening of comment period (66 FR 2828), that wetland rehabilitation could be deleterious to the splittail, but that wetland habitat improvements within the species' range would be beneficial. The respondent felt we had not ''* * * integrated its concepts and concerns in a manner that weighs relative risks and concepts.''

Our Response: We agree with the respondent that wetland restoration projects are generally beneficial to splittail.

Comment 28: A respondent felt that our statement that the present operation of Federal, State and private water development projects, that entail water storage, diversions, re-diversions, and agricultural return flows, destroy splittail habitat was incorrect.

Our Response: We refer the respondent to the section entitled Summary of Factors Affecting the Species.

Comment 29: A respondent felt that we did not adequately acknowledge the positive environmental effects of the CVP and SWP. The respondent specifically noted that the inland extent of saltwater intrusion into the Delta is currently lower than with the ''without-project'' condition.

Our Response: We do not consider the pre-SWP and CVP extent of saltwater intrusion to be detrimental to splittail. Saltwater intrusion was defined by the respondent as the location of the chloride concentration of 1000 milligrams per liter (mg/L)(1000 parts per million (ppm)), measured 90 minutes after high tide. It is not clear if the inference is that brackish water such as this is detrimental to the splittail. Splittail occupy brackish water at various stages of their life and such habitat may actually be essential to the species' life history. The 1000 parts per million value is equivalent to 1 part per thousand (ppt), which differs little from the 2 ppt standard identified as X2. The White Paper (Moyle *et al.* 2001) includes numerous references to the use of brackish water near X2 by splittail, indicating that it may actually characterize optimal rearing habitat for fish greater than 75 mm (3.0 in) in standard length (typically late year 0 or early year 1 fish). Non-reproductive (rearing juvenile and adult) splittail are most abundant in shallow brackish tidal sloughs, such as those found in Suisun Marsh. Growth of splittail in brackish sloughs is rapid in the first year of life, with fish reaching a size of 12 to 14 cm (4.7 to 5.5 in) TL. Further, historic, pre-reclamation conditions in the Delta would have allowed the ''natural'', non-SWP and CVP manipulated X2 location to exist within extensive flooded wetlands. Also note that splittail have wide salinity tolerance (10 to 18 ppt) (Moyle 1976; Moyle and Yoshiyama 1992), with an absolute observed tolerance of 29 ppt for short periods (Young and Cech 1996). Inland brackish water intrusion may have thus been at tolerable or even desirable concentrations for the species. We do not consider the changes in estuarine hydrology induced by the SWP and CVP to be beneficial to the splittail and traditionally the Service and other wildlife agencies have accepted as fact the supposition that splittail habitat was degraded as a result of the operation of these projects (see the section entitled Summary of Factors Affecting the Species).

Comment 30: The court directed that we respond to the issue that splittail have a broader distribution than previously thought, including a broader range in the Sacramento and San Joaquin Rivers. Another respondent noted that larval, Age 0 and Age 1 splittail have all been collected above the Delta.

Our Response: The greater range of the splittail was acknowledged in the January 12, 2001, notice (66 FR 2828). The above Background section of this final document contains a discussion of the range of the splittail.

Comment 31: Nearly all respondents felt that we should not classify the Yolo and Sutter bypasses as a threat to the splittail, as we did in the January 12, 2001, reopening of comment period (66 FR 2828), based primarily upon the data found in Sommer *et al.* (1997) and Sommer (2001a). The bypasses have demonstrated the capability of producing large numbers of splittail when inundated.

Our Response: We have determined, based on consideration of scientific data and information provided by respondents, that the Yolo and Sutter bypasses are not, in and of themselves, a threat to the splittail. Our reevaluation of this issue is discussed in Factor E of the section entitled Summary of Factors Affecting the Species.

Comment 32: Some respondents stated that the bypasses, the Sacramento River Flood Control System, and other reclamation and flood control efforts are beneficial to the splittail because they redirect water into the Sacramento River that, prior to the 1920s, would have spilled into the Colusa, Yolo, Butte, Sutter, and American basins, thus entraining significant numbers of fish.

Our Response: Splittail evolved in the Central Valley and we postulate that the species is likely evolutionarily equipped to exist in the presence of natural flood basins inundated during unaltered hydrologic conditions. The splittail's high salinity tolerance (*see* Background section, above) also indicates its ability to persist in detached, increasingly saline waters. The number of confounding factors as well as lack of any historic data severely limits our ability to assess with any real authority the ultimate effect of the Sacramento River Flood Control System, the CVP and the SWP. Following is our assumed scenario regarding the effects on splittail of past reclamation and flood control efforts. However, we acknowledge that alternative assumptions and conclusions could be drawn from existing information.

Reclamation activities, including the Sacramento River Flood Control Project and similar efforts to prevent flooding of urban and agricultural lands, have resulted in the confinement of the Sacramento River primarily to a single, leveed or otherwise artificially-confined channel, with much of the former American and Colusa basin habitat no longer available to fish occupying the mainstem river. The respondent claimed this was a benefit in that splittail were no longer subject to entrainment in these basins. While it is true that splittail are no longer subject to stranding in these basins, no data were provided to indicate that these basins, in their unaltered state, were a source of mortality sufficient to cause a decline of the species. There were no hydrologic data provided to indicate when the historic basins would have become connected or isolated from the Sacramento River in a typical year. These basins, being situated lower than the adjoining river and likely maintaining an alluvial (stream bed sediment) water connection, may have existed as perennial marshes wherein splittail could persist until inundation was restored. Indeed, the White Paper (Moyle *et al.* 2001) states that splittail historically occurred in alkaline lakes on the valley floor. The Butte Basin remains connected to the Sacramento River via the Sutter Bypass and Butte Creek; splittail are known to spawn in this area (Baxter 1999a).

It is also possible that, for the American River, Feather River, and other eastside streams, pre-European habitat conditions contained more complete and/or longer duration surficial (surface water) hydrologic connections between rivers and sinks than they did following the period of massive hydraulic mining. Hydraulic mining resulted in massive deposition of sediments in the beds of many eastside streams. The streambeds then became elevated. Rivers began to meander, as gradient and sinuosity are inversely related. When hydraulic mining ceased, the rivers began to straighten, eroding back through the deposits, and leaving elevated banks as effective barriers for the basins' receding flood waters. These elevated banks could have exacerbated the tendency for the rivers to become disconnected from the natural basins.

Comment 33: Several respondents felt that our determination that the Sutter and Yolo bypasses would require inundation for at least 30 continuous days between March and April in order for them to be considered a beneficial splittail spawning habitat was inaccurate and could affect water supply and flood management. Another respondent indicated that constant flows, related to inundation of the bypasses, would favor non-native fish.

Our Response: We have not proposed inundation of the bypasses for any specific interval, duration, or frequency. Rather, we have suggested that the bypasses would have their greatest benefits to splittail if they became inundated at a frequency and duration that as closely as possible mimics the natural, precipitation-driven hydrograph. The reference to 30 days is a statement regarding how the

inundation patterns of the bypasses at times do not meet the life history requirements of the splittail. Inundation of bypasses in dry years would reduce the effects of drought on the splittail. We also speculate that if the bypasses were inundated at a frequency and duration that as closely as possible mimics the natural, precipitation-driven hydrograph, then the numbers of non-native fish would be reduced, as non-native fishes favor ponded and continuously inundated habitats.

Comment 34: Certain respondents felt that compensation should be provided to land owners when habitat restorations affected land use.

Our Response: If habitat restorations affect land use, there is a separate process available to landowners for redress. While we do not anticipate that efforts to restore the habitat will result in substantial changes in the land use practices in the bypasses, the regulations governing listing [50 CFR § 424.11(b)] state that listing of a species as threatened or endangered is made ''* * * solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such a determination.'' Accordingly, we do not consider or address this issue in our listing decision.

Comment 35: Several respondents commented that our classification of the Yolo Bypass as a threat in the January 12, 2001, notice (66 FR 2828) would undermine potential ecosystem restoration actions that would benefit the splittail.

Our Response: In this notice, we have determined that the Sutter and Yolo bypasses are not in and of themselves threats.

The bypasses remain important splittail spawning and rearing habitat during wet periods. Sommer *et al.* (1997) and Sommer *et al.* (2001a, 2001b) found that the bypasses as they exist today, and when flooded, already provide substantial amounts of habitat.

Comment 36: A respondent claimed that this determination could not be promulgated because it was not likely to include the required critical habitat designation or the preparation of a recovery plan.

Our Response: We have determined that listing as a threatened species is not warranted for the splittail, and therefore the designation of critical habitat is not warranted.

Comment 37: A respondent claimed that we must consider the cumulative impacts of multiple species listings and critical habitat designations.

Our Response: The ESA does not allow us to consider cumulative impacts of multiple species listings and critical habitat designations when making a listing determination.

Comment 38: A respondent stated that sport fishing take of other listed species, specifically salmonids, is a significant source of mortality of splittail caught unintentionally and asked if the listing of splittail would include measures to protect the species from this threat.

Our Response: We concur that sport fisheries can be a source of mortality for splittail caught unintentionally. However, since we have determined that listing as a threatened species is not warranted for the splittail, this notice does not include restrictions on sportfishing.

Comment 39: Several respondents objected to our statements regarding the entrainment risks present in the bypasses based upon Sommer *et al.*'s (1997) findings that entrainment is not a significant threat within the bypasses. It is thought that the splittail's evolutionarily-derived ability to emigrate prior to stranding reduces the risk of stranding. Respondents felt that the magnitude of the entrainment threats presented by the bypasses was overestimated when we cited in the January 12, 2001, notice (66 FR 2828), the death of a number of juvenile splittail in an approximately 0.8 hectare (ha) (2 acre (ac)) borrow pit as statistically-significant and that the classification of ''natural sinks'' as a threat was in error.

Our Response: We have considered these data and now agree that entrainment in the Yolo Bypass is less than was originally thought. Information presented at the January 29, 2001, CALFED Splittail Science Conference indicates that a modest degree of topographic variability within an inundated area may be beneficial, as it may create a diversity of flow patterns and velocities which in turn may allow juvenile splittail to evade predation and forage more effectively during egress.

Comment 40: A respondent described that many of the non-native species of the Delta have arrived via the discharge of ballast water from seagoing vessels and asked if the listing of the splittail would result in the regulation of maritime trade.

Our Response: As we have determined that listing as a threatened species is not warranted for the splittail, this notice does not include restrictions on maritime trade.

Comment 41: A respondent stated that we should consider only project-induced effects associated with existing projects and their associated operations. The respondent discouraged assessments of effects to splittail that would occur based upon implementation of projects that will be constructed and/or operated in manners that cannot be substantially verified at present, such as those in CALFED and the CVPIA.

Our Response: We agree and have revised and reevaluated the threats presented by existing conditions and projects (*see* Summary of Factors Affecting the Species section).

Comment 42: Several respondents believed that full implementation of the CALFED Program would preclude the need to list the splittail and indicated that over $10 million had been spent on actions that could improve conditions for splittail.

Our Response: We agree that actions taken under the CALFED program have contributed to the current improvements in habitat that affects the splittail and anticipate that other actions of that type are forseeably likely to occur. (We refer the respondent to the sections entitled Summary of Factors Affecting the Species.)

Comment 43: Various respondents informed us of the contents of an April 24, 2001, *Sacramento Bee* article wherein Dr. Peter B. Moyle, a recognized expert in aquatic ecology, fisheries science, and the splittail, discussed the February 8, 1999, listing of the splittail as threatened. Respondents related Dr. Moyle's statement that ''Things were getting better'' and argued that it constituted an opinion that the species should not have been, and by inference, should not now be listed.

Our Response: We have read the article in question. We cannot conclude that Dr. Moyle was making a statement on the listing status of splittail. However, we do note that ecosystem improvements are a primary reason why we are removing the listing. We have cited several of Dr. Moyle's scientific publications and conclusions within this document.

Summary of Factors Affecting the Species

After a thorough review and consideration of all the best scientific and commercial information available, we have determined that the listing of the Sacramento splittail as a threatened species should be removed. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1).

These factors, and their application to our decision to remove from the list the Sacramento splittail as threatened, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* We have identified, as threats to the splittail, the present operation of Federal, State, and private water development projects entailing water storage, diversions and re-diversions, releases, flood control, and export and agricultural return flows, which destroyed splittail habitat (59 FR 682, 64 FR 5963, 66 FR 2828). Each is discussed briefly below as are the beneficial effects of CALFED and the CVPIA, which offset some of these threats.

Habitat Loss: The Bay Institute (1998) has estimated that intertidal wetlands in the Delta have been diked and leveed so extensively that only approximately 3,237 ha (8,000 ac) remain of the 161,875 ha (400,000 ac) that existed in 1850, and that 90 percent of the riparian forest and riparian wetlands of the Sacramento Valley have been cleared, filled, or otherwise eliminated. Diking, dredging, filling of wetlands, and reduction of freshwater flows through more than half of the rivers, distributary sloughs, and the estuary for irrigated agriculture and urban use have widely reduced fish habitat and resulted in extensive fish losses (Moyle *et al.*, 1995; Nichols *et al.*, 1986).

There has been loss and degradation of the near-shore habitat required by splittail. Riparian and natural bank habitats are features that historically provided natural function to the stream banks and flood plains for splittail by providing spawning substrate, organic material, food supply, and cover from predators. Vast stretches of the Sacramento and San Joaquin Rivers, their tributaries, and distributary sloughs in the Delta have been channelized and the habitat converted or destroyed.

Delta water diversions and exports currently total 1.1 hectare-meters (ha-m) (9 million acre-feet (MAF)) per year. These diversions and exports also harm the splittail. The Federal and State water projects presently export as much as approximately 740,000 ha-m (6 MAF) per year from the Delta when sufficient water is available. Agricultural diversions for lands within the Delta range from 7,400 to 160,000 ha-m (60,000 acre-feet to 1.3 MAF); approximately 123,000 ha-m (1.0 MAF) per year in the long term period, 136,000 ha-m (1.1 MAF) in critical and dry years (CALFED 2000b). The draft White Paper entitled *Factors Relating to Salvage of Splittail at South Delta Pumping Plants* (Cannon 2001 in prep.) states that ''* * * lower population levels occurring as a consequence of salvage-entrainment related mortality may be reducing population resilience (*e.g.*, less dependence on a single age class) and jeopardizing the long-term viability and ecological role of splittail in the estuary.'' If entrainment mortality increases further, it could be expected to have even greater adverse effects on the splittail. In addition, reservoir operations and ramping rates for flood control inadvertently drain shallow water spawning habitat along river corridors and exacerbate stranding of splittail.

Beneficial Actions Offsetting Adverse Affects

A number of beneficial actions offset the above described adverse affects. Below are some of the specific actions or programs describing the beneficial actions.

CALFED Habitat Restoration: The CALFED Bay-Delta Program (CALFED) exists as a multi-purpose (water supply, flood protection, and conservation) program with significant ecosystem restoration and enhancement elements, and is well into its implementation phase (CALFED 2000a, 2000b). The stated mission of CALFED is to develop a long-term comprehensive plan that will restore ecological health and improve water management for all beneficial uses of the Bay-Delta system (CALFED 2000a, 2000b). The plan specifically addresses ecosystem quality, water quality, water supply, and levee system integrity (CALFED 2000a, 2000b). CALFED encompasses eight separate program elements; each having disparate potential effects to the splittail (CALFED 2000a, 2000b).

CALFED is a cooperative effort of the U.S. Department of the Interior, the U.S. Department of Commerce, the Environmental Protection Agency, the California Environmental Protection Agency, and the California Resources Agency, as well as other State and Federal agencies, with the involved public formally participating originally through the Bay-Delta Advisory Council, and currently through the Bay-Delta Public Advisory Committee (CALFED 2000a, 2000b). CALFED is a long term effort with an initial, shorter term implementation strategy (CALFED 2000a, 2000b). The Record of Decision (ROD) for CALFED was signed in August, 2000.

CALFED has has received sufficient funding (approximately 80 percent of funding required from the State of California, from CVP and SWP water project users and local entities, and from Federal funding), to make progress toward achieving its goals which include restoration and enhancement of splittail habitat (CALFED 2000a, 2000b). While CALFED is not meeting the expected schedules, the individual actions are occurring generally within the scope of their own schedules (CALFED 2000a, 2000b). With respect to splittail actions, CALFED has identified the plan to be implemented, as well as the funding level, funding sources, and other resources necessary to implement it (CALFED 2000a, 2000b). In addition, CALFED has identified the appropriate authorities as well as the legal, regulatory, and procedural requirements necessary to implement the conservation effort. Importantly, CALFED has completed the environmental reviews and consultations necessary to proceed with its proposed actions. CALFED describes the nature and extent of threats being addressed, and addresses the threats to the splittail through its tidal and riparian habitat restoration projects, fish screen projects, environmental water program, water quality program and numerous other programs (CALFED 2000a, 2000b). CALFED defines its conservation objectives in terms of recovery of targeted species, including the splittail, and has identified the steps necessary to implement the program (CALFED 2000a, 2000b). The goal of CALFED to recover the splittail will remain whether the splittail is listed or not (CALFED 2000a, 2000b). CALFED has identified and employed quantifiable, scientifically valid parameters to demonstrate achievement of objectives and the standards by which progress is to be measured (CALFED 2000a, 2000b). CALFED monitors and reports on progress towards implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort (CALFED 2000a, 2000b). Adaptive management has been incorporated into CALFED (CALFED 2000a, 2000b).

Although the splittail reared in the Sacramento River and/or Yolo Bypass are likely to largely avoid the CVP and SWP pumps, in the absence of any consideration of the splittail in the CALFED process, the splittail's status could be adversely affected by program elements to increase water storage in the Central Valley upstream of the Delta; modify Delta hydrologic patterns to convey additional water south, and upgrade and maintain Delta levees. However, as noted previously CALFED has an explicit goal to balance the water

supply program elements with these the restoration of the Bay-Delta and tributary ecosystems and recovery of the splittail and other species. Because achieving the diverse goals of the program is iterative and subject to annual funding by diverse agencies, CALFED has committed to maintaining balanced implementation of the program within an adaptive management framework (CALFED 2000a, 2000b). Within this framework of implementation, it is intended that the storage, conveyance, and levee program elements would only be implemented in such a way that the splittail's status would be maintained and eventually improved (CALFED 2000a, 2000b). The restorative components of CALFED will positively influence the status of the splittail; these are the Ecosystem Restoration Program (ERP), the Multi-Species Conservation Strategy (MSCS,) and the Environmental Water Account (EWA) (CALFED 2000a, 2000b). CALFED has identified 29 species enhancement conservation measures for splittail (CALFED 2000a, 2000b). These measures include a variety of actions consistent with our conservation strategy.

CALFED's Ecosystem Restoration Program includes the development and implementation of a program to address flows resulting from the present operation of Federal, State, and private water development projects, entailing water storage, diversions and re-diversions, releases, export and agricultural return flows (CALFED 2000a, 2000b). This includes the development of a methodology for evaluating Delta flow and hydrodynamic patterns and implementation of an ecologically based plan to restore conditions in the rivers and sloughs of the Delta sufficient to support targets for the restoration of aquatic resources, including splittail (CALFED 2000a, 2000b).

The EWA's stated purpose is to provide benefits to threatened or endangered fish without causing additional adverse impacts on water deliveries from diversions and the export facilities (CALFED 2000a, 2000b). The EWA, not analyzed in the February 1, 1999, final rule (64 FR 5963), or in the January 12, 2001, notice (66 FR 2828), purchases water from willing sellers, then banks, stores, transfers and releases it as needed to protect fish and compensate water users (CALFED 2000a, 2000b). The EWA has set a goal of acquiring at least 23,400 ha-m (190,000 acre-feet) of water each year through purchases, but also expects to obtain additional 23,400 ha-m (190,000 acre-feet) of water on average each year through additional pumping at times safe for fish (CALFED 2000a, 2000b). Already the EWA has demonstrated some success. In its first year, the account provided 35,400 ha-m (287,000 acre-feet) of water for environmental purposes without reducing allocations to agricultural and urban users. The EWA thus has functioned as a mechanism for providing for improved Delta conditions for splittail.

A review of the CALFED ERP projects shows that as of June 2002, the ERP has funded: 58,300 acres of habitat proposed for protection, including 12,000 acres dedicated to wildlife friendly agriculture and 16,000 acres of floodplain; 39,000 acres of habitat proposed for restoration, including 9,500 acres of shallow water tidal and marsh habitat; 63 miles of upstream habitat proposed for protection and/or restoration; 93 miles of riparian corridor proposed for protection and/or restoration; 72 fish screens accounting for an additional 2,565 cfs of diversion capacity screened; 15 fish ladders and 10 dam removals to provide better upstream passage; 31 projects involving analysis of environmental water and sediment quality; 18 projects intended to specifically address nonnative invasive species; and 75 projects supporting local watershed stewardship and environmental education (CALFED 2002). Clearly substantial efforts are underway to continue to restore and develop optimum splittail habitat.

Full implementation of the 30 year program will require both State and Federal funding and is expected to require both annual appropriations by Congress and continued funding by the State of California. To date, the federal government has spent over $700 million on CALFED, and the overall expenditures for the first 3 years of the program exceeds $2 billion; all of which has been spent for environmental restoration.

CVPIA Habitat Restoration: The Central Valley Project Improvement Act (CVPIA) (Public Law 102–575) signed October 30, 1992, amends previous authorizations of the Central Valley Project (CVP) (16 U.S.C 695d-695j) to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic water supply, and fish and wildlife enhancement having equal priority with power generation. Two of the stated purposes of the CVPIA are to ''protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley * * * of California'' and ''to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay-Sacramento-San Joaquin Delta Estuary.'' We also note that the CVPIA is a mitigative effort for past impacts of the CVP, and like CALFED, is a multi-purpose program that, at full implementation, will include both beneficial ecosystem restoration elements as well as water supply, water conveyance, and flood control projects, all of which are required to be implemented in a manner that considers the needs of the environment, rather than just maximizing flood control and water supply and delivery which was the case in the past.

The CVPIA exists as a multi-purpose (water supply, flood protection, and conservation) program with significant ecosystem restoration and enhancement elements and has been approved by all the affected parties including the FWS. It is well into its implementation phase and is fully funded. While the CVPIA is not meeting the expected schedules, the individual actions are occurring generally within the scope of their schedules. The CVPIA has identified the plan to be implemented, as well as the funding level, funding source, and other resources necessary to implement it. In addition, the authorities, and the legal, regulatory and procedural requirements necessary to implement the conservation effort have been identified. Finally the necessary environmental reviews and consultations have been completed. The CVPIA describes the nature and extent of threats being addressed, and addresses the threats to the splittail through its tidal and riparian habitat restoration projects, fish screen projects, environmental water programs and numerous other programs. The CVPIA's conservation objectives are defined in terms of recovery of targeted species, of which the splittail is one, and has identified the steps necessary to implement the program. The program has identified and employed quantifiable, scientifically valid parameters to demonstrate achievement of its objectives and the standards by which progress is to be measured. The CVPIA monitors and reports on progress towards implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort.

Provisions of the CVPIA to benefit fish and wildlife habitat include protection and restoration of natural channel, riparian, and wetland habitats (sections 3406(b)(1) and 3406(d)), dedication and management of 98,680 ha-m (800,000 ac-ft) of CVP yield (section 3406(b)(2)), acquisition of additional water supplies to supplement the amount dedicated (section

3406(b)(3)), modification of CVP operations (sections 3406(b)(1) and 3406 (b)(19)), removal of fish migration barriers (sections 3406(b)(10) and 3406(b)(17)), screening of water diversions (section 3406(b)(21)), and acquisition of land and associated water rights (section 3408(h)), among others. Funding sources for CVPIA mitigation and restoration actions include the CVPIA Restoration Fund; State funds provided to meet CVPIA cost share requirements; and additional Federal funds appropriated by Congress.

Two programs, the CVP Conservation Program, and the CVPIA Habitat Restoration Program, were created to proactively restore and improve the Central Valley environment that was or is being impacted by the operations of the CVP. These two programs have provided funding to a number of projects which collectively would double the acres of riparian forest on the Sacramento River (from approximately 8,093 ha (20,000 ac) to 16,188 ha (40,000 ac)) and to contribute to the recovery of threatened and endangered species (Carlton 2003 in prep.). Combined efforts of Federal, state, and nonprofit partnerships have reforested almost 1,619 ha (4000 ac) between Red Bluff and Colusa during the last 15 years (Carlton 2003 in prep.). Riparian forest restoration would, over time, also increase the amount of large woody debris habitat available to splittail.

Section 3406(b)(2) of the CVPIA dedicates 98,680 ha-m (800,000 ac-ft) of CVP yield annually to implement fish, wildlife, and habitat restoration, and to help federally listed species. A portion of the 98,680 ha-m (800,000 ac-ft) identified in the CVPIA may be used to meet the Department of the Interior's obligations under the Bay-Delta Accord (discussed below). The rest of the water can be used for instream flows, additional Delta outflow, and the other purposes of the CVPIA. Management of dedicated, supplemental, and reoperated CVP yield will benefit splittail when water releases are made at times and locations that coincide with splittail spawning and rearing, and in such a manner that the releases are adequate to flood vegetated areas adjacent to stream channels. The provisions of section 3406(b)(2) are to be implemented for five years and involve not only upstream actions but also actions in the Delta which may benefit splittail.

Other Habitat Restoration Projects: Ecosystem restoration efforts have been undertaken within the splittail's range. USACE began implementation of an ecosystem restoration project on Prospect Island in the northwestern Delta in 2001 (Coastal America 2000). The project is likely to result in the restoration of approximately 243 ha (600 ac) of open water, 134 ha (330 ac) of tidal emergent marsh, and 95 ha (235 ac) of mud flat within Prospect Island's approximately 486 ha (1,200 ac) interior. These may represent habitat enhancements for splittail.

Restoration efforts have been undertaken at the Cosumnes River Reserve under management by the Bureau of Land Management (BLM), The Nature Conservancy, and a number of other agencies and private organizations (The Nature Conservancy 2002a). Restoration activities that benefit splittail include riparian enhancement and intentional breaching of levees to restore floodplain function. Restoration is ongoing and splittail are likely to benefit from any efforts, as the area has also been described as among the most important floodplain habitats still available to the species (Moyle *et al.* 2001).

CDWR has also completed an ecosystem restoration on Decker Island, located on the Sacramento River, adjoining Sherman Island near the confluence with the San Joaquin River (CDWR 1998). The project has restored approximately 4.45 ha (11 ac) of shallow water habitat that is likely to be utilized by the splittail. The California Department of Transportation has committed to restore 190 ha (470 ac) of tidal marshes within the range of splittail for the benefit of splittail as compensation for impacts resulting from the construction of the Benicia Martinez New Bridge (USFWS 2003a).

USACE and CDFG are currently in the final stages of planning the Napa River Salt Marsh Restoration Project (USFWS 2003b). Approximately 1,262 ha (3,120 ac) of diked salt ponds would be restored to tidal marshes usable by splittail.

The 44 ha (109 ac) Kimball Island Mitigation Bank reestablished riverine aquatic bed, riparian forest, shaded riverine aquatic, and tidal marsh habitat at the mouth of the Delta usable by splittail (Wildlands, Inc. 2002).

In early 2002, our Sacramento River National Wildlife Refuge Complex (SNWRC) began implementation of the Environmental Assessment for Proposed Restoration Activities on the Sacramento River National Wildlife Refuge. The restoration activities will result in the reestablishment or enhancement of approximately 960 ha (2,372 ac) of land on 11 units or subunits of the SNWRC. Restoration and enhancement will involve the removal of crops, orchards, and related infrastructure (pumping units, barns, sheds, etc.) followed by replacement with native vegetation appropriate to each site (USFWS 2002a). A portion of these actions are expected to benefit splittail through the improvement of vegetative conditions on floodplains and the eventual creation of large woody debris (via riparian tree mortality and entrainment).

The Vic Fazio Yolo Bypass Wildlife Area (Wildlife Area), located within the Yolo Bypass, will increase in size from its current approximately 1,497 ha (3,700 ac) to approximately 5,261 ha (13,000 ac) (The Nature Conservancy 2002b). This increase was not analyzed in the February 1, 1999, final rule (64 FR 5963), or in the January 12, 2001, notice (66 FR 2828). Though the Wildlife Area does contain entrainment hazards, and is located along the slightly less infrequently inundated western edge of the Yolo Bypass, it will incorporate opportunities to restore the lower reaches of Putah Creek. The added area may allow restorations to proceed that benefit splittail to a greater degree than possible with the current shorebird and waterfowl-intensive management regime.

Other State efforts may contain actions beneficial to the splittail which were not analyzed in the February 1, 1999, final rule (64 FR 5963), or in the January 12, 2001, notice (66 FR 2828). Assembly Bill (AB) 360, the State Delta Flood Protection Act, has a primary purpose of strengthening Delta levees with various ''hard'' measures, including riprap. Habitat restoration components of AB 360, more properly considered mitigation for concurrent State projects' impacts to aquatic and terrestrial ecosystems in the Delta do require improvement rather than a strict mitigation approach which results in an increased habitat benefit and a net increase in habitat. The State Senate Bill (SB) 1086-funded Sacramento River Conservation Area is an interagency group chartered to promote and guide protection and enhancement of riparian resources and fluvial function the reach of the lower Sacramento River between Red Bluff and Colusa. The Nature Conservancy, working with the Sacramento River Conservation Area and local stakeholders, has acquired appreciable amounts of land for restoration. This and other future Sacramento River Conservation Area actions may be beneficial to splittail.

Conclusion: The loss of spawning and rearing habitat remains a potential threat the splittail. However, the implementation and magnitude of the CALFED, and CVPIA programs, and other habitat restoration activities, which focus on the restoration of

habitats which directly and indirectly benefit splittail go far beyond any forseeable habitat losses (particularly in the context of the state's Environmental Quality Act (CEQA) which explicitly requires mitigation for habitat loss. The overall effect of such habitat restoration activities is also expected to continue to be beneficial for splittail at present and into the foreseeable future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We believe that overutilization (*i.e.*, recreational and commercial harvest) is not a factor affecting the splittail. As noted in the January 6, 1994, proposed rule (59 FR 862) and the 1999 final rule (64 FR 5963), some scientific collecting is conducted for splittail, but these activities do not adversely affect the species. In addition, striped bass anglers report occasional use of splittail as bait, but we think this usage has little affect on the species.

In the January 6, 1994, proposed rule, and the 1999 final rule, we also noted that the small splittail fishery (Daniels and Moyle 1983; Caywood 1974) was poorly documented and that no evidence suggested it was a threat to splittail. At present, we do not consider the threat of recreational fishing to be significant. Baxter (2001b) analyzed 1999 and 2000 creel census data from the Sacramento River from Garcia Bend to Redding. Monthly catch amounted to 103 and 232 splittail, respectively. However, no abundance indices were calculated by any agency, organization, or individual from these data, as they fail to meet the criteria established by Meng and Moyle (1995) and are generally considered inadequate to the task of quantifying splittail abundance.

The largest splittail are the first to engage in the spawning migration (Caywood 1974; Moyle *et al.* 2001). The early season fishery thus targets and removes females with high reproductive potential. The effect of this fishery in the Sacramento River may be relatively greater in dry years, when splittail spawning is largely confined to river margins. However, at present, there is no evidence of any trend in the available data suggesting that larger fish are being removed from the population or that the size structure of the population have been altered by this or other fisheries.

C. *Disease or predation.* In our 1994 proposed rule we indicated that this factor was not applicable to splittail (59 FR 862). Since that time, we have questioned whether that disease may be a threat due to high incidences of adult splittail in poor health being captured in the State and Federal water project facilities in the south Delta. The south Delta is dominated by water from the San Joaquin River, where pesticides (*e.g.*, chlorpyrifos, carbofuran, and diazinon), salts (*e.g.*, sodium sulfates), trace elements (boron and selenium), and high levels of total dissolved solids are prevalent in agricultural runoff (59 FR 862, 64 FR 5963). We are unwilling to dismiss the potential that disease is related to the presence of environmental contaminants. Of specific concern are the threats posed by metals, mercury, selenium, and pesticides. We speculate that there is some possibility that disease in splittail could be a function of increased contaminant loading and subsequent immune system depression. However, offsetting this concern is information found in the White Paper (Moyle *et al.* 2001) indicating that disease and parasite infestation may be a natural function related to the heavy cost of migration and spawning. Post-spawn adult splittail, and male fish in particular, are substantially weakened when outmigrating. We have considered whether selenium exposure can reasonably be expected to exacerbate this condition. No research is known to be conducted on disease occurrence in splittail; the only information we found on disease in splittail was in the White Paper (Moyle *et al.* 2001). Therefore, given the lack of available information, we are unable to determine that splittail are impacted by disease.

In the past, we have considered threats of predation to be minor because striped bass had coexisted with splittail for decades and because CDFG had forgone hatchery rearing and release of striped bass (59 FR 862, 64 FR 5963). We have determined that predation may be a minor factor in the decline of the splittail. Additionally, CALFED includes numerous studies on the threats posed by predators (CALFED 2000a, 2000b) (*see* Factor A for a discussion of CALFED).

D. *The inadequacy of existing regulatory mechanisms.* In the past (59 FR 682, 64 FR 5963), we did not consider the suite of available regulatory mechanisms to be adequate to protect the splittail. Our primary concerns involved the likelihood that the CVPIA, the Bay-Delta Accord and CALFED, though not regulatory programs, would be sufficient to control water movement in a way that would protect splittail. At that time, the funding and implementation of the Bay-Delta Accord and CALFED had just begun, and it was too early to know if their funding and implementation would continue. We now believe that progress to date indicates that these mechanisms are likely to allow effective management of water for the benefit of splittail. In addition, we believe that some benefits will accrue from efforts associated with these programs (*see* Factor A above for a discussion on CALFED and the CVPIA).

We also note that splittail's habitat, the loss of which constitutes the single largest threat to the species, is protected by the State under CEQA and by state statutes specific to Delta levees which protect levee habitat. Finally, plittail are listed as a Species of Special Concern requiring special considerations for mitigation and protection under CEQA.

To the extent that projects may sometimes be constructed without proper authorization under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act, this could result in threats to the splittail. Implementation of the unpermitted projects could have negative effects on near-shore splittail habitat similar to those described under Factor A , and would not necessarily include mitigative features.

In summary, there is a slight potential that some residual threats still face splittail due to of inadequate application or enforcement of RHA and CWA regulatory mechanisms. However, we have been unable to document these threats in other than the most nebulous and anecdotal manner. Notwithstanding this potential, as the CALFED program is designed to improve habitat for the splittail as well as offset any adverse effects of its own actions and provide for recovery of a number of species including splittail, we believe it ameliorates the bulk of the minor threats associated with this factor.

E. *Other natural or manmade factors affecting its continued existence.* In our past rules and notices concerning the splittail (59 FR 682, 64 FR 5963, 66 FR 2828), we identified the risk of drought, invasive species (including interference in CVP and SWP salvage operations by the introduced Chinese mitten crab (*Eriocheir sinensis*)), detrimental flood bypass operations, the lack of screened water diversions, poor water quality and environmental contaminants including mercury, selenium and pesticides, bioaccumulation of selenium in the introduced Asiatic clam (Potamocorbula amurensis) as threatening the splittail. These topics and our current viewpoint of their affect on the splittail are further discussed below.

Drought: The variability of California's Mediterranean climate is not a threat to the species; it represents a baseline condition. This climate, however, may exacerbate the effects of the threats discussed above. Since the proposal to list the splittail, California

has had relatively wet hydrologic conditions that benefit fish species, though water year 2001 was below normal. Because the splittail is a floodplain adapted species, a dramatic decline in abundance was observed during the 1987 to 1992 drought. Similarly, abundance peaks during years when there is extensive floodplain inundations, and of the Yolo and Sutter bypasses in particular (Sommer *et al.* 1997) (*see* below for a discussion of Yolo and Sutter bypasses). When another drought occurs, splittail indices will again invariably drop. We have speculated the drought cycle may at some point stress the species to extinction if populations are too depressed. However, we have no direct evidence this is the case, and in the context of the significant habitat improvements being undertaken, are far less concerned that populations will fall to levels that makes this a concern.

Invasive species: Chinese mitten crabs (*Eriocheir sinensis*) could reach concentrations sufficient to intermittently impede the operation of fish screens and salvage facilities, thus reducing the effectiveness of splittail salvage and repatriation efforts. Since the January 12, 2001, notice (66 FR 2828), USBR has installed a device, known as Crabzilla, to remove the Chinese mitten crab from their CVP fish salvage facilities. In addition, Chinese mitten crabs have not appeared in large numbers at either of the fish salvage facilities in recent years. Therefore, the Chinese mitten crab does not appear to be a current threat to splittail, as they have not appeared in large numbers at the fish salvage facilities and those that do are efficiently removed and destroyed before they are able to clog the pipes and intakes at the fish salvage facilities.

Of some concern is the presence of Brazilian pondweed (*Egeria densa*) and water hyacinth (*Eichhornia crassipes*), both of which tend to form dense near-shore and slough-wide mats of vegetation which serves as a retreat, foraging, and ambush site for splittail predators and which may divert upstream- and downstream-migrating splittail into channels rather than the more-productive bankside habitat (Moyle *et al.* 2001 in prep). The California Department of Boating and Waterways (CDBW) and the United States Department of Agriculture (USDA) Agricultural Research Service (ARS) are presently and have been for at least 10 years, engaged in a program to control these invasive plant species. To date, the control effort has not had a measureable effect on splittail.

CALFED includes numerous studies on the threats of non-native competitors (CALFED 2000a, 2000b)(*see* Factor A for a discussion of CALFED).

Detrimental flood bypass operations: It has been documented that splittail make use of the Sutter Bypass, and particularly heavy use of the Yolo Bypass for spawning under certain hydrologic conditions and that the shallow, vegetated waters provide excellent rearing conditions for juvenile fish (Sommer *et al.* 1997, 2001a, 2001b). The bypasses are primarily flood control facilities and secondarily agricultural lands, and are passively operated as such. Splittail using the bypasses are subject to many of the same threats found elsewhere, such as habitat loss, environmental contamination, harmful reservoir operations, pesticide loading, competition with and predation by non-native fish, etc.

The flood bypasses are only flooded when flows in the Sacramento River reach a certain level. This inundation tends to occur at the correct time of year for splittail spawning, but may be reduced in frequency and duration (Yates 2001), with direct implications for splittail spawning. This constitutes a threat in that adult fish, having migrated to suitable spawning habitats on a floodplain, could be denied the opportunity to spawn. In those cases where adult splittail have successfully spawned, the resulting eggs or larvae could become trapped and killed. Insufficient floodplain inundation could also force egress of juvenile splittail before they have attained a size and swimming ability sufficient to avoid predation.

Since the publication of our January 12, 2001, notice (66 FR 2828), we have determined, based on consideration of scientific data and information provided by the public, that the Yolo and Sutter bypasses are not, in and of themselves, a threat to the splittail. A threat is that which, if removed, will result in improvements in a species' status. The removal of the Yolo and Sutter bypasses would be highly detrimental to the splittail, as the bypasses constitute a substantial portion of the species available spawning habitat. We agree that the bypasses are presently important to the splittail when inundated and that they produce more fish than they harm. The bypasses likely have helped this resilient species to persist through over a century of largely unmitigated habitat destruction.

CALFED's ERP includes the development of a program to eliminate fish stranding in the Sacramento, Feather, and Yuba rivers and the Colusa Basin Drain and Sutter Bypass in the active stream channels, floodplains, shallow ponds, and borrow areas (CALFED 2000a, 2000b) (*see* Factor A for a discussion of CALFED). In addition, the program will conduct instream flow studies to determine the flows necessary to support all life stages of anadromous and estuarine fish species, including splittail (CALFED 2000a, 2000b).

Entrainment as a result of *water diversions:* We conclude that diversion of water from any river or stream or other water course that results in the entrainment, injury or death of Sacramento splittail, including stranding of eggs, larvae, juveniles or adults; or diversions and subsequent runoff that results in the degradation of waters containing splittail is no longer a threat to splittail. Entrainment of splittail at diversions is reduced if fish screens are installed at diversions in splittail habitat areas. Two programs implemented under CVPIA, particularly the Anadromous Fish Restoration Program (AFRP) and allied Anadromous Fish Screen Program (AFSP), which were not analyzed in the January 12, 2001, notice (66 FR 2828), have had a net benefit to the splittail. Removal of migration barriers and placement of fish screens on water diversions is ongoing under the AFRP and AFSP, and several actions with adjunct benefits to splittail have been completed. Removal of migration barriers can provide additional splittail habitat where potential habitat is blocked, and entrainment of splittail at diversions can be reduced if fish screens are installed in splittail habitat areas. Though many small diversions remain unscreened, approximately 95 percent of water annually diverted has been or is in the process of being screened, including all water diversions greater than 40 cubic feet per second, and many of the remaining unscreened diversions are small and intermittently operated (O'Leary 2003 pers. comm.). CALFED's Ecosystem Restoration Program includes a program to consolidate and screen the remaining small agricultural diversions in the Delta, and the Sacramento and San Joaquin rivers. The NOAA Fisheries Restoration Center has also begun to fund small fish screen projects in the Sacramento River within the range of the splittail. This represents a near-total reduction in the threat of entrainment in unscreened diversions to the splittail, and thus removal of the threat.

Water quality and environmental contaminants: Metals such as copper, zinc and cadmium (Environmental Protection Agency (EPA) 1976) can be directly toxic to fish, and presumably to splittail, especially in their sensitive

larval stages, with the effects particularly deleterious near inputs of acid mine drainage within the Sacramento River watershed and in the vicinity of highly industrialized near-shore areas of the lower San Francisco Bay Estuary. These metals damage gills and alter liver and nervous system functions causing death, behavioral changes, and reduced growth and reproduction (EPA 1976). These metals can have the same effects on food items of the splittail, reducing their prey base and placing additional stress on the splittail (EPA 1976). However, we are not aware of any evidence suggesting that splittail are at any higher risk of suffering direct or indirect adverse effects from metals exposure than other fish species within the Sacramento River and San Francisco Bay estuary systems. For all such species, the potential for at least periodic adverse impacts from exposure to metals is of substantive concern, but poorly understood.

Three other potential contaminant threats are of concern specifically with respect to the splittail: (1) mercury; (2) selenium; and (3) pesticides (persistent organochlorines and currently used organophosphates). In part, these contaminant threats are of concern because they may be focused, to varying degrees, on habitat features and biological characteristics tentatively identified as particularly relevant to splittail conservation (Moyle *et al.* 2001).

Recent analytical data indicate that mercury concentrations in aquatic biota in the San Joaquin River are exceeding screening thresholds and may pose ecological and human health risks (Davis *et al.*, 2000). A benthic-foraging, longer-lived fish such as splittail would be likely to acquire higher and more toxic levels of whole body mercury concentration. We are concerned the combined data from these monitoring and research efforts may indicate that mercury in the San Joaquin River poses a threat to ecological health in general, and the splittail, as a benthic forager, in particular. Some findings have linked elevated mercury to the Consumnes and Yolo Bypass (Slotten *et al.* 2000), which are both primary spawning areas for splittail (Moyle *et al.* 2001). Furthermore, the Yolo Bypass may be hydrologically connected to Suisun Marsh, the likely core rearing area for splittail (Moyle *et al.* 2001). Suchanek *et al.* (2000) is investigating the role of wetland restoration involving re-flooding of mercury-contaminated soils.

Significant exposure to selenium could potentially pose a threat to splittail throughout much of its range, including the Yolo Bypass. Recent samples of splittail from Montezuma Slough collected by USGS scientists (Stewart *et al.* 2000, Stewart *et al.* unpubl. data) have revealed elevated muscle selenium concentrations ranging as high as 4 to 5 mg/kg (5 ppm), and liver concentrations ranging as high as 20 mg/kg (20 ppm). The relationship between the bioaccumulation of selenium in the Asiatic clam and its predation by splittail could become significant in the near-term future because the clam, via its predation on typical splittail prey items such as estuarine copepods (*Eurytemora affinis*, and *Acartia* spp.) (Kimmerer and Peňalva 2000), is creating conditions that promotes increasing reliance of splittail on the clam as an alternate food source (Feyrer and Matern 2000). Thus, a potential scenario for the future is greater reliance of splittail on Asiatic clams as a food supply and possibly further increases of selenium concentrations in both Asiatic clams and splittail. Selenium threats to splittail are not confined to the Yolo Bypass/Suisun Marsh systems. We speculate that when splittail are exposed to this level of selenium, there is potential that a reduction in reproductive performance will occur, which would then result in poor post-hatch survivorship. This means that less splittail young would be able to recruit to adulthood. There are 1998 splittail data which confirm that these fish are being exposed to harmful levels of selenium in their range along the San Joaquin River.

Splittail apparently experience substantial post-spawning stress, and are subject to substantial stress during salvage operations at the State and Federal pumping facilities. In addition to weakening the immune defenses of fish and wildlife, excessive environmental selenium can also trigger pathogen and toxin challenges that would not otherwise have occurred. At this point, we have no direct information on the potential effects of selenium with respect to splittail. However we have considered the selenium-mediated vulnerability to non-chemical stressors when assessing the threats presented by exposure of splittail to selenium.

Several of the pesticides present in the rivers of the Central Valley have been documented to have adverse effects on animal life. However, we have no direct evidence that pesticides are a pervasive threat to the splittail throughout its range. If there is a threat it may be relatively greater in the bypasses due to the large amount of spawning and early rearing that occurs there in wet years. All major rivers that are tributary to the Estuary are exposed to large volumes of agricultural and industrial chemicals that are applied in the Central Valley watershed (Nichols *et al.* 1986) as agricultural chemicals and their residues, as well as chemicals originating in urban runoff find their way into the rivers and estuary.

In addition, re-flooding of the Sutter and Yolo Bypasses and the use of other flooded agricultural lands by splittail for spawning can result in agricultural-related chemical exposures depending on the circumstances.

Toxicology studies of rice field irrigation drain water of the Colusa Basin Drainage Canal have documented significant toxicity of drain water to striped bass (*Morone saxatilis*) embryos and larvae, *Oryzias latipes* larvae (in the Cyprinodontidae family), and opossum shrimp, which is the major food organism of striped bass larvae and juveniles (Bailey *et al.* 1991), as well as all age classes of splittail. This drainage canal flows into the Sacramento River just north of the City of Sacramento. The majority of drain water samples collected during April and May 1990 were acutely toxic to striped bass larvae (96 hour exposures); this was the third consecutive year rice irrigation drain water from the Colusa Basin was acutely toxic (Bailey *et al.* 1991). Splittail may be similarly affected by agricultural and industrial chemical runoff, particularly, because like striped bass, adults migrate upriver to spawn and young rear upriver until waters recede in late spring.

While we have considered these contaminants as possible threats to the splittail, it must also be noted that we have no information on the splittail's thresholds for metals and pesticides. We are unwilling to accept the use of a surrogate species to determine acceptable thresholds for splittail. While there are abundant non-native cyprinids available (fathead minnows [*Pimephales promelas*] and golden shiners [*Notemigonus crysoleucas*]), we assert the splittail is behaviorally unlike these non-native fishes and most likely physiologically distinct from them as well. Further, potential surrogate native cyprinids (hardhead [*Mylopharodon conocephalus*], blackfish [*Orthodon microlepidotus*], pikeminnow [*Ptychocheilus grandis*]) are piscivorous (fish-eating) when adults, and therefore likely distinct from splittail. Splittail may have its closest relative in the Rhinichthys complex (speckled dace [*Rhinichthys osculus*] and others) but use of these diminutive, short-lived, small-stream species would be similarly unadvisable. Lastly, we would have serious concerns with results obtained

from non-cyprinids surrogate species, such as white sturgeon, bluegill, inland silverside, mosquito fish, and lake trout, as they would certainly be both physiologically and behaviorally distinct from splittail and therefore useless in determining thresholds for the splittail. We therefore have determined that the above mentioned thresholds for other fish species are not indicative of the thresholds of the splittail. For all fish species, the potential for at least periodic adverse impacts from exposure to metals and pesticides is of potentially substantive concern, but poorly understood and poorly documented. Thus we have no real basis for concluding that these substances represent a particular threat to the splittail.

Finally, Moyle *et al.* (2001) hypothesize that success of juvenile downstream migration is strongly linked to the size that juvenile splittail achieve prior to exiting the spawning areas. It was suggested that a minimum size of 25 mm (1 in) greatly enhances success of downstream migration. Moyle *et al.* (2001) have already presented data demonstrating statistically-significant declining growth rates in Suisun Marsh splittail between 1980 and 1995. The apparent declines in growth rate appear to correlate to the invasion of the estuary by the Asiatic clam, and the subsequent shift of splittail to an Asiatic clam-dominated diet. Moyle *et al.* (2001) suggested that this trend might reflect poorer energetics of a non-mysid shrimp-dominated diet, but it can just as plausibly be suggested that it reflects the cachexia (contaminant-induced weight loss despite calorically sufficient dietary intake) that is a classic symptom of non-lethal selenium poisoning. However we have no particular basis for finding the growth rates are the result of any contaminent induced mechanism.

CALFED's Water Quality Program, which was not analyzed in the January 12, 2001, notice (66 FR 2828), will have a net benefit for the splittail when implemented (*see* Factor A for a discussion of CALFED). The Water Quality Program includes the following actions: (1) Reduce the impacts of pesticides through development and implementation of Best Management Practices (BMPs) for both urban and agricultural uses, through support of pesticide studies for regulatory agencies, and through providing education and assistance in implementation of control strategies for the regulated pesticide users; (2) reduce the load of organochlorine pesticides in the system by reducing runoff and erosion from agricultural lands through BMPs; (3) reduce the impacts of trace metals, such as copper, cadmium, and zinc, through source control at inactive and abandoned mine sites, urban storm water programs and agricultural BMPs; (4) reduce mercury levels in rivers and the estuary by source control at inactive and abandoned mine sites; (5) reduce selenium impacts through reduction of loads at their sources and through appropriate land fallowing and land retirement programs; (6) reduce salt sources in urban and industrial wastewater and facilitate development of successful water recycling, source water blending, and groundwater storage programs; (7) manage Delta salinity by limiting salt loadings from its tributaries and through managing seawater intrusion by such means as using storage capacity to maintain Delta outflow and adjust timing of outflow, and by export management; (8) reduce turbidity and sedimentation; (9) reduce the impairment of rivers and the estuary from substances that exert excessive demand on dissolved oxygen; and, (10) through research and monitoring, to identify parameters of concern in the water and sediment and impairment actions, to reduce their impacts to aquatic resources.

Conclusion: Splittail are no longer threatened by interference in CVP and SWP salvage operations by the introduced Chinese mitten crab and unscreened diversions. The Yolo and Sutter Bypasses are a net benefit to the splittail. CALFED's Ecosystem Restoration Program (discussed in Factor A above) will conduct instream flow studies to determine the flows necessary to support all life stages of anadromous and estuarine fish species, including splittail, which will offset the threat of drought and flow regime changes resulting from water project operations. The threats of poor water quality from contaminants including mercury, selenium and pesticides, and bioaccumulation of selenium in the introduced Asiatic clam, appear to be reduced by CALFED's Water Quality Program (discussed in Factor E above). At present, although environmental contaminants are pervasive throughout the range of the splittail, and many contaminants have the potential to pose a significant threat to splittail, there is insufficient scientific evidence at this time to indicate that environmental contaminants impair splittail growth and reproduction at all; much less to a magnitude that would warrant listing splittail due to that threat alone or in combination with others.

Finding

We have carefully assessed the best scientific and commercial information available regarding the abundance and distribution of; and the past, present, and future threats faced by the splittail in this listing determination. The following narrative will summarize the pertinent data regarding abundance and threats.

Based upon our statistical analysis using a relaxed standard for significance, we conclude that splittail populations may have declined over the period of analysis. We recognize that other agencies, including USBR and CDFG, believe that the available data do not indicate a population decline. However, the magnitude, certainty, and ecological significance of the apparent population decline remain unclear.

We believe that above all else, the primary threat to splittail is the loss of spawning and rearing habitat. Past habitat losses are offset by the implementation programs of CALFED and the CVPIA which are restoring significant amounts of habitat previously lost. In addition, those programs ensure that future water operations and development will protect and improve existing habitats. The many additional ongoing and future habitat restoration projects throughout the range of the splittail include, either as direct or indirect effects, spawning and rearing habitat for the splittail, or enhancement of such habitat. The restoration of splittail habitat enables greater spawning and rearing opportunities and thus increases the population size, ameliorating all of the remaining threats to a level below the point at which the splittail would meet the definition of a threatened species.

We therefore have determined that the splittail is not in danger of extinction through all or a significant portion of its range either now or in the foreseeable future. It therefore does not meet the definition of an endangered or threatened species. As a result, we have determined that listing the splittail as endangered or threatened under the Act is not warranted.

In making this finding, we recognize that the Sacramento splittail may be experiencing a decline in population size based upon our conservative statistical analysis, and that the species continues to face potential threats from habitat loss. We also recognize that the full implementation of CALFED and the CVPIA restoration programs are not 100 percent certain. Finally, we recognize other threats to the species, its habitat, and its prey exist, including effects of drought and climate change on habitat; non-native competitors and predators; and possible threats of disease and environmental contaminants. We will continue to monitor the status and

management of the species. We will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. If we find that circumstances change to the point that any of these threats change significantly, we will reexamine the status of the splittail.

Coordination With the State of California

The State of California administers, via CDFG, the California Endangered Species Act (CESA) (Fish and Game Code sections 2050 to 2116, *et seq.*). The purposes of the CESA are to conserve, protect, restore, and enhance any bird, mammal, fish, amphibian, reptile, or plant meeting CESA criteria for threatened or endangered status, and to acquire lands for habitat for these species.

Procedures governing the submission and review of petitions for listing, uplisting, downlisting, and delisting of CESA endangered and CESA threatened species of plants and animals are described in section 670.1, Title 14, California Code of Regulations.

Under CESA, a State ''threatened'' species is a California native species that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts (Fish and Game Code section 2067). A State ''endangered'' species is that which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease (Fish and Game Code section 2062). The splittail is not listed as threatened or endangered by the State of California under the authority of CESA. There appears to be substantive similarity between the Federal requirement under section 4(a)(1) of the Act and the State requirement under section 14(i)(1)(A) of the of the California Code of Regulations to consider all factors affecting a species. There also appears to be a high degree of similarity between the definition of a ''threatened species'' under both section 3(20) of the Act and CESA (Fish and Game Code section 2067).

CDFG submitted comments regarding the status of the splittail during the January 12, 2001, May 8, 2001, and August 17, 2001, comment periods (66 FR 2828, 66 FR 23181, and 66 FR 43145, respectively) subsequent to the court's June 23, 2000, summary judgement. Further, CDFG staff were involved in an interagency peer review effort undertaken concurrent with the August 17, 2001, comment period. CDFG comments were limited only to alternate analyses of species abundance (see the Summary of Comments and Recommendations section).

We are actively coordinating with California Environmental Protection Agency (CalEPA), the State Water Resources Control Board (SWRCB), and the Regional Water Quality Control Boards (RWQCBs) through public comment periods on their regulatory program actions (USFWS 2002b). The CalEPA, SWRCB, and OEHHA provided no comments regarding the listing, however. The CDWR and the Reclamation Board did comment to a certain degree regarding the factors affecting the splittail (*see* the Summary of Comments and Recommendations section).

We have given full consideration to CDFG as well as CDWR recommendations to employ an alternate abundance analysis (see Abundance and our response to Comment 1). Indeed, we used the CDFG/USBR MRF model, the result of a joint State and Federal scientific undertaking, to determine if a trend exists for the species. Based on our evaluation of conservation efforts completed, currently underway, and likely to stem from CALFED and the CVPIA, we now agree with the State that listing of the splittail as a threatened species is not warranted at this time.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. For additional information concerning permits and associated requirements for threatened wildlife species, *see* 50 CFR 17.21 and 17.22.

References Cited

A complete list of all references cited in this final rule is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**).

Authors

The primary authors of this document are staff of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—(AMENDED)

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by removing the entry ''Sacramento splittail'' under ''FISHES'' from the List of Endangered and Threatened Wildlife and Plants.

Dated: September 15, 2003.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–23919 Filed 9–18–03; 12:01 pm]

BILLING CODE 4310–55–P

Federal Register

Monday,
September 22, 2003

Part IV

National Archives and Records Administration

Information Security Oversight Office

32 CFR Parts 2001 and 2004
Classified National Security Information (Directive No. 1); Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Parts 2001 and 2004

RIN 3095–AB18

Classified National Security Information Directive No. 1

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Implementing directive; final rule.

SUMMARY: The Information Security Oversight Office, National Archives and Records Administration, is publishing this Directive as a final rule and pursuant to Section 5.1(a) and (b) of Executive Order 12958, as amended, relating to classified national security information. The Executive order prescribes a uniform system for classifying, safeguarding, and declassifying national security information. It also establishes a monitoring system to enhance its effectiveness. This Directive sets forth guidance to agencies on original and derivative classification, downgrading, declassification, and safeguarding of classified national security information.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: J. William Leonard, Director, ISOO, at 202–219–5250.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the provisions of 5.1 (a) and (b) of Executive Order 12958, as further amended by Executive Order 13292, published March 28, 2003 (60 FR 15315) and amends 32 CFR part 2001, Directive No. 1 published on October 13, 1995 (60 FR 53492). Further, this Directive incorporates 32 CFR part 2004, Safeguarding Classified National Security Information, into this Part. The purpose of this Directive is to assist in implementing the Order; users of the Directive shall refer concurrently to that Order for guidance. As of November 17, 1995, ISOO became a part of the National Archives and Records Administration. The Archivist of the United States delegated the implementation and monitoring functions of this program to the Director of ISOO. The drafting, coordination and issuance of this Directive fulfills one of the responsibilities of the implementation delegated to the Director of ISOO.

This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation. The interpretive guidance contained in this rule will assist agencies in implementing Executive Order 12958, which was amended on March 25, 2003. NARA has also determined that delaying the effective date for 30 days is unnecessary as this rule updates the existing Directive implementing Executive Order 12958. Moreover, since the revised Executive Order 12958 becomes effective on September 22, 2003, Federal agencies will benefit immediately by having up-to-date ISOO guidance, and any delay in the effective date would hinder agency procedure and be contrary to the public interest.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies.

List of Subjects

32 CFR Part 2001

Archives and records, Authority delegations (Government agencies), Classified information, Executive orders, Freedom of Information, Information, Intelligence, National defense, National security information, Presidential documents, Security information, Security measures.

32 CFR Part 2004

Classified information.

■ 1. Title 32 of the Code of Federal Regulations, part 2001, is revised to read as follows:

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

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2001.83 Effective date [6.3].

Authority: Section 5.1(a) and (b), E.O. 12958, 60 FR 19825, 3 CFR 1995 Comp., p. 333, as amended by E.O. 13292, 60 FR 19825, March 25, 2003.

Subpart A—Classification

§ 2001.10 Classification standards [1.1, 1.5].[1]

(a) *''An original classification authority with jurisdiction over the information''* includes:

(1) The official who authorized the original classification, if that official is still serving in the same position;

(2) The originator's current successor in function;

(3) A supervisory official of either; or

(4) The senior agency official under Executive Order 12958, as amended (''the Order'').

(b) *''Permanently valuable information''* or *''permanent historical value''* refers to information contained in:

(1) Records that have been accessioned into the National Archives of the United States;

(2) Records that have been scheduled as permanent under a records

[1] Bracketed references pertain to related sections of Executive Order 12958, as amended by E.O. 13292.

disposition schedule approved by the National Archives and Records Administration (NARA); and

(3) Presidential historical materials, presidential records or donated historical materials located in the National Archives of the United States, a presidential library, or any other approved repository.

(c) *Identifying or describing damage to the national security.* Section 1.1(a) of the Order sets forth the conditions for classifying information in the first instance. One of these conditions, the ability to identify or describe the damage to the national security, is critical to the process of making an original classification decision. There is no requirement, at the time of the decision, for the original classification authority to prepare a written description of such damage. However, the original classification authority must be able to support the decision in writing, including identifying or describing the damage, should the classification decision become the subject of a challenge or access demand.

(d) *Declassification without proper authority.* Classified information that has been declassified without proper authority remains classified. Administrative action shall be taken to restore markings and controls, as appropriate.

§ 2001.11 Classification authority [1.3].

(a) *General.* Agencies with original classification authority shall establish a training program for original classifiers in accordance with subpart F of this part.

(b) *Requests for original classification authority.* Agencies not possessing such authority shall forward requests to the Director of the Information Security Oversight Office (ISOO). The agency head must make the request and shall provide a specific justification of the need for this authority. The Director of ISOO shall forward the request, along with the Director's recommendation, to the President through the Assistant to the President for National Security Affairs within 30 days. Agencies wishing to increase their assigned level of original classification authority shall forward requests in accordance with the procedures of this section.

§ 2001.12 Duration of classification [1.5].

(a) *Determining duration of classification for information originally classified under the Order.*

(1) *Establishing duration of classification.* When determining the duration of classification for information originally classified under this Order, an original classification authority shall follow the sequence listed in paragraphs (a)(1)(i), (ii), and (iii) of this section.

(i) The original classification authority shall attempt to determine a date or event that is less than 10 years from the date of original classification and which coincides with the lapse of the information's national security sensitivity, and shall assign such date or event as the declassification instruction.

(ii) If unable to determine a date or event of less than 10 years, the original classification authority shall ordinarily assign a declassification date that is 10 years from the date of the original classification decision.

(iii) If unable to determine a date or event of 10 years, the original classification authority shall assign a declassification date not to exceed 25 years from the date of the original classification decision.

(2) *Extending duration of classification for information originally classified under the Order.* Extensions of classification are not automatic. If an original classification authority with jurisdiction over the information does not extend the classification of information assigned a date or event for declassification, the information is automatically declassified upon the occurrence of the date or event. If an original classification authority has assigned a date or event for declassification that is less than 25 years from the date of classification, an original classification authority with jurisdiction over the information may extend the classification duration of such information for a period not to exceed 25 years from the date of origination.

(i) For information in records determined to have permanent historical value, successive extensions may not exceed a total of 25 years from the date of the information's origin. Continued classification of this information beyond 25 years is governed by section 3.3 of the Order.

(ii) For information in a file series of records determined not to have permanent historical value, the duration of classification beyond 25 years shall be the same as the disposition of those records (destruction date) in each agency Records Control Schedule or General Records Schedule approved by the National Archives and Records Administration, although the duration of classification may be extended if a record has been retained for business reasons beyond its scheduled destruction date.

(iii) For currently unscheduled records, the duration of classification beyond 25 years shall be determined in accordance with the provisions of (a)(2)(i) (for permanently valuable records) or (a)(2)(ii) (for temporary records) when the records are scheduled.

(3) *Conditions for extending classification.* When extending the duration of classification, the original classification authority must:

(i) Be an original classification authority with jurisdiction over the information;

(ii) Ensure that the information continues to meet the standards for classification under the Order; and

(iii) Make reasonable attempts to notify all known holders of the information.

(b) *Information classified under prior orders.*

(1) *Specific date or event.* Unless declassified earlier, information marked with a specific date or event for declassification under a prior order is automatically declassified upon that date or event. However, if the information is contained in records determined by the Archivist of the United States to be permanently valuable, and the prescribed date or event will take place more than 25 years from the information's origin, the declassification of the information will instead be subject to section 3.3 of the Order.

(2) *Indefinite duration of classification.* For information marked ''Originating Agency's Determination Required,'' its acronym ''OADR,'' or with some other marking indicating an indefinite duration of classification under a prior order:

(i) A declassification authority, as defined in section 6.1 of the Order, may declassify it;

(ii) An authorized original classification authority with jurisdiction over the information may re-mark the information to establish a duration of classification consistent with the requirements for information originally classified under the Order, as provided in paragraph (a) of this section; or

(iii) Unless declassified earlier, such information contained in records determined by the Archivist of the United States to be permanently valuable shall remain classified for 25 years from the date of its origin, at which time it will be subject to section 3.3 of the Order.

(c) *Changing the classification level of information originally classified under the Order.* An original classification authority with jurisdiction over the information may change the level of classification of information. Documents shall be remarked with the new classification level, the date of the

action, and the authority for the change. Changing the classification level may also require changing portion markings for information contained within a document. Additionally, the original classification authority shall update appropriate security classification guides.

(d) *Reclassifying specific information.* An original classification authority with jurisdiction over the information may reclassify information that has been declassified or marked as unclassified in cases involving specific information that has not been publicly released under proper authority and has not been subject to a Freedom of Information Act, Privacy Act, or Mandatory Declassification Review request. (If the information has been publicly released under proper authority, see section 1.7(c) of the Order and § 2001.13; if the information has not been publicly released but has been the subject of an access demand, see section 1.7(d) of the Order.).

(1) When taking this action, an original classification authority must include the following markings on the information:

(i) The level of classification;

(ii) The identity, by name or personal identifier and position, of the original classification authority;

(iii) declassification instructions;

(iv) a concise reason for classification; and

(v) the date the action was taken.

(2) The original classification authority shall notify all known authorized holders of this action.

(e) *Exemption categories from 10-year declassification.* The markings for exemption categories X1 through X8 can no longer be used. When these markings appear on information dated before September 22, 2003, the information shall be declassified 25 years from the date of the original decision, unless it has been properly exempted under section 3.3 of the Order.

(f) *Foreign government information.* The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification or appears to be subject to automatic declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. Depending on the age of the information and whether it is contained in permanently valuable records, the declassifying agency shall also determine if another exemption under section 3.3 (b) of the Order, such as the exemption that pertains to United States foreign relations, may apply to the information. If the declassifying agency believes such an exemption may apply, it should consult with any other concerned agencies in making its declassification determination. The declassifying agency or the Department of State, as appropriate, may consult with the foreign government(s) prior to declassification.

(g) *Determining when information is subject to automatic declassification.* The ''date of the information's origin'' or ''the information's origin,'' as used in the Order and this part, pertains to the date that specific information, which is contemporaneously or subsequently classified, is first recorded in an agency's records, or in presidential historical materials, presidential records or donated historical materials. The following examples illustrate this process:

Example 1. An agency first issues a classification guide on the F–99 aircraft on October 20, 1995. The guide states that the fact that the F–99 aircraft has a maximum velocity of 500 m.p.h. shall be classified at the ''Secret'' level for a period of ten years. A document dated July 10, 1999, is classified because it includes the maximum velocity of the F–99. The document should be marked for declassification on October 20, 2005, ten years after the specific information was first recorded in the guide, not on July 10, 2009, ten years after the derivatively classified document was created.

Example 2. An agency classification guide issued on October 20, 1995, states that the maximum velocity of any fighter aircraft shall be classified at the ''Secret'' level for a period of ten years. The agency first records the specific maximum velocity of the new F–88 aircraft on July 10, 1999. The document should be marked for declassification on July 10, 2009, ten years after the specific information is first recorded, and not on October 20, 2005, ten years after the date of the guide's generic instruction. Subsequent documents containing this information would be marked for declassification 10 years from the date of the document.

§ 2001.13 Classification prohibitions and limitations [1.7].

(a) In making the decision to reclassify information that has been declassified and released to the public under proper authority, the agency head or deputy agency head must determine in writing that reclassification of the information is necessary in the interest of the national security.

(1) In addition, the agency must deem the information to be reasonably recoverable which means that:

(i) Most individual recipients or holders are known and can be contacted and all forms of the information to be reclassified can be retrieved from them and

(ii) If the information has been made available to the public via means such as Government archives or reading rooms, it is withdrawn from public access.

(2) The declassification and release of information under proper authority means that the agency originating the information authorized the declassification and release of the information.

(b) Once the reclassification action has occurred, it must be reported to ISOO within 30 days. The notification must include how the ''reasonably recoverable'' decision was made, including the number of recipients or holders, how the information was retrieved and how the recipients or holders were briefed.

(c) Any recipients or holders of the reclassified information who have current security clearances shall be appropriately briefed about their continuing legal obligations and responsibilities to protect this information from unauthorized disclosure. The recipients or holders who do not have security clearances shall, to the extent practicable, be appropriately briefed about the reclassification of the information that they have had access to, their obligation not to disclose the information, and be requested to sign an acknowledgement of this briefing.

(d) The reclassified information must be appropriately marked and safeguarded. The markings should include the reclassification authority and the date of the action. Apply other markings as provided in subpart B of this part.

§ 2001.14 Classification challenges [1.8].

(a) *Challenging classification.* Authorized holders wishing to challenge the classification status of information shall present such challenges to an original classification authority with jurisdiction over the information. An authorized holder is any individual, including an individual external to the agency, who has been granted access to specific classified information in accordance with the provisions of the Order to include the special conditions set forth in section 4.1(h) of the Order. A formal challenge under this provision must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level.

(b) *Agency procedures.* (1) Because the Order encourages authorized holders to challenge classification as a means for promoting proper and thoughtful classification actions,

agencies shall ensure that no retribution is taken against any authorized holders bringing such a challenge in good faith.

(2) Agencies shall establish a system for processing, tracking and recording formal classification challenges made by authorized holders. Agencies shall consider classification challenges separately from Freedom of Information Act or other access requests, and shall not process such challenges in turn with pending access requests.

(3) The agency shall provide an initial written response to a challenge within 60 days. If the agency is unable to respond to the challenge within 60 days, the agency must acknowledge the challenge in writing, and provide a date by which the agency will respond. The acknowledgment must include a statement that if no agency response is received within 120 days, the challenger has the right to forward the challenge to the Interagency Security Classification Appeals Panel (ISCAP) for a decision. The challenger may also forward the challenge to the ISCAP if an agency has not responded to an internal appeal within 90 days of the agency's receipt of the appeal. Agency responses to those challenges it denies shall include the challenger's appeal rights to the ISCAP.

(4) Whenever an agency receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, the agency is not required to process the challenge beyond informing the challenger of this fact and of the challenger's appeal rights, if any.

(c) *Additional considerations.* (1) Challengers and agencies shall attempt to keep all challenges, appeals and responses unclassified. However, classified information contained in a challenge, an agency response, or an appeal shall be handled and protected in accordance with the Order and its implementing directives. Information being challenged for classification shall remain classified unless and until a final decision is made to declassify it.

(2) The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries should be encouraged as a means of holding down the number of formal challenges.

§ 2001.15 Classification guides [2.2].

(a) *Preparation of classification guides.* Originators of classification guides are encouraged to consult users of guides for input when developing or updating guides. When possible, originators of classification guides are encouraged to communicate within their agencies and with other agencies that are developing guidelines for similar activities to ensure the consistency and uniformity of classification decisions. Each agency shall maintain a list of its classification guides in use.

(b) *General content of classification guides.* Classification guides shall, at a minimum:

(1) Identify the subject matter of the classification guide;

(2) Identify the original classification authority by name or personal identifier, and position;

(3) Identify an agency point-of-contact or points-of-contact for questions regarding the classification guide;

(4) Provide the date of issuance or last review;

(5) State precisely the elements of information to be protected;

(6) State which classification level applies to each element of information, and, when useful, specify the elements of information that are unclassified;

(7) State, when applicable, special handling caveats;

(8) Prescribe declassification instructions or the exemption category from automatic declassification at 25 years, as approved by the ISCAP under section 3.3(d) of the Order and listed in § 2001.21(e) of subpart B, for each element of information; and

(9) State a concise reason for classification which, at a minimum, cites the applicable classification category or categories in section 1.4 of the Order.

(c) Dissemination of classification guides. Classification guides shall be disseminated as widely as necessary to ensure the proper and uniform derivative classification of information.

(d) *Reviewing and updating classification guides.*

(1) Classification guides, including guides created under prior orders, shall be reviewed and updated as circumstances require, but, in any event, at least once every five years. Updated instructions for guides first created under prior orders shall comply with the requirements of the Order and this part.

(2) Originators of classification guides are encouraged to consult the users of guides for input when reviewing or updating guides. Also, users of classification guides are encouraged to notify the originator of the guide when they acquire information that suggests the need for change in the instructions contained in the guide.

Subpart B—Identification and Markings

§ 2001.20 General [1.6].

A uniform security classification system requires that standard markings be applied to classified information. Except in extraordinary circumstances, or as approved by the Director of ISOO, the marking of classified information created after September 22, 2003, shall not deviate from the following prescribed formats. If markings cannot be affixed to specific classified information or materials, the originator shall provide holders or recipients of the information with written instructions for protecting the information. Markings shall be uniformly and conspicuously applied to leave no doubt about the classified status of the information, the level of protection required, and the duration of classification.

§ 2001.21 Original classification [1.6(a)].

(a) *Primary markings.* On the face of each originally classified document, regardless of the media, the original classification authority shall apply the following markings.

(1) *Classification authority.* The name or personal identifier, and position title of the original classification authority shall appear on the ''Classified By'' line. An example might appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

or

Classified By: ID#IMNO1, Chief, Division 5, Department of Good Works, Office of Administration

(2) *Agency and office of origin.* If not otherwise evident, the agency and office of origin shall be identified and follow the name on the ''Classified By'' line. An example might appear as:

Classified By: David Smith, Chief, Division 5 Department of Good Works, Office of Administration.

(3) *Reason for classification.* The original classification authority shall identify the reason(s) for the decision to classify. The original classification authority shall include, at a minimum, a brief reference to the pertinent classification category(ies), or the number 1.4 plus the letter(s) that corresponds to that classification category in section 1.4 of the Order.

(i) These categories, as they appear in the Order, are as follows:

(A) Military plans, weapons systems, or operations;

(B) Foreign government information;

(C) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;

(D) Foreign relations or foreign activities of the United States, including confidential sources;

(E) Scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;

(F) United States Government programs for safeguarding nuclear materials or facilities;

(G) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or

(H) Weapons of mass destruction.

(ii) An example might appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: Vulnerabilities or capabilities of plans relating to the national security

or

Reason: 1.4(g)

(iii) When the reason for classification is not apparent from the content of the information, *e.g.*, classification by compilation, the original classification authority shall provide a more detailed explanation of the reason for classification.

(4) *Declassification instructions.* The duration of the original classification decision shall be placed on the ''Declassify On'' line. The original classification authority will apply one of the following instructions:

(i) The original classification authority will apply a date or event for declassification that corresponds to the lapse of the information's national security sensitivity, that is less than 10 years from the date of the original decision. When linking the duration of classification to a specific date or event, mark that date or event as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: 1.4(g)

Declassify On: October 14, 2004

or

Declassify On: Completion of Operation

(ii) When a specific date or event within 10 years cannot be established, the original classification authority will apply the date that is 10 years from the date of the original decision. For example, on a document that contains information classified on October 14, 2003, mark the ''Declassify On'' line as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: 1.4(g)

Declassify On: October 14, 2013

(iii) Upon the determination that the information must remain classified beyond 10 years, the original classification authority will apply a date not to exceed 25 years from the date of the original decision. For example, on a document that contains information classified on October 10, 2003, mark the ''Declassify On'' line as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: 1.4(g)

Declassify On: October 10, 2028

(b) Overall marking. The highest level of classified information contained in a document shall appear in a way that will distinguish it clearly from the informational text.

(1) Conspicuously place the overall classification at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any).

(2) For documents containing information classified at more than one level, the overall marking shall be the highest level. For example, if a document contains some information marked ''Secret'' and other information marked ''Confidential,'' the overall marking would be ''Secret.''

(3) Each interior page of a classified document shall be marked at the top and bottom either with the highest level of classification of information contained on that page, including the designation ''Unclassified'' when it is applicable, or with the highest overall classification of the document.

(c) *Portion marking.* Each portion of a document, ordinarily a paragraph, but including subjects, titles, graphics and the like, shall be marked to indicate its classification level by placing a parenthetical symbol immediately preceding or following the portion to which it applies.

(1) To indicate the appropriate classification level, the symbols ''(TS)'' for Top Secret, ''(S)'' for Secret, ''(C)'' for Confidential, and ''(U)'' for Unclassified shall be used.

(2) Each classified portion of a document marked exempt from automatic declassification shall be exempted unless the original classification authority indicates otherwise on the document.

(3) An agency head or senior agency official may request a waiver from the portion marking requirement for a specific category of information. Such a request shall be submitted to the Director of ISOO and should include the reasons that the benefits of portion marking are outweighed by other factors. Statements citing administrative burden alone will ordinarily not be viewed as sufficient grounds to support a waiver.

(d) *Classification extensions.* (1) An original classification authority may extend the duration of classification for up to 25 years from the date of the information's origin for information contained in records determined to be permanently valuable.

(2) The ''Declassify On'' line shall be revised to include the new declassification instructions, and shall include the identity of the person authorizing the extension and the date of the action.

(3) The office of origin shall make reasonable attempts to notify all holders of such information. Classification guides shall be updated to reflect such revisions.

(4) An example of an extended duration of classification may appear as follows for a document dated December 1, 2003 with a declassification date of December 1, 2015:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: 1.4(g)

Declassify On: Classification extended on December 1, 2005, until December 1, 2028, by David Jones, Chief, Division 5

(e) *Marking information exempted from automatic declassification at 25 years.* (1) When an agency head or senior agency official exempts permanently valuable information from automatic declassification at 25 years, the ''Declassify On'' line shall be revised to include the symbol ''25X'' plus a brief reference to the pertinent exemption category(ies) or the number(s) that corresponds to that category(ies) in section 3.3(b) of the Order. Other than when the exemption pertains to the identity of a confidential human source, or a human intelligence source, the revised ''Declassify On'' line shall also include the new date or event for declassification. The marking for an exemption for the identity of a confidential human source or a human intelligence source shall be ''25X1-human.'' This marking denotes that this specific information is not subject to automatic declassification.

(2) The pertinent exemptions, using the language of section 3.3(b) of the Order, are:

25X1: reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;

25X2: reveal information that would assist in the development or use of weapons of mass destruction;

25X3: reveal information that would impair U.S. cryptologic systems or activities;

25X4: reveal information that would impair the application of state-of-the-art technology within a U.S. weapon system;

25X5: reveal actual U.S. military war plans that remain in effect;

25X6: reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

25X7: reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;

25X8: reveal information that would seriously and demonstrably impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, infrastructures, or projects relating to the national security; or

25X9: violate a statute, treaty, or international agreement.

(3) The pertinent portion of the marking would appear as:

Declassify On: 25X-State-of-the-art technology within a U.S. weapon system, October 1, 2020

or

Declassify On: 25X4, October 1, 2020

(4) Documents should not be marked with a ''25X'' marking until the agency has been informed that the President or the Interagency Security Classification Appeals Panel concurs with the proposed exemption. Agencies that have submitted proposed exemptions or a declassification guide to the ISCAP may mark documents with ''25X'' categories, while waiting for ISCAP concurrence, unless otherwise notified by the Panel's Executive Secretary.

(5) Agencies need not apply a ''25X'' marking to individual documents contained in a file series exempted from automatic declassification under section 3.3(c) of the Order until the individual document is removed from the file.

§ 2001.22 Derivative classification [2.1].

(a) *General.* Information classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in § 2001.20 and § 2001.21, except as provided in this section. Information for these markings shall be carried forward from the source document or taken from instructions in the appropriate classification guide.

(b) *Source of derivative classification.* (1) The derivative classifier shall concisely identify the source document or the classification guide on the ''Derived From'' line, including the agency and, where available, the office of origin, and the date of the source or guide. An example might appear as:

Derived From: Memo, ''Funding Problems,'' October 20, 2003, Office of Administration, Department of Good Works

or

Derived From: CG No. 1, Department of Good Works, dated October 20, 2003

(i) When a document is classified derivatively on the basis of more than one source document or classification guide, the ''Derived From'' line shall appear as: Derived From: Multiple Sources

(ii) The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. When practicable, this list should be included in or with all copies of the derivatively classified document.

(2) A document derivatively classified on the basis of a source document that is itself marked ''Multiple Sources'' shall cite the source document on its ''Derived From'' line rather than the term ''Multiple Sources.'' An example might appear as:

Derived From: Report entitled, ''New Weapons,'' dated October 20, 2003, Department of Good Works, Office of Administration

(c) *Reason for classification.* The reason for the original classification decision, as reflected in the source document(s) or classification guide, is not required to be transferred in a derivative classification action. If included, however, it shall conform to the standards in § 2001.21(a)(3).

(d) *Declassification instructions.* (1) The derivative classifier shall carry forward the instructions on the ''Declassify On'' line from the source document to the derivative document, or the duration instruction from the classification or declassification guide.

(2) When a document is classified derivatively on the basis of more than one source document or more than one element of a classification guide, the ''Declassify On'' line shall reflect the longest duration of any of its sources.

(i) When a document is classified derivatively either from a source document(s) or a classification guide that contains the declassification instruction, ''Originating Agency's Determination Required,'' or ''OADR,'' or from a source document(s) or a classification guide that contains any of the exemption markings X1 through X8. Unless otherwise instructed by the original classifier, the derivative classifier shall carry forward:

(A) The fact that the source document(s) was marked with this instruction; and

(B) The date of origin of the most recent source document(s), classification guides, or specific information, as appropriate to the circumstances.

(ii) Examples might appear as:

Declassify On: Source Marked ''OADR'', Date of source: October 20, 1990

or

Declassify On: Source Marked ''X1'', Date of source: October 20, 2000

(iii) Either of these markings will permit the determination of when the classified information is 25 years old and, if permanently valuable, subject to automatic declassification under section 3.3 of the Order.

(e) *Overall marking.* The derivative classifier shall conspicuously mark the classified document with the highest level of classification of information included in the document, as provided in § 2001.21(b).

(f) *Portion marking.* Each portion of a derivatively classified document shall be marked in accordance with its source, and as provided in § 2001.21(c).

§ 2001.23 Additional requirements [1.6].

(a) *Marking prohibitions.* Markings other than ''Top Secret,'' ''Secret,'' and ''Confidential,'' such as ''For Official Use Only,'' ''Sensitive But Unclassified,'' ''Limited Official Use,'' or ''Sensitive Security Information'' shall not be used to identify classified national security information. No other term or phrase shall be used in conjunction with these markings, such as ''Secret Sensitive'' or ''Agency Confidential,'' to identify classified national security information. The terms ''Top Secret,'' ''Secret,'' and ''Confidential'' should not be used to identify non-classified executive branch information.

(b) *Agency prescribed special markings.* Agencies shall refrain from the use of special markings when they merely restate or emphasize the principles and standards of the Order and this part. Upon request, the senior agency official shall provide the Director of ISOO with a written explanation for the use of agency special markings.

(c) *Transmittal documents.* A transmittal document shall indicate on its face the highest classification level of any classified information attached or enclosed. The transmittal shall also include conspicuously on its face the following or similar instructions, as appropriate:

Unclassified When Classified Enclosure Removed

or

Upon Removal of Attachments, This Document is (Classification Level)

(d) *Foreign government information.* Documents that contain foreign government information shall include the marking, ''This Document Contains (indicate country of origin) Information.'' The portions of the document that contain the foreign government information shall be marked to indicate the government and classification level, using accepted country code standards, *e.g.*, ''(Country code—C).'' If the identity of the specific government must be concealed, the document shall be marked, ''This Document Contains Foreign Government Information,'' and pertinent portions shall be marked ''FGI'' together with the classification level, *e.g.*, ''(FGI–C).'' In such cases, a separate record that identifies the foreign government shall be maintained in order to facilitate subsequent declassification actions. When classified records are transferred to the National Archives and Records Administration for storage or archival purposes, the accompanying documentation shall, at a minimum, identify the boxes that contain foreign government information. If the fact that information is foreign government information must be concealed, the markings described in this paragraph shall not be used and the document shall be marked as if it were wholly of U.S. origin.

(e) *Working papers.* A working paper is defined as documents or materials, regardless of the media, which are expected to be revised prior to the preparation of a finished product for dissemination or retention. Working papers containing classified information shall be dated when created, marked with the highest classification of any information contained in them, protected at that level, and if otherwise appropriate, destroyed when no longer needed. When any of the following conditions applies, working papers shall be controlled and marked in the same manner prescribed for a finished document at the same classification level:

(1) Released by the originator outside the originating activity;

(2) Retained more than 180 days from the date of origin; or

(3) Filed permanently.

(f) *Other material.* Bulky material, equipment and facilities, etc. shall be clearly identified in a manner that leaves no doubt about the classification status of the material, the level of protection required, and the duration of classification. Upon a finding that identification would itself reveal classified information, such identification is not required. Supporting documentation for such a finding must be maintained in the appropriate security facility.

(g) *Unmarked materials.* Information contained in unmarked records, or presidential or related materials, and which pertains to the national defense or foreign relations of the United States and has been maintained and protected as classified information under prior orders shall continue to be treated as classified information under the Order, and is subject to its provisions regarding declassification.

§ 2001.24 Declassification markings [1.5, 1.6, 3.3].

(a) *General.* A uniform security classification system requires that standard markings be applied to declassified information. Except in extraordinary circumstances, or as approved by the Director of ISOO, the marking of declassified information shall not deviate from the following prescribed formats. If declassification markings cannot be affixed to specific information or materials, (*e.g.*, agencies using automated information systems, special media, microfilm) the originator shall provide holders or recipients of the information with written instructions for marking the information. Markings shall be uniformly and conspicuously applied to leave no doubt about the declassified status of the information and who authorized the declassification.

(b) The following markings shall be applied to records, or copies of records, regardless of media:

(1) The word, ''Declassified;''

(2) The name or personal identifier, and position title of the declassification authority or declassification guide;

(3) The date of declassification; and

(4) The overall classification markings that appear on the cover page or first page shall be lined with an ''X'' or straight line. An example might appear as:

~~**SECRET**~~

Declassified by David Smith, Chief, Division 5, August 17, 2005

Subpart C—Declassification

§ 2001.30 Automatic declassification [3.3].

(a) *General.* All departments and agencies that have original classification authority, or previously had original classification authority, and maintain records appraised as having permanent historical value that contain information classified by that agency shall comply with the automatic declassification provisions of the Order. All agencies with original classification authority shall cooperate with NARA in managing automatic declassification of accessioned Federal records, presidential papers and records, and donated historical materials under the control of the Archivist of the United States.

(b) *Presidential records.* The Archivist of the United States shall establish procedures for the declassification of presidential or White House materials transferred to the legal custody of the National Archives of the United States or maintained in the presidential libraries.

(c) *Classified information in the custody of contractors, licensees, certificate holders, grantees or other authorized private organizations or individuals.* Pursuant to the provisions of National Industrial Security Program, agencies must provide security classification/declassification guidance to such entities or individuals who possess classified information. Agencies must also determine if classified Federal records are held by such entities or individuals, and if so, whether they are permanent records of historical value and thus subject to section 3.3 of this Order. Until such a determination has been made by an appropriate agency official, the classified information contained in such records shall not be subject to automatic declassification and shall be safeguarded in accordance with the most recent security classification/declassification guidance provided by the agency.

(d) *Transferred information.* In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage or archival purposes, the receiving agency shall be deemed to be the originating agency.

(e) *Unofficially transferred information.* In the case of classified information that is not officially transferred as described in paragraph (d), of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, the Director of ISOO will designate an agency or agencies to act on provisions of the Order, with the concurrence of the designated agency or agencies.

(f) *Processing records originated by another agency.* When an agency uncovers classified records originated by another agency that appear to meet the criteria for the application of the automatic declassification provisions of the Order, the finding agency should

alert the originating agency and seek instruction.

(g) *Unscheduled records.* Classified information in records that have not been scheduled for disposal or retention by NARA is not subject to section 3.3 of the Order. Classified information in records that are scheduled as permanently valuable when that information is already more than 20 years old shall be subject to the automatic declassification provisions of section 3.3 of the Order five years from the date the records are scheduled. Classified information in records that are scheduled as permanently valuable when that information is less than 20 years old shall be subject to the automatic declassification provisions of section 3.3 of the Order when the information is 25 years old.

(h) *Foreign government information.* The declassifying agency is the agency that initially received or classified the information. When foreign government information appears to be subject to automatic declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. The declassifying agency shall also determine if another exemption under section 3.3(b) of the Order, such as the exemption that pertains to United States foreign relations, may apply to the information. If the declassifying agency believes such an exemption may apply, it should consult with any other concerned agencies in making its declassification determination. The declassifying agency or the Department of State, as appropriate, should consult with the foreign government prior to declassification.

(i) *Assistance to the Archivist of the United States.* Agencies shall consult with NARA before establishing automatic declassification programs. Agencies shall cooperate with NARA in developing schedules for the declassification of records in the National Archives of the United States and the presidential libraries to ensure that declassification is accomplished in a timely manner. NARA will provide information about the records proposed for automatic declassification. Agencies shall consult with NARA before reviewing records in their holdings to ensure that appropriate procedures are established for maintaining the integrity of the records and that NARA receives accurate information about agency declassification actions when records are accessioned into NARA. NARA will provide guidance to the agencies about the requirements for notification of declassification actions on accessioned records, box labeling, and identifying exempt information in the records.

(j) *Use of approved declassification guides.* Approved declassification guides are a basis for the exemption from automatic declassification of specific information as provided in section 3.3(d) of the Order. These guides must include additional pertinent detail relating to the exemptions described in section 3.3(b) of the Order, and follow the format required of declassification guides for systematic review as described in § 2001.32 of this part. In order for such guides to be used in place of the identification of specific information within individual documents, the information to be exempted must be narrowly defined, with sufficient specificity to allow the user to identify the information with precision. Exemptions for general categories of information will not be acceptable. The actual items to be exempted are specific documents. All such declassification guides used in conjunction with section 3.3(d) of the Order must be submitted to the Director of ISOO, serving as Executive Secretary of the Interagency Security Classification Appeals Panel, for approval by the Panel.

(k) *Automatic declassification date.* No later than December 31, 2006, all classified records that are more than 25 years old and have been determined to have permanent historical value will be automatically declassified whether or not the records have been reviewed.

(l) *Exemption from Automatic Declassification.* Agencies may propose to exempt from automatic declassification specific information, either by reference to information in specific records or in the form of a classification or declassification guide, within five years of, but not later than 180 days before the information is subject to automatic declassification. The agency head or senior agency official, within the specified timeframe, shall notify the Director of ISOO, serving as the Executive Secretary of the Interagency Security Classification Appeals Panel, of the specific information being proposed for exemption from automatic declassification.

(m) *Delays in the onset of automatic declassification.* (1) Microforms, motion pictures, audiotapes, videotapes, or comparable media. An agency head or senior agency official, either through its agency's declassification plan, or within 90 days of the decision, must notify the Director of the Information Security Oversight Office of a decision to delay the onset of automatic declassification for classified information contained in this type of media. Agencies may delay the date for automatic declassification for up to five additional years for these types of special media. Information contained in special media that has been referred shall be automatically declassified five years from the date of notification or 30 years from the date of origination of the special media, whichever is longer, unless the information has been properly exempted by the equity holding agency under section 3.3(d) of the Order.

(2) Referred or Transferred Records. An agency head or senior agency official, either through the agency's declassification plan or within 90 days of the decision, must notify the Director of the Information Security Oversight Office of a decision to delay the onset of automatic declassification for records that have been referred or transferred to that agency. Agencies that have records subject to automatic declassification must identify all equities and refer them to the appropriate agency prior to the date of automatic declassification or, if the information has been properly exempted by the referring agency, prior to the specific date or event for declassification under section 3.3(d) of the Order. Information contained in records that have been referred shall be automatically declassified three years from the date of notification or 28 years from the date of origination of the records, whichever is longer, unless the information has been properly exempted by another equity holding agency under section 3.3(d) of the Order. Agencies receiving a notification of a referral must immediately acknowledge receipt of it. Notifying agencies must follow-up if an acknowledgment is not received within 60 days.

(3) Newly Discovered Records. An agency head or senior agency official must notify the Director of the Information Security Oversight Office of any decision to delay automatic declassification no later than 90 days, from discovery of the records. The notification should identify the records and the anticipated date for declassification. An agency has up to three years from the date of discovery to make a declassification, exemption or referral determination. If other agencies' interests or equities are identified in the newly discovered records, those agencies will have three years from the date of notification to complete their review and make a declassification or exemption determination.

(n) *Redaction standard.* Agencies are encouraged but are not required to redact documents that contain information that is exempt from

automatic declassification under section 3.3 of the Order, especially if the information that must remain classified comprises a relatively small portion of the document.

(o) *Restricted Data and Formerly Restricted Data.* (1) Records containing Restricted Data (RD) and Formerly Restricted Data (FRD) are excluded from the automatic declassification requirements in section 3.3 of the Order because they are classified under the Atomic Energy Act of 1954, as amended. Restricted Data concerns:

(i) The design, manufacture, or utilization of atomic weapons;

(ii) The production of special nuclear material, *e.g.*, enriched uranium or plutonium; or

(iii) The use of special nuclear material in the production of energy.

(2) Formerly Restricted Data is information that is still classified but which has been removed from the Restricted Data category because it is related primarily to the military utilization of atomic weapons.

(3) Any document marked as containing Restricted Data or Formerly Restricted Data shall remain classified indefinitely or shall be referred to the Department of Energy for a classification review.

§ 2001.31 Systematic declassification review [3.4].

(a) *Listing of declassification authorities.* Agencies shall maintain a current listing of officials delegated declassification authority by name, position, or other identifier. If possible, this listing shall be unclassified.

(b) *Responsibilities.* Agencies shall establish systematic review programs for those records containing information exempt from automatic declassification. Agencies may also conduct systematic review of information contained in permanently valuable records that is less than 25 years.

§ 2001.32 Declassification guides [3.3].

(a) *Preparation of declassification guides.* Declassification guides shall be prepared to facilitate the declassification of information contained in records determined to be of permanent historical value. When it is sufficiently detailed and understandable, and identified for both purposes, a classification guide may also be used as a declassification guide.

(b) *General content of declassification guides.* Declassification guides shall, at a minimum:

(1) Identify the subject matter of the declassification guide;

(2) Identify the original declassification authority by name or personal identifier, and position;

(3) Provide the date of issuance or last review;

(4) State precisely the categories or elements of information:

(i) To be declassified;

(ii) To be downgraded; or

(iii) Not to be declassified.

(5) Identify any related files series that have been exempted from automatic declassification pursuant to section 3.3(c) of the Order;

(6) To the extent a guide is used in conjunction with the automatic declassification provisions in section 3.3 of the Order, state precisely the elements of information to be exempted from declassification to include:

(i) The appropriate exemption category listed in section 3.3(b) of the Order, and, when citing the exemption category listed in section 3.3(b)(9) of the Order, specify the applicable statute, treaty or international agreement; and

(ii) A date or event for declassification.

(c) *External review.* Agencies shall submit declassification guides for review to the Director of ISOO. To the extent such guides are used in conjunction with the automatic declassification provisions in section 3.3 of the Order, the Director shall submit them for approval by the Interagency Security Classification Appeals Panel. Agencies that have submitted a declassification guide to the ISCAP may use the guide while waiting for ISCAP approval, unless otherwise notified by the Panel's Executive Secretary.

(d) *Internal review and update.* Agency declassification guides shall be reviewed and updated as circumstances require, but at least once every five years. Each agency shall maintain a list of its declassification guides in use.

§ 2001.33 Mandatory review for declassification [3.5, 3.6].

(a) *U.S. originated information.*

(1) Receipt of requests. Each agency shall publish in the **Federal Register** the identity of the person(s) or office(s) to which mandatory declassification review requests should be addressed.

(2) Processing.

(i) Requests for classified records in the custody of the originating agency. A valid mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient specificity to allow agency personnel to locate the records containing the information sought with a reasonable amount of effort. In responding to mandatory declassification review requests, agencies shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. Agencies shall ordinarily make a final determination within one year from the date of receipt. When information cannot be declassified in its entirety, agencies shall make reasonable efforts to release, consistent with other applicable law, those declassified portions of the requested information that constitute a coherent segment. Upon denial of an initial request, the agency shall also notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial.

(ii) Requests for classified records in the custody of an agency other than the originating agency. When an agency receives a mandatory declassification review request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency. However, if the originating agency has previously agreed that the custodial agency may review its records, the custodial agency shall review the requested records in accordance with declassification guides or guidelines provided by the originating agency. Upon receipt of a request from the referring agency, the originating agency shall process the request in accordance with this section. The originating agency shall communicate its declassification determination to the referring agency.

(iii) Appeals of denials of mandatory declassification review requests. The agency appellate authority shall normally make a determination within 60 working days following the receipt of an appeal. If additional time is required to make a determination, the agency appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The agency appellate authority shall notify the requester in writing of the final determination and of the reasons for any denial.

(iv) Appeals to the Interagency Security Classification Appeals Panel. In accordance with section 5.3(c) of the Order, the Interagency Security Classification Appeals Panel shall publish in the **Federal Register** the rules and procedures for bringing mandatory declassification appeals before it.

(b) *Foreign government information.* Except as provided in this paragraph, agency heads shall process mandatory declassification review requests for classified records containing foreign government information in accordance

with this section. The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. The declassifying agency or the Department of State, as appropriate, may consult with the foreign government(s) prior to declassification.

(c) *Cryptologic and intelligence information.* Mandatory declassification review requests for cryptologic information and information concerning intelligence activities (including special activities) or intelligence sources or methods shall be processed solely in accordance with special procedures issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

(d) *Fees.* In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with section 9701 of title 31, United States Code.

(e) *Assistance to the Department of State.* Heads of agencies should assist the Department of State in its preparation of the Foreign Relations of the United States (FRUS) series by facilitating access to appropriate classified materials in their custody and by expediting declassification review of documents proposed for inclusion in the FRUS.

(f) *Requests filed under mandatory declassification review and the Freedom of Information Act.* When a requester submits a request both under mandatory review and the Freedom of Information Act (FOIA), the agency shall require the requester to elect one process or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory review.

(g) *FOIA and Privacy Act requests.* Agency heads shall process requests for declassification that are submitted under the provisions of the FOIA, as amended, or the Privacy Act of 1974, in accordance with the provisions of those Acts.

(h) *Redaction standard.* Agencies shall redact documents that are the subject of an access demand unless the overall meaning or informational value of the document is clearly distorted by redaction.

§ 2001.34 Referrals [3.3, 3.6].

(a) *Approaches to declassification.* The exchange of information between agencies and the final disposition of documents are affected by differences in the approaches to declassification. To facilitate this process, the Information Security Oversight Office, in coordination with the National Archives and Records Administration and the other concerned agencies, shall standardize the referral process, including the development of standard forms. Agencies conducting pass/fail reviews may refer documents to agencies that redact. Actions taken by the sender and the recipient may differ as noted below:

(1) When a referral is from a pass/fail agency to a pass/fail agency, both agencies conduct a pass/fail review and annotate the classification or declassification decisions in accordance with NARA guidelines. The receiving agency should also notify the referring agency that the review has been completed.

(2) When a referral is from a pass/fail agency to a redaction agency, the redaction agency is only required to conduct pass/fail reviews of documents referred by a pass/fail agency. If the redaction agency wishes to redact the document, it must do so on a copy of the referred document, then file the redacted version with the original. The redaction agency should also notify the pass/fail referring agency that the review has been completed.

(3) Referrals from redaction agencies to pass/fail agencies will be in the form of document copies. In the course of review the pass/fail agency may either pass or fail the document or its equities. The pass/fail agency may review and redact failed documents when practicable.

(4) Referrals between redaction agencies may result in redaction of any exemptible equities.

(b) *Referral decisions.* When agencies review documents or folders only to the point at which exemptible information is identified, they must take one of the following actions to protect any other unidentified equities that may be in the unreviewed portions of the document:

(1) Complete a review of the document or folder to identify other agency equities and notify those agencies; or

(2) Exempt the document or folder and assign a Date/Event for automatic declassification, before which time they must provide timely notification to any equity agencies. Agencies reviewing a previously exempted document or folder may apply a different exemption and new Date/Event for automatic declassification based upon the content of previously unreviewed equities.

(c) *Unmarked or improperly marked documents.* Agencies that find other agency information in unmarked or improperly marked documents may apply a different exemption and new Date/Event for automatic declassification based upon the content of previously unreviewed equities.

(d) *Means of Referral.* The reviewing agency must communicate referrals to equity agencies. They may use either of the methods below:

(1) Full text referral. Agencies will make referrals in a format mutually agreed to by the referring and receiving agencies. Each referral request will clearly identify the referring agency and may identify the sections or areas of the document containing the receiving agency's equities and the requested action; or

(2) Tab and notify.

(i) Agencies will use NARA-approved tabs and will clearly indicate on them the agency or agencies having equity in the document(s) held within the tabs. Successive documents with identical equity(ies) may be grouped within a single tab. Documents with differing equities, or non-successive documents, must be tabbed individually. In general, document order may not be changed to facilitate tabbing. In cases where there are so many tabbed documents in a box that tabbing documents individually would seriously overfill the box, the reviewer may group documents under a single tab for each agency equity at the back of each file folder, or back of the box if there is no file folder. If this becomes necessary, the reviewer shall prepare a folder/document list or consult with NARA so that original order can be restored during archival processing.

(ii) Agency notification must include, at a minimum, the following information: the approximate volume of equity, the highest classification of documents, the exact location (to box level) of the documents so marked, and instructions related to access to the boxes containing the documents.

(iii) Agencies will acknowledge receipt of referral notifications. They should notify the agency that placed the tabs that the review is complete. Any additional equities noted in the review must be annotated on the tab and brought to the attention of the agency that tabbed the document so the tabbing agency can notify those newly identified agencies.

(iv) Equity Notification Database. Agencies may also use an electronic notification database as a means of notification. Use of such a database, when available, will constitute referral and acknowledgement of referrals received under the Order.

Subpart D—Safeguarding

§ 2001.40 General [4.1].

(a) Classified information, regardless of its form, shall be afforded a level of protection against loss or unauthorized disclosure commensurate with its level of classification.

(b) Except for NATO and other foreign government information, agency heads or their designee(s) (hereinafter referred to as agency heads) may adopt alternative measures, using risk management principles, to protect against loss or unauthorized disclosure when necessary to meet operational requirements. When alternative measures are used for other than temporary, unique situations, the alternative measures shall be documented and provided to the Director, Information Security Oversight Office (ISOO), to facilitate that office's oversight responsibility. Upon request, the description shall be provided to any other agency with which classified information or secure facilities are shared. In all cases, the alternative measures shall provide protection sufficient to reasonably deter and detect loss or unauthorized disclosure. Risk management factors considered will include sensitivity, value and crucial nature of the information; analysis of known and anticipated threats; vulnerability; and countermeasure benefits versus cost.

(c) NATO classified information shall be safeguarded in compliance with U.S. Security Authority for NATO Instructions I–69 and I–70. Other foreign government information shall be safeguarded as described herein for U.S. information except as required by an existing treaty, agreement or other obligation (hereinafter, obligation). When the information is to be safeguarded pursuant to an existing obligation, the additional requirements at § 2001.53 may apply to the extent they were required in the obligation as originally negotiated or are agreed upon during amendment. Negotiations on new obligations or amendments to existing obligations shall strive to bring provisions for safeguarding foreign government information into accord with standards for safeguarding U.S. information as described in this Directive.

(d) An agency head who originates or handles classified information shall refer any matter pertaining to the implementation of this Directive that he or she cannot resolve to the Director, ISOO for resolution.

§ 2001.41 Responsibilities of holders [4.1].

Authorized persons who have access to classified information are responsible for:

(a) Protecting it from persons without authorized access to that information, to include securing it in approved equipment or facilities whenever it is not under the direct control of an authorized person;

(b) Meeting safeguarding requirements prescribed by the agency head; and

(c) Ensuring that classified information is not communicated over unsecured voice or data circuits, in public conveyances or places, or in any other manner that permits interception by unauthorized persons.

§ 2001.42 Standards for security equipment [4.1].

The Administrator of General Services shall, in coordination with agency heads originating classified information, establish and publish uniform standards, specifications and supply schedules for security equipment designed to provide secure storage for and destruction of classified information. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications established by the Administrator of General Services, and shall, to the maximum extent possible, be of the type available through the Federal Supply System.

§ 2001.43 Storage [4.1].

(a) *General.* Classified information shall be stored only under conditions designed to deter and detect unauthorized access to the information. Storage at overseas locations shall be at U.S. Government controlled facilities unless otherwise stipulated in treaties or international agreements. Overseas storage standards for facilities under a Chief of Mission are promulgated under the authority of the Overseas Security Policy Board.

(b) *Requirements for physical protection.* (1) Top Secret. Top Secret information shall be stored by one of the following methods:

(i) In a GSA-approved security container with one of the following supplemental controls:

(A) Continuous protection by cleared guard or duty personnel;

(B) Inspection of the security container every two hours by cleared guard or duty personnel;

(C) An Intrusion Detection System (IDS) with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation [Acceptability of Intrusion Detection Equipment (IDE): All IDE must be UL-listed (or equivalent as defined by the agency head) and approved by the agency head. Government and proprietary installed, maintained, or furnished systems are subject to approval only by the agency head.]; or

(D) Security-In-Depth conditions, provided the GSA-approved container is equipped with a lock meeting Federal Specification FF-L–2740.

(ii) An open storage area constructed in accordance with § 2001.43, which is equipped with an IDS with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation if the area is covered by Security-In-Depth or a five minute alarm response if it is not.

(iii) An IDS-equipped vault with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation.

(2) Secret. Secret information shall be stored by one of the following methods:

(i) In the same manner as prescribed for Top Secret information;

(ii) In a GSA-approved security container or vault without supplemental controls; or

(iii) In either of the following:

(A) Until October 1, 2012, in a non-GSA-approved container having a built-in combination lock or in a non-GSA-approved container secured with a rigid metal lockbar and an agency head approved padlock; or

(B) An open storage area. In either case, one of the following supplemental controls is required:

(*1*) The location that houses the container or open storage area shall be subject to continuous protection by cleared guard or duty personnel;

(*2*) Cleared guard or duty personnel shall inspect the security container or open storage area once every four hours; or

(*3*) An IDS (per paragraph (b)(1)(i)(C) of this section) with the personnel responding to the alarm arriving within 30 minutes of the alarm annunciation. [In addition to one of these supplemental controls specified in paragraphs (b)(2)(iii)(B)(*1*) through (*3*), security-in-depth as determined by the agency head is required as part of the supplemental controls for a non-GSA-approved container or open storage area storing Secret information.]

(3) Confidential. Confidential information shall be stored in the same manner as prescribed for Top Secret or Secret information except that supplemental controls are not required.

(c) *Combinations.* Use and maintenance of dial-type locks and other changeable combination locks.

(1) Equipment in service. The classification of the combination shall

be the same as the highest level of classified information that is protected by the lock. Combinations to dial-type locks shall be changed only by persons having a favorable determination of eligibility for access to classified information and authorized access to the level of information protected unless other sufficient controls exist to prevent access to the lock or knowledge of the combination. Combinations shall be changed under the following conditions:

(i) Whenever such equipment is placed into use;

(ii) Whenever a person knowing the combination no longer requires access to it unless other sufficient controls exist to prevent access to the lock; or

(iii) Whenever a combination has been subject to possible unauthorized disclosure.

(2) Equipment out of service. When security equipment is taken out of service, it shall be inspected to ensure that no classified information remains and the built-in combination lock shall be reset to a standard combination.

(d) *Key operated locks.* When special circumstances exist, an agency head may approve the use of key operated locks for the storage of Secret and Confidential information. Whenever such locks are used, administrative procedures for the control and accounting of keys and locks shall be established.

§ 2001.44 Information controls [4.1, 4.2].

(a) *General.* Agency heads shall establish a system of control measures which assure that access to classified information is limited to authorized persons. The control measures shall be appropriate to the environment in which the access occurs and the nature and volume of the information. The system shall include technical, physical, and personnel control measures. Administrative control measures which may include records of internal distribution, access, generation, inventory, reproduction, and disposition of classified information shall be required when technical, physical and personnel control measures are insufficient to deter and detect access by unauthorized persons.

(b) *Reproduction.* Reproduction of classified information shall be held to the minimum consistent with operational requirements. The following additional control measures shall be taken:

(1) Reproduction shall be accomplished by authorized persons knowledgeable of the procedures for classified reproduction;

(2) Unless restricted by the originating Agency, Top Secret, Secret, and Confidential information may be reproduced to the extent required by operational needs, or to facilitate review for declassification;

(3) Copies of classified information shall be subject to the same controls as the original information; and

(4) The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified information is encouraged.

§ 2001.45 Transmission [4.1, 4.2].

(a) *General.* Classified information shall be transmitted and received in an authorized manner which ensures that evidence of tampering can be detected, that inadvertent access can be precluded, and that provides a method which assures timely delivery to the intended recipient. Persons transmitting classified information are responsible for ensuring that intended recipients are authorized persons with the capability to store classified information in accordance with this Directive.

(b) *Dispatch.* Agency heads shall establish procedures which ensure that:

(1) All classified information physically transmitted outside facilities shall be enclosed in two layers, both of which provide reasonable evidence of tampering and which conceal the contents. The inner enclosure shall clearly identify the address of both the sender and the intended recipient, the highest classification level of the contents, and any appropriate warning notices. The outer enclosure shall be the same except that no markings to indicate that the contents are classified shall be visible. Intended recipients shall be identified by name only as part of an attention line. The following exceptions apply:

(i) If the classified information is an internal component of a packable item of equipment, the outside shell or body may be considered as the inner enclosure provided it does not reveal classified information;

(ii) If the classified information is an inaccessible internal component of a bulky item of equipment, the outside or body of the item may be considered to be a sufficient enclosure provided observation of it does not reveal classified information;

(iii) If the classified information is an item of equipment that is not reasonably packable and the shell or body is classified, it shall be concealed with an opaque enclosure that will hide all classified features;

(iv) Specialized shipping containers, including closed cargo transporters or diplomatic pouch, may be considered the outer enclosure when used; and

(v) When classified information is hand-carried outside a facility, a locked briefcase may serve as the outer enclosure.

(2) Couriers and authorized persons designated to hand-carry classified information shall ensure that the information remains under their constant and continuous protection and that direct point-to-point delivery is made. As an exception, agency heads may approve, as a substitute for a courier on direct flights, the use of specialized shipping containers that are of sufficient construction to provide evidence of forced entry, are secured with a high security padlock, are equipped with an electronic seal that would provide evidence of surreptitious entry and are handled by the carrier in a manner to ensure that the container is protected until its delivery is completed.

(c) *Transmission methods within and between the U.S., Puerto Rico, or a U.S. possession or trust territory.*

(1) Top Secret. Top Secret information shall be transmitted by direct contact between authorized persons; the Defense Courier Service or an authorized government agency courier service; a designated courier or escort with Top Secret clearance; electronic means over approved communications systems. Under no circumstances will Top Secret information be transmitted via the U.S. Postal Service.

(2) Secret. Secret information shall be transmitted by:

(i) Any of the methods established for Top Secret; U.S. Postal Service Express Mail and U.S. Postal Service Registered Mail, as long as the Waiver of Signature and Indemnity block, item 11–B, on the U.S. Postal Service Express Mail Label shall not be completed; and cleared commercial carriers or cleared commercial messenger services. The use of street-side mail collection boxes is strictly prohibited; and

(ii) Agency heads may, on an exceptional basis and when an urgent requirement exists for overnight delivery within the U.S. and its Territories, authorize the use of the current holder of the General Services Administration contract for overnight delivery of information for the Executive Branch as long as applicable postal regulations (39 CFR chapter I) are met. Any such delivery service shall be U.S. owned and operated, provide automated in-transit tracking of the classified information, and ensure package integrity during transit. The contract shall require cooperation with government inquiries in the event of a loss, theft, or possible unauthorized disclosure of classified information. The

sender is responsible for ensuring that an authorized person will be available to receive the delivery and verification of the correct mailing address. The package may be addressed to the recipient by name. The release signature block on the receipt label shall not be executed under any circumstances. The use of external (street side) collection boxes is prohibited. Classified Communications Security Information, NATO, and foreign government information shall not be transmitted in this manner.

(3) Confidential. Confidential information shall be transmitted by any of the methods established for Secret information or U.S. Postal Service Certified Mail. In addition, when the recipient is a U.S. Government facility, the Confidential information may be transmitted via U.S. First Class Mail. However, Confidential information shall not be transmitted to government contractor facilities via first class mail. When first class mail is used, the envelope or outer wrapper shall be marked to indicate that the information is not to be forwarded, but is to be returned to sender. The use of street-side mail collection boxes is prohibited.

(d) *Transmission methods to a U.S. Government facility located outside the U.S.* The transmission of classified information to a U.S. Government facility located outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or a U.S. possession or trust territory, shall be by methods specified above for Top Secret information or by the Department of State Courier Service. U.S. Registered Mail through Military Postal Service facilities may be used to transmit Secret and Confidential information provided that the information does not at any time pass out of U.S. citizen control nor pass through a foreign postal system.

(e) *Transmission of U.S. classified information to foreign governments.* Such transmission shall take place between designated government representatives using the transmission methods described in paragraph (d) of this section. When classified information is transferred to a foreign government or its representative a signed receipt is required.

(f) *Receipt of classified information.* Agency heads shall establish procedures which ensure that classified information is received in a manner which precludes unauthorized access, provides for inspection of all classified information received for evidence of tampering and confirmation of contents, and ensures timely acknowledgment of the receipt of Top Secret and Secret information by an authorized recipient. As noted in paragraph (e) of this section, a receipt acknowledgment of all classified material transmitted to a foreign government or its representative is required.

§ 2001.46 Destruction [4.1, 4.2].

(a) *General.* Classified information identified for destruction shall be destroyed completely to preclude recognition or reconstruction of the classified information in accordance with procedures and methods prescribed by agency heads. The methods and equipment used to routinely destroy classified information include burning, cross-cut shredding, wet-pulping, melting, mutilation, chemical decomposition or pulverizing.

(b) *Technical guidance.* Technical guidance concerning appropriate methods, equipment, and standards for the destruction of classified electronic media and processing equipment components may be obtained by submitting all pertinent information to the National Security Agency/Central Security Service, Directorate for Information Systems Security, Fort Meade, MD 20755. Specifications concerning appropriate equipment and standards for the destruction of other storage media may be obtained from the GSA.

§ 2001.47 Loss, possible compromise or unauthorized disclosure [4.1, 4.2].

(a) *General.* Any person who has knowledge that classified information has been or may have been lost, possibly compromised or disclosed to an unauthorized person(s) shall immediately report the circumstances to an official designated for this purpose.

(b) *Cases involving information originated by a foreign government or another U.S. government agency.* Whenever a loss or possible unauthorized disclosure involves the classified information or interests of a foreign government agency, or another government agency, the department or agency in which the compromise occurred shall advise the other government agency or foreign government of the circumstances and findings that affect their information or interests. However, foreign governments normally will not be advised of any security system vulnerabilities that contributed to the compromise.

(c) *Inquiry/investigation and corrective actions.* Agency heads shall establish appropriate procedures to conduct an inquiry/investigation of a loss, possible compromise or unauthorized disclosure of classified information, in order to implement appropriate corrective actions, which may include disciplinary sanctions, and to ascertain the degree of damage to national security.

(d) *Department of Justice and legal counsel coordination.* Agency heads shall establish procedures to ensure coordination with legal counsel whenever a formal action, beyond a reprimand, is contemplated against any person believed responsible for the unauthorized disclosure of classified information. Whenever a criminal violation appears to have occurred and a criminal prosecution is contemplated, agency heads shall use established procedures to ensure coordination with—

(1) The Department of Justice, and

(2) The legal counsel of the agency where the individual responsible is assigned or employed.

§ 2001.48 Special access programs [4.3].

(a) *General.* The safeguarding requirements of this Directive may be enhanced for information in Special Access Programs (SAP), established under the provisions of Section 4.3 of E.O. 12958, as amended, by the agency head responsible for creating the SAP. Agency heads shall ensure that the enhanced controls are based on an assessment of the value, critical nature, and vulnerability of the information.

(b) *Significant interagency support requirements.* Agency heads must ensure that a Memorandum of Agreement/Understanding (MOA/MOU) is established for each Special Access Program that has significant interagency support requirements, to appropriately and fully address support requirements and supporting agency oversight responsibilities for that SAP.

§ 2001.49 Telecommunications automated information systems and network security [4.1, 4.2].

Each agency head shall ensure that classified information electronically accessed, processed, stored or transmitted is protected in accordance with applicable national policy issuances identified in the Index of National Security Telecommunications and Information Systems Security Issuances (NSTISSI) and Director of Central Intelligence Directive (DCID) 6/3.

§ 2001.50 Technical security [4.1].

Based upon the risk management factors referenced in § 2001.40 of this directive agency heads shall determine the requirement for technical countermeasures such as Technical Surveillance Countermeasures (TSCM) and TEMPEST necessary to detect or deter exploitation of classified

information through technical collection methods and may apply countermeasures in accordance with NSTISSI 7000, entitled Tempest Countermeasures for Facilities, and SPB Issuance 6–97, entitled National Policy on Technical Surveillance Countermeasures.

§ 2001.51 Emergency authority [4.2].

(a) Agency heads or any designee may prescribe special provisions for the dissemination, transmission, safeguarding and destruction of classified information during certain emergency situations.

(b) In emergency situations, in which there is an imminent threat to life or in defense of the homeland, agency heads or designees may authorize the disclosure of classified information to an individual or individuals who are otherwise not routinely eligible for access under the following conditions:

(1) Limit the amount of classified information disclosed to the absolute minimum to achieve the purpose;

(2) Limit the number of individuals who receive it;

(3) Transmit the classified information via approved Federal Government channels by the most secure and expeditious method to include those required in subpart C of this directive, or other means deemed necessary when time is of the essence;

(4) Provide instructions about what specific information is classified, how it should be safeguarded; physical custody of classified information must remain with an authorized Federal Government entity, in all but the most extraordinary circumstances;

(5) Provide appropriate briefings to the recipients on their responsibilities not to disclose the information and obtain a signed nondisclosure agreement;

(6) Within 72 hours of the disclosure of classified information, or the earliest opportunity that the emergency permits, but no later than 30 days after the release, the disclosing authority must notify the originating agency of the information by providing the following information:

(i) A description of the disclosed information;

(ii) To whom the information was disclosed;

(iii) How the information was disclosed and transmitted;

(iv) Reason for the emergency release;

(v) How the information is being safeguarded; and

(vi) A description of the briefings provided and a copy of the nondisclosure agreements signed.

§ 2001.52 Open storage areas [4.1].

This section describes the construction standards for open storage areas.

(a) *Construction.* The perimeter walls, floors, and ceiling will be permanently constructed and attached to each other. All construction must be done in a manner as to provide visual evidence of unauthorized penetration.

(b) *Doors.* Doors shall be constructed of wood, metal, or other solid material. Entrance doors shall be secured with a built-in GSA-approved three-position combination lock. When special circumstances exist, the agency head may authorize other locks on entrance doors for Secret and Confidential storage. Doors other than those secured with the aforementioned locks shall be secured from the inside with either deadbolt emergency egress hardware, a deadbolt, or a rigid wood or metal bar which extends across the width of the door, or by other means approved by the agency head.

(c) *Vents, ducts, and miscellaneous openings.* All vents, ducts, and similar openings in excess of 96 square inches (and over 6 inches in its smallest dimension) that enter or pass through an open storage area shall be protected with either bars, expanded metal grills, commercial metal sounds baffles, or an intrusion detection system.

(d) *Windows.*

(1) All windows which might reasonably afford visual observation of classified activities within the facility shall be made opaque or equipped with blinds, drapes, or other coverings.

(2) Windows at ground level will be constructed from or covered with materials which provide protection from forced entry. The protection provided to the windows need be no stronger than the strength of the contiguous walls. Open storage areas which are located within a controlled compound or equivalent may eliminate the requirement for forced entry protection if the windows are made inoperable either by permanently sealing them or equipping them on the inside with a locking mechanism and they are covered by an IDS (either independently or by the motion detection sensors within the area.)

§ 2001.53 Foreign Government Information [4.1].

The requirements described below are additional baseline safeguarding standards that may be necessary for foreign government information, other than NATO information, that requires protection pursuant to an existing treaty, agreement, bilateral exchange or other obligation. NATO classified information shall be safeguarded in compliance with United States Security Authority for NATO Instructions I–69 and I–70. To the extent practical, and to facilitate its control, foreign government information should be stored separately from other classified information. To avoid additional costs, separate storage may be accomplished by methods such as separate drawers of a container. The safeguarding standards described below may be modified if required or permitted by treaties or agreements, or for other obligations, with the prior written consent of the National Security Authority of the originating government, hereafter ''originating government.''

(a) *Top Secret.* Records shall be maintained of the receipt, internal distribution, destruction, access, reproduction, and transmittal of foreign government Top Secret information. Reproduction requires the consent of the originating government. Destruction will be witnessed.

(b) *Secret.* Records shall be maintained of the receipt, external dispatch and destruction of foreign government Secret information. Other records may be necessary if required by the originator. Secret foreign government information may be reproduced to meet mission requirements unless prohibited by the originator. Reproduction shall be recorded unless this requirement is waived by the originator.

(c) *Confidential.* Records need not be maintained for foreign government Confidential information unless required by the originator.

(d) *Restricted and other foreign government information provided in confidence.* In order to assure the protection of other foreign government information provided in confidence (*e.g.,* foreign government ''Restricted,'' ''Designated,'' or unclassified provided in confidence), such information must be classified under E.O. 12958 as amended. The receiving agency, or a receiving U.S. contractor, licensee, grantee, or certificate holder acting in accordance with instructions received from the U.S. Government, shall provide a degree of protection to the foreign government information at least equivalent to that required by the government or international organization that provided the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to U.S. CONFIDENTIAL information. If the foreign protection requirement is lower than the protection required for U.S. CONFIDENTIAL information, the following requirements shall be met:

(1) Documents may retain their original foreign markings if the responsible agency determines that these markings are adequate to meet the purposes served by U.S. classification markings. Otherwise, documents shall be marked, ''This document contains (insert name of country) (insert classification level) information to be treated as U.S. (insert classification level).'' The notation, ''Modified Handling Authorized,'' may be added to either the foreign or U.S. markings authorized for foreign government information. If remarking foreign originated documents or matter is impractical, an approved cover sheet is an authorized option;

(2) Documents shall be provided only to those who have an established need-to-know, and where access is required by official duties;

(3) Individuals being given access shall be notified of applicable handling instructions. This may be accomplished by a briefing, written instructions, or by applying specific handling requirements to an approved cover sheet;

(4) Documents shall be stored in such a manner so as to prevent unauthorized access;

(5) Documents shall be transmitted in a method approved for classified information, unless this method is waived by the originating government.

(e) Third-country transfers. The release or disclosure of foreign government information to any third-country entity must have the prior consent of the originating government if required by a treaty, agreement, bilateral exchange, or other obligation.

Subpart E—Self-Inspections

§ 2001.60 General [5.4].

(a) *Purpose.* This subpart sets standards for establishing and maintaining an ongoing agency self-inspection program, which shall include the periodic review and assessment of the agency's classified product. ''Self-inspection'' means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under the Order.

(b) *Applicability.* These standards are binding on all executive branch agencies that create or handle classified information. Pursuant to Executive Order 12829, the National Industrial Security Program Operating Manual (NISPOM) prescribes the security requirements, restrictions and safeguards applicable to industry, including the conduct of contractor self-inspections. The standards established in the NISPOM should be consistent with the standards prescribed in Executive Order 12958, as amended and this part.

(c) *Responsibility.* The senior agency official is responsible for the agency's self-inspection program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) *Approach.* The official(s) responsible for the program shall determine the means and methods for the conduct of self-inspections. These may include:

(1) A review of relevant security directives, guides and instructions;

(2) Interviews with producers and users of classified information;

(3) A review of access and control records and procedures; and

(4) A review of a sample of classified documents generated by agency activities.

(e) *Frequency.* The official(s) responsible for the program shall set the frequency of self-inspections on the basis of program needs and the degree of classification activity. Activities that generate significant amounts of classified information should conduct at least one document review per year.

(f) *Reporting.* The format for documenting findings shall be set by the official(s) responsible for the program.

§ 2001.61 Coverage [5.4(d)(4)].

(a) *General.* These standards are not all-inclusive. Each agency may expand upon the coverage according to program and policy needs. Each self-inspection of an agency activity need not include all the elements covered in this section. Agencies without original classification authority need not include in their self-inspections those elements of coverage pertaining to original classification.

(b) *Elements of coverage.*

(1) Original classification.

(i) Evaluate original classification authority's general understanding of the process of original classification, including the:

(A) Applicable standards for classification;

(B) Levels of classification and the damage criteria associated with each; and

(C) Required classification markings.

(ii) Determine if delegations of original classification authority conform with the requirements of the Order, including whether:

(A) Delegations are limited to the minimum required to administer the program;

(B) Designated original classification authorities have a demonstrable and continuing need to exercise this authority;

(C) Delegations are in writing and identify the official by name or position title; and

(D) New requests for delegation of classification authority are justified.

(iii) Assess original classification authority's familiarity with the duration of classification requirements, including:

(A) Assigning a specific date or event for declassification that is less than 10 years when possible;

(B) Establishing ordinarily a 10 year duration of classification when an earlier date or event cannot be determined; and

(C) Limiting extensions of classification for specific information not to exceed 25 years for permanently valuable records or providing a 25 year exemption.

(iv) Conduct a review of a sample of classified information generated by the inspected activity to determine the propriety of classification and the application of proper and full markings.

(v) Evaluate classifiers' actions to comply with the standards specified in § 2001.15 and § 2001.32 of this part, relating to classification and declassification guides, respectively.

(vi) Verify observance with the prohibitions on classification and limitations on reclassification.

(vii)Assess whether the agency's classification challenges program meets the requirements of the Order and this part.

(2) Derivative classification. Assess the general familiarity of individuals who classify derivatively with the:

(i) Conditions for derivative classification;

(ii) Requirement to consult with the originator of the information when questions concerning classification arise;

(iii) Proper use of classification guides; and

(iv) Proper and complete application of classification markings to derivatively classified documents.

(3) Declassification.

(i) Verify whether the agency has established, to the extent practical, a system of records management to facilitate public release of declassified documents.

(ii) Evaluate the status of the agency declassification program, including the requirement to:

(A) Comply with the automatic declassification provisions regarding historically valuable records over 25 years old;

(B) Declassify, when possible, historically valuable records prior to accession into the National Archives;

(C) Provide the Archivist with adequate and current declassification guides;

(D) Ascertain that the agency's mandatory review program conforms to established requirements; and

(E) Determine whether responsible agency officials are cooperating with the ISOO Director to coordinate the linkage and effective utilization of existing agency databases of records that have been declassified and publicly released.

(4) Safeguarding.

(i) Monitor agency adherence to established safeguarding standards.

(ii) 5.4(c) of the Order—Verify whether the agency has established to the extent practical a records system designed and maintained to optimize the safeguarding of classified information.

(iii) Assess compliance with controls for access to classified information.

(iv) Evaluate the effectiveness of the agency's program in detecting and processing security violations and preventing recurrences.

(v) Assess compliance with the procedures for identifying, reporting and processing unauthorized disclosures of classified information.

(vi) Evaluate the effectiveness of procedures to ensure that:

(A) The originating agency exercises control over the classified information it generates;

(B) Holders of classified information do not disclose information originated by another agency without that agency's authorization; and

(C) Departing or transferred officials return all classified information in their possession to authorized agency personnel.

(5) Security education and training. Evaluate the effectiveness of the agency's security education and training program in familiarizing appropriate personnel with classification procedures; and determine whether the program meets the standards specified in subpart F of this part.

(6) Management and oversight.

(i) Determine whether original classifiers have received prescribed training.

(ii) Verify whether the agency's special access programs:

(A) Adhere to specified criteria in the creation of these programs;

(B) Are kept to a minimum;

(C) Provide for the conduct of internal oversight; and

(D) Include an annual review of each program to determine whether it continues to meet the requirements of the Order.

(iii) Assess whether:

(A) Senior management demonstrates commitment to the success of the program, including providing the necessary resources for effective implementation;

(B) Producers and users of classified information receive guidance with respect to security responsibilities and requirements;

(C) Controls to prevent unauthorized access to classified information are effective;

(D) Contingency plans are in place for safeguarding classified information used in or near hostile areas;

(E) The performance contract or other system used to rate civilian or military personnel includes the management of classified information as a critical element or item to be evaluated in the rating of: Original classifiers; security managers; classification management officers; and security specialists; and other employees whose duties significantly involve the creation or handling of classified information; and

(F) A method is in place for collecting information on the costs associated with the implementation of the Order.

Subpart F—Security Education and Training

§ 2001.70 General [5.4].

(a) *Purpose.* This subpart sets standards for agency security education and training programs. Implementation of these standards should:

(1) Ensure that all executive branch employees who create, process or handle classified information have a satisfactory knowledge and understanding about classification, safeguarding, and declassification policies and procedures;

(2) Increase uniformity in the conduct of agency security education and training programs; and

(3) Reduce improper classification, safeguarding and declassification practices.

(b) *Applicability.* These standards are binding on all executive branch departments and agencies that create or handle classified information. Pursuant to Executive Order 12829, the NISPOM prescribes the security requirements, restrictions, and safeguards applicable to industry, including the conduct of contractor security education and training. The standards established in the NISPOM should be consistent with the standards prescribed in Executive Order 12958, as amended and of this part.

(c) *Responsibility.* The senior agency official is responsible for the agency's security education and training program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) *Approach.* Security education and training should be tailored to meet the specific needs of the agency's security program, and the specific roles employees are expected to play in that program. The agency official(s) responsible for the program shall determine the means and methods for providing security education and training. Training methods may include briefings, interactive videos, dissemination of instructional materials, and other media and methods. Agencies shall maintain records about the programs it has offered and employee participation in them.

(e) *Frequency.* The frequency of agency security education and training will vary in accordance with the needs of the agency's security classification program. Each agency shall provide some form of refresher security education and training at least annually.

§ 2001.71 Coverage [5.4(d)(3)].

(a) *General.* Each department or agency shall establish and maintain a formal security education and training program which provides for initial and refresher training, and termination briefings. This subpart establishes security education and training standards for original classification authorities, declassification authorities, security managers, classification management officers, security specialists, and all other personnel whose duties significantly involve the creation or handling of classified information. These standards are not intended to be all-inclusive. The official responsible for the security education and training program may expand or modify the coverage provided in this part according to the agency's program and policy needs.

(b) *Elements of initial coverage.* All cleared agency personnel shall receive initial training on basic security policies, principles, practices, and criminal, civil, and administrative penalties. Such training must be provided in conjunction with the granting of a security clearance, and prior to granting access to classified information. The following areas should be considered for inclusion in initial briefings.

(1) Roles and responsibilities.

(i) What are the responsibilities of the senior agency official, classification management officers, the security manager and the security specialist?

(ii) What are the responsibilities of agency employees who create or handle classified information?

(iii) Who should be contacted in case of questions or concerns about classification matters?

(2) Elements of classifying and declassifying information.

(i) What is classified information and why is it important to protect it?

(ii) What are the levels of classified information and the damage criteria associated with each level?

(iii) What are the prescribed classification markings and why is it important to have classified information fully and properly marked?

(iv) What are the general requirements for declassifying information?

(v) What are the procedures for challenging the classification status of information?

(3) Elements of safeguarding.

(i) What are the proper procedures for safeguarding classified information?

(ii) What constitutes an unauthorized disclosure and what are the criminal, civil, and administrative penalties associated with these disclosures?

(iii) What are the general conditions and restrictions for access to classified information?

(iv) What should an individual do when he or she believes safeguarding standards may have been violated?

(c) *Specialized security education and training.* Original classification authorities, authorized declassification authorities, individuals specifically designated as responsible for derivative classification, classification management officers, security managers, security specialists, and all other personnel whose duties significantly involve the creation or handling of classified information should receive more detailed training. This training should be provided before or concurrent with the date the employee assumes any of the positions listed above, but in any event no later than six months from that date. Coverage considerations should include:

(1) Original Classification Authorities.

(i) What is the difference between original and derivative classification?

(ii) Who can classify information originally?

(iii) What are the standards that a designated classifier must meet to classify information?

(iv) What discretion does the Original Classification Authority have in classifying information, for example, foreign government information.

(v) What is the process for determining duration of classification?

(vi) What are the prohibitions and limitations on classifying information?

(vii) What are the basic markings that must appear on classified information?

(viii) What are the general standards and procedures for declassification?

(2) Declassification authorities other than original classification authorities.

(i) What are the standards, methods and procedures for declassifying information under Executive Order 12958, as amended?

(ii) What are the standards for creating and using agency declassification guides?

(iii) What is contained in the agency's automatic declassification plan?

(iv) What are the agency responsibilities for the maintenance of a declassification database?

(3) Individuals specifically designated as responsible for derivative classification, security managers, classification management officers, security specialists or any other personnel whose duties significantly involve the creation or handling of classified information.

(i) What are the original and derivative classification processes and the standards applicable to each?

(ii) What are the proper and complete classification markings, as described in subpart B of this part?

(iii) What are the authorities, methods and processes for downgrading and declassifying information?

(iv) What are the methods for the proper use, storage, reproduction, transmission, dissemination and destruction of classified information?

(v) What are the requirements for creating and updating classification and declassification guides?

(vi) What are the requirements for controlling access to classified information?

(vii) What are the procedures for investigating and reporting instances of security violations, and the penalties associated with such violations?

(viii) What are the requirements for creating, maintaining, and terminating special access programs, and the mechanisms for monitoring such programs?

(ix) What are the procedures for the secure use, certification and accreditation of automated information systems and networks which use, process, store, reproduce, or transmit classified information?

(x) What are the requirements for oversight of the security classification program, including agency self-inspections?

(d) *Refresher security education and training.* Agencies shall provide refresher training to employees who create, process or handle classified information. Refresher training should reinforce the policies, principles and procedures covered in initial and specialized training. Refresher training should also address the threat and the techniques employed by foreign intelligence activities attempting to obtain classified information, and advise personnel of penalties for engaging in espionage activities. Refresher training should also address issues or concerns identified during agency self-inspections. When other methods are impractical, agencies may satisfy the requirement for refresher training by means of audiovisual products or written materials.

(e) *Termination briefings.* Each agency shall ensure that each employee granted access to classified information who leaves the service of the agency receives a termination briefing. Also, each agency employee whose clearance is withdrawn must receive such a briefing. At a minimum, termination briefings must impress upon each employee: The continuing responsibility not to disclose any classified information to which the employee had access and the potential penalties for non-compliance; and the obligation to return to the appropriate agency official all classified documents and materials in the employee's possession.

(f) *Other security education and training.* Agencies are encouraged to develop additional security education and training according to program and policy needs. Such security education and training could include:

(1) Practices applicable to U.S. officials traveling overseas;

(2) Procedures for protecting classified information processed and stored in automated information systems;

(3) Methods for dealing with uncleared personnel who work in proximity to classified information;

(4) Responsibilities of personnel serving as couriers of classified information; and

(5) Security requirements that govern participation in international programs.

Subpart G—Reporting and Definitions

§ 2001.80 Statistical reporting [5.2(b)(4)].

Each agency that creates or handles classified information shall report annually to the Director of ISOO statistics related to its security classification program. The Director will instruct agencies what data elements are required, and how and when they are to be reported.

§ 2001.81 Accounting for costs [5.4(d)(8)].

(a) Information on the costs associated with the implementation of the Order will be collected from the agencies. The agencies will provide data to ISOO on the cost estimates for classification-related activities. ISOO will report these cost estimates annually to the President. The agency senior official should work

closely with the agency comptroller to ensure that the best estimates are collected.

(b) The Secretary of Defense, acting as the executive agent for the National Industrial Security Program under Executive Order 12829, and consistent with agreements entered into under section 202 of E.O. 12829, will collect cost estimates for classification-related activities of contractors, licensees, certificate holders, and grantees, and report them to ISOO annually. ISOO will report these cost estimates annually to the President.

§ 2001.82 Definitions [6.1].

(a) *''Accessioned Records''* means records of permanent historical value in the legal custody of NARA.

(b) *''Authorized person''* means a person who has a favorable determination of eligibility for access to classified information, has signed an approved nondisclosure agreement, and has a need-to-know for the specific classified information in the performance of official duties.

(c) *''Cleared commercial carrier''* means a carrier that is authorized by law, regulatory body, or regulation, to transport SECRET and CONFIDENTIAL material and has been granted a SECRET facility clearance in accordance with the National Industrial Security Program.

(d) *''Control''* means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

(e) *''Declassified or Declassification''* means the authorized change in the status of information from classified information to unclassified information.

(f) *''Equity''* means information originally classified by or under the control of an agency.

(g) *''Exempted''* means nomenclature and marking indicating information has been determined to fall within an enumerated exemption from automatic declassification under E.O. 12958, as amended.

(h) *''Federal Record''* includes all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference, and stocks of publications and processed documents are not included. (44 U.S.C. 3301)

(i) *''File series''* means a body of related records created or maintained by an agency, activity, office or individual. The records may be related by subject, topic, form, function, or filing scheme. An agency, activity, office, or individual may create or maintain several different file series, each serving a different function. Examples may include a subject file, alphabetical name index, chronological file, or a record set of agency publications. File series frequently correspond to items on a NARA-approved agency records schedule. Some very large series may contain several identifiable sub-series, and it may be appropriate to treat sub-series as discrete series for the purposes of the Order.

(j) *''Newly Discovered Records''* means records that were inadvertently not reviewed prior to the effective date of automatic declassification because the agency declassification authority was unaware of their existence.

(k) *''Open storage area''* means an area constructed in accordance with section 2001.62 and authorized by the agency head for open storage of classified information.

(l) *''Pass/Fail (P/F)''* means a declassification technique that regards information at the full document or folder level. Any exemptible portion of a document or folder may result in exemption (failure) of the entire documents or folders. Documents or folders that contain no exemptible information are passed and therefore declassified. Documents within exempt folders are exempt from automatic declassification. Declassified documents may be subject to FOIA exemptions other than the security exemption ((b)(1)), and the requirements placed by legal authorities governing Presidential records and materials.

(m) *''Permanent Records''* means any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives of the United States. Permanent records include all records accessioned by NARA into the National Archives of the United States and later increments of the same records, and those for which the disposition is permanent on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

(n) *''Presidential Historical Materials and Records''* means the papers or records of the former Presidents under the legal control of the Archivist pursuant to sections 2107, 2111, 2111note, or 2203 of title 44, U.S.C., as defined at 44 U.S.C. 2111, 2111note, and 2001.

(o) *''Records''* means the records of an agency and Presidential papers or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant.

(p) *''Redaction''* means the removal of exempted information from copies of a document.

(q) *''Security-in-depth''* means a determination by the agency head that a facility's security program consists of layered and complementary security controls sufficient to deter and detect unauthorized entry and movement within the facility. Examples include, but are not limited to, use of perimeter fences, employee and visitor access controls, use of an Intrusion Detection System (IDS), random guard patrols throughout the facility during non-working hours, closed circuit video monitoring or other safeguards that mitigate the vulnerability of open storage areas without alarms and security storage cabinets during non-working hours.

(r) *''Tab''* means a narrow paper sleeve placed around a document or group of documents in such a way that it would be readily visible.

(s) *''Transferred Records''* means records transferred to agency storage facilities or a federal records center.

(t) *''Temporary Records''* means federal records approved by NARA for disposal, either immediately or after a specified retention period. Also called disposable records.

(u) *''Unscheduled Records''* means federal records whose final disposition has not been approved by NARA. All records that fall under a NARA approved records control schedule are considered to be scheduled records.

(v) *''Vault''* means an area approved by the agency head which is designed and constructed of masonry units or steel lined construction to provide protection against forced entry. A modular vault approved by the General Services Administration (GSA) may be used in lieu of a vault as prescribed in the first sentence of this paragraph (e). Vaults shall be equipped with a GSA-approved vault door and lock.

§ 2001.83 Effective date [6.3].

Part 2001 shall become effective September 22, 2003.

PART 2004—DIRECTIVE ON SAFEGUARDING CLASSIFIED NATIONAL SECURITY INFORMATION [Removed and reserved.]

■ 2. Remove and reserve 32 CFR part 2004.

Dated: September 15, 2003.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. 03–24047 Filed 9–18–03; 12:01 pm]

BILLING CODE 7515–01–P

Federal Register

Monday,
September 22, 2003

Part V

The President

Notice of September 18, 2003—Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

Federal Register
Vol. 68, No. 183
Monday, September 22, 2003

Presidential Documents

Title 3—

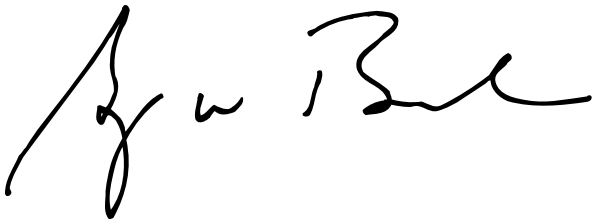
The President

Notice of September 18, 2003

Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

On September 23, 2001, by Executive Order 13224, I declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701-1706). I took this action to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and on the Pentagon committed on September 11, 2001, and the continuing and immediate threat of further attacks on United States nationals or the United States. Because the actions of these persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on September 23, 2001, and the measures adopted on that date to deal with that emergency, must continue in effect beyond September 23, 2003. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 18, 2003.

[FR Doc. 03–24191
Filed 9–19–03; 10:43 am]
Billing code 4710–10–P

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Procedure and administration:
Capital account revaluations; comments due by 9-30-03; published 7-2-03 [FR 03-16788]

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Non-VA physician services associated with outpatient or inpatient care at non-VA facilities; payment; comments due by 9-29-03; published 7-29-03 [FR 03-19174]
Sensori-neural aids; extension to Purple Heart recipients; comments due by 9-29-03; published 7-31-03 [FR 03-19441]

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. 2738/P.L. 108–77
United States-Chile Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 909)

H.R. 2739/P.L. 108–78
United States-Singapore Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 948)

S. 1435/P.L. 108–79
Prison Rape Elimination Act of 2003 (Sept. 4, 2003; 117 Stat. 972)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
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Complete 2003 CFR set		1,195.00	2003
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Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.