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Federal Register

8–6–01 Monday
Vol. 66 No. 151 August 6, 2001
Pages 40839–41128

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–37]

RIN 0579–AA83

Karnal Bunt; Compensation for the 1999–2000 and Subsequent Crop Seasons

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations to provide compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt in the 1999–2000 crop season and afterward. The payment of compensation is necessary in order to reduce the economic effect of the Karnal bunt regulations on affected wheat growers and other individuals and to help obtain cooperation from affected individuals in efforts to contain and reduce the prevalence of Karnal bunt.

EFFECTIVE DATE: August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X Secale cereale), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas. The regulations also provide for the payment of compensation for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt during certain years. These provisions are in § 301.89–15, ''Compensation for growers, handlers, and seed companies in the 1996–1997 and 1997–1998 crop seasons,'' and § 301.89–16, ''Compensation for grain storage facilities, flour millers, and NationalSurvey participants for the 1996–1997 and 1997–1998 crop seasons.''

On January 16, 2001, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a proposed rule (66 FR 3505–3511, Docket No. 96–016–33) to establish the 1999–2000 compensation levels. We solicited comments on our proposal for 60 days ending March 19, 2001. We received 12 comments by that date. These comments were from custom harvester businesses who all used their combine harvesters in regulated areas in Arizona in 1996 to harvest grain for owners or to conduct preharvest sampling in connection with the NationalKarnal Bunt Survey. These commenters stated that they suffered equipment damage to their combine harvesters as a result of the bleach treatments required by the regulations before the machinery could be used afterward in nonregulated areas.

Note: In a final rule published in the **Federal Register** and effective on August 21, 2000 (65 FR 50595–50598, Docket No. 99–077–2), we amended the regulations to state that harvesters would no longer be required to clean and disinfect their combines prior to moving them out of the regulated area, as long as the machines had not been used to harvest host crops that actually tested positive for Karnal bunt, and also authorized two additional, and potentially less damaging, treatments, i.e., live steam and hot water and detergent.

The commenters stated that the affected combines suffered paint loss, rusting, destruction of wiring, and other damage, and in some cases were rendered totally unfit for further use. They also stated that their businesses suffered severe revenue loss due to loss of use of this equipment for other contracts. These commenters requested a regulatory change to specifically authorize compensation for their losses.

The proposed rule did not address compensation to harvesters for equipment damage and revenue loss, and we do not intend to make any changes in the final rule concerning this issue.

The USDA has evaluated, and continues to evaluate, individual claims for damage to harvesters caused by Department action, but does not believe it is necessary to address these claims in these regulations.

Several commenters suggested that there would be a continuing need for compensation beyond the 1999–2000 crop season. We agree that some compensation should be authorized for the 2000–2001 crop season and beyond, given that Karnal bunt continues to be identified in new locations. Therefore, we are changing the language of the proposed rule that stated that it applied to the 1999–2000 crop season to state instead that the rule applies to the 1999–2000 and subsequent crop seasons. Until further notice, growers, handlers, and seed companies will be eligible to receive compensation for the loss in value of their wheat in accordance with the regulations. Section 301.89–15(a) states that growers, handlers, and seed companies will be eligible for compensation if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt after the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. This final rule continues the principle stated in the proposed rule, that, in the future,

compensation will no longer be made available to persons growing or handling crops that were knowingly planted in previously regulated areas. Growers, handlers, and seed companies in previously regulated areas are eligible for compensation only for 1999–2000 and 2000–2001 crop season wheat.

Also, we are authorizing compensation in accordance with § 301.89–16 for the 1999–2000, 2000–2001, and subsequent crop seasons for grain storage facilities, flour millers, andNational Survey participants whose wheat or grain storage facility tests positive for Karnal bunt.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed above.

Past and Future Crop Seasons and Compensation for Already Regulated Areas

This final rule also removes language from the regulations that provides for compensation payments for the 1996–1997 and 1997–1998 crop seasons. Because the deadline for submitting a claim for these crop seasons was October 8, 1998, and October 25, 1999, respectively, we believe that all claims for those years have been submitted and paid.

At this time, for crop seasons beyond the 1999–2000 and 2000–2001 crop seasons, we do not anticipate proposing to provide compensation to growers, handlers, or seed companies who were in regulated areas at the time they made planting and contracting decisions. We believe they know the risks associated with those decisions and can choose to alter their planting or contracting decisions to avoid experiencing losses due to Karnal bunt.

Effective Date

This is a substantive rule that provides compensation to persons who experience economic losses in the 1999–2000 crop season and subsequent crop seasons because of the Karnal bunt regulations and emergency actions. Immediate action is necessary to compensate for these losses. Therefore, pursuant to the provisions of 5 U.S.C. 553, the Administrator of the Animal and Plant Health Inspection Service finds good cause for making this rule effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule establishes compensation provisions for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey to mitigate losses and expenses incurred in the 1999–2000 and subsequent crop seasons because of the Karnal bunt quarantine and emergency actions.

In accordance with Executive Order 12866, this analysis examines the economic effects and the costs and benefits of providing such compensation. The wheat industry within the regulated area is largely composed of businesses that can be considered ''small'' according to guidelines established by the Small Business Administration (SBA). Therefore, this analysis also fulfills the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which requires agencies to consider the economic effects of the rule on small entities.

Upon detection of Karnal bunt in Arizona in March 1996, the U.S. Department of Agriculture (USDA) imposed a Federal quarantine and emergency actions to prevent the interstate spread of the disease to other wheat producing areas in the United States. The unexpected discovery of Karnal bunt and subsequent Federal emergency actions disrupted the production and marketing flows of wheat in the quarantined areas. It was estimated that the economic effect of Karnal bunt quarantine and subsequent Federal actions on the wheat industry totaled $44 million in the 1995–1996 crop season.

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the quarantine program, USDA offered compensation to mitigate certain losses incurred by growers, handlers, seed companies, and other affected persons in the areas regulated for Karnal bunt in the 1995–1996, 1996–1997, and 1997–1998 crop seasons. The payment of compensation is in recognition of the fact that, while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominately on a small segment of the affected wheat industry within the regulated areas. A final rule promulgating compensation regulations for the 1997–1998 crop season was effective and published in the **Federal Register** on June 25, 1999 (64 FR 34109–34113, Docket No. 96–016–35). The compensation authorized in this document, as it relates to the 1999–2000 and 2000–2001 crop seasons, is the same as the compensation offered for the 1997–1998 crop season.

Growers, handlers, and seed companies are eligible for compensation for losses in the 1999–2000 and 2000–2001 crop seasons due to wheat grain or seed that tested positive for Karnal bunt. Only positive-testing wheat is eligible for compensation because of the lack of restrictions on the movement of negative-testing wheat. As in the 1997–1998 crop season, there are different levels of compensation, depending on whether the wheat was grown in an area under the first regulated crop season or in a previously regulated area. An area in the first regulated crop season is an area that became regulated for Karnal bunt after the crop for that particular season was planted. A previously regulated area is an area that became regulated for Karnal bunt before the crop for that particular season was planted. For the 1999–2000 crop season, there were no areas in the first regulated crop season. However, for the 2000–2001 crop season, four counties in Texas (Young, Throckmorton, Archer, and Baylor) and a portion of Maricopa County in Arizona were in the first regulated crop season.

For growers, handlers, and seed companies in previously regulated areas, the compensation for positive grain or seed is $0.60 per bushel. Growers, handlers, and seed companies in the first regulated crop season are eligible for compensation at a rate not to exceed $1.80 per bushel. These compensation rates apply to both wheat grain and seed. The difference in compensation rates reflects the fact that affected entities in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time that they made planting and contracting decisions and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in previously regulated areas knew they were in an area regulated for Karnal bunt at the time that they made planting and contracting decisions for the 1999–2000 and 2000–2001 crop seasons. Given the restrictions, growers and handlers could have chosen to alter their planting or contract decisions to avoid experiencing potential losses due to Karnal bunt. The compensation rates are the same as those offered in the 1997–1998 crop season.

For the 1999–2000 growing season, all areas that are regulated for Karnal bunt are previously regulated areas. Approximately 37,000 acres of wheat were harvested in 2000 from the regulated areas. In the 1998–1999 crop season, no wheat grown in the regulated

areas tested positive for Karnal bunt. Approximately 1 percent of wheat harvested from the regulated areas tested positive for Karnal bunt in the 1999–2000 crop season, so compensation for wheat grain and seed grown in the regulated areas totals approximately $17,760 (1 percent of 37,000 acres equals 370 acres; using an estimate of 80 bushels per acre crop yield, 370 acres multiplied by 80 equals 29,600 bushels; 29,600 bushels multiplied by $0.60 per bushel equals $17,760). The estimated total compensation of $17,760 translates into a per-grower average of $987, assuming that 18 growers, or 10 percent of the approximately 180 growers in the regulated area, produced wheat that tested positive for Karnal bunt. The positive-testing wheat would have a market value of approximately $73,400 in the absence of Karnal bunt.

For the 2000–2001 crop season, some areas that are regulated for Karnal bunt are previously regulated areas, and some areas are first regulated areas. Approximately 25,200 acres of wheat were harvested in 2001 from previously regulated areas, of which about 7,300 acres, or 29 percent, tested positive for Karnal bunt. The compensation for wheat grain and seed in previously regulated areas is approximately $319,256 (7,274 acres multiplied by 73.15 bushels per acre average crop yield multiplied by $0.60 per bushel).

An estimated 115,600 acres of wheat were harvested in 2001 from first regulated areas, of which about 2,800 acres, or 2 percent, tested positive for Karnal bunt. However, this estimate of positive wheat is preliminary. Better estimates will be available after we finish testing samples from approximately 7 million bushels of wheat that were moved to grain storage facilities in Texas before field testing began. To date, grain storage facility testing in Texas has found approximately 1.75 million bushels of positive wheat. Based on the positive finds to date from both field and facility testing, the compensation for wheat grain and seed in first regulated areas is approximately $3.4 million—$224,485 for the field tested wheat (2,848 acres multiplied by 43.79 bushels per acre average crop yield multiplied by $1.80 per bushel) and $3,156,300 for the storage facility tested wheat (1,753,500 bushels multiplied by $1.80 per bushel).

As of July 16, 2001, estimated total compensation of $3,700,041 for both previously regulated and first regulated areas translates into a per-grower average of $64,913, assuming that 57 growers produced wheat in the 2000–2001 crop season that tested positive for Karnal bunt. The positive testing wheat would have a market value of about $6.3 million in the absence of Karnal bunt.

Estimating the amount of compensation that would be paid in future crop seasons, i.e., 2001–2002 and beyond, is difficult because of the many variables involved, all of which are unknown at this time (*e.g.*, acres of wheat harvested, infection rates, crop yields per acre). However, all else being equal, compensation will be less in future crop seasons since growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation as they are now.

To compare, compensation for wheat grain and seed in the 1996–1997 crop season totaled about $149,000. Approximately 122,000 acres of wheat were harvested in the 1996–1997 crop season from regulated areas with a Karnal bunt infection rate of 0.8 percent. Compensation for wheat grain and seed in the 1997–1998 crop season totaled about $1.9 million. Approximately 181,540 acres of wheat were harvested in the 1997–1998 crop season from regulated areas with an infection rate of 3.2 percent. The increase in the amount of compensation paid in the 1997–1998 crop season resulted from wetter weather conditions, which increased the infection rate, and the fact that positive wheat was commingled with negative wheat in grain storage facilities in the certification area in Arizona before it was known that the wheat was positive.

This rule also provides compensation under specific criteria for the decontamination of grain storage facilities found with positive wheat, the treatment of millfeed, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found to be positive for Karnal bunt. Compensation for decontamination of grain storage facilities will be on a one-time-only basis for up to 50 percent of the cost of decontamination, not to exceed $20,000. We do not expect total compensation paid for the decontamination of grain storage facilities used in the 1999–2000 season to exceed $30,000. For the 2000–2001 crop season, such compensation is estimated at $159,000.

We are also authorizing compensation for the cost of heat treating millfeed that APHIS requires to be treated, at the rate of $35 per short ton of millfeed. No millfeed made from wheat grown in the regulated area was required to be heat treated in the 1998–1999 crop season. Under current regulations, APHIS requires heat treatment of millfeed made from wheat that tested positive for Karnal bunt. Since little or no positive wheat is expected to be used for milling in the 1999–2000 crop season, compensation for the heat treatment of millfeed in the 1999–2000 crop season will be minimal. However, for the 2000–2001 crop season, compensation for the heat treatment of millfeed is estimated to cost $619,325. (This estimate of $619,325 is preliminary as it was made before the soon-to-begin testing of approximately 7 million bushels of wheat in grain storage facilities in Texas.)

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small businesses, organizations, and governmental jurisdictions. Growers and handlers of wheat grain and seed, and wheat seed companies, will be those most affected by this rule. In the 1999–2000 crop season, there were a total of about 180 growers in the four States with regulated areas. In the 2000–2001 crop season, there were an estimated 574 growers in regulated areas, including approximately 411 in first regulated areas in Texas and Arizona. Most of these entities have total annual sales of less than $0.75 million, the SBA's threshold for classifying wheat producers as small entities. Accordingly, the economic effects of this rule will largely be on small entities.

This rule is expected to have a positive economic effect on all affected entities, large and small, but few entities are likely to be affected. As indicated above, only about 18 growers in regulated areas produced wheat that tested positive for Karnal bunt in the 1999–2000 crop season, and only about 57 growers in first regulated and previously regulated areas produced wheat that tested positive for Karnal bunt in the 2000–2001 crop season. Compensation for the loss in value of wheat that tests positive for Karnal bunt serves to encourage compliance with testing requirements within the regulated area, thereby aiding in the preservation of an important wheat growing region in the United States. It also serves to encourage participation in the National Karnal Bunt Survey.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This final rule contains information collection requirements in addition to those described in the proposed rule. This increased burden resulted from changing the final rule to apply to the 1999–2000 crop season and all subsequent seasons, rather than to just the 1999–2000 crop season. Under this final rule, there will be 170 burden hours for the first year the rule is in effect, and 85 burden hours for each subsequent year.

This final rule, like the proposal, requires that growers, handlers, and seed companies provide certain records and documents to a local Farm Service Agency (FSA) office in order to claim compensation. Growers, handlers, and seed companies will also have to sign a Karnal Bunt Compensation Claim form (completed by an employee of FSA using the information provided by the claimant) to attest that the information on the form is accurate and to demonstrate acceptance of the compensation. Owners of grain storage facilities and flour millers must also provide certain records and documents to an APHIS inspector in order to claim compensation. This information collection is necessary in order to verify a claimant's eligibility for compensation and to provide documentation of compensation claims and payments.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), these information collection requirements have been submitted for approval to the Office of Management and Budget (OMB). The Office of Management and Budget (OMB) has approved these information collection requirements under OMB control number 0579–0182.

List of Subjects in 7 CFR Part 301

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

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

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

2. Section 301.89–15 is amended by revising the section heading, the introductory text to the section, the introductory text to paragraph (a), the introductory text to paragraph (b), and the introductory text to paragraph (c), to read as follows:

§ 301.89–15 Compensation for growers, handlers, and seed companies in the 1999–2000 and subsequent crop seasons.

Growers, handlers, and seed companies are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1999–2000 and subsequent crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers, handlers, and seed companies in areas under first regulated crop season.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt after the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1999–2000 or subsequent crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

* * * * *

(b) *Growers, handlers, and seed companies in previously regulated areas.* For the 1999–2000 crop season and the 2000–2001 crop season only, growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and (b)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt before the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation for wheat from the 2001–2002 and subsequent crop seasons. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

* * * * *

(c) *To claim compensation.* Compensation payments to growers, handlers, and seed companies under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation for the 1999–2000 crop season must be received by FSA on or before December 4, 2001. Claims for compensation for subsequent crop seasons must be received by FSA on or before March 1 of the year following that crop season. The Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates. To claim compensation, a grower, handler, or seed company must complete and submit to the local FSA county office the following documents:

* * * * *

§ 301.89–16 [Amended]

3. Section 301.89–16 is amended as follows:

a. In the heading, by removing the words ''1996–1997 and 1997–1998 crop seasons'' and adding the words ''1999–2000 and subsequent crop seasons'' in their place.

b. In the introductory text, by removing the words '' 1996–1997 and 1997–1998 crop seasons'' and adding the words ''1999–2000 and subsequent crop seasons'' in their place.

c. In paragraphs (a), (b), (c)(1), and (c)(2), by removing the last three sentences in each paragraph and by adding three sentences in their place to read as follows: ''Claims for

compensation for the 1999–2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000–2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.''

Done in Washington, DC, this 1st day of August 2001.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 01–19661 Filed 8–3–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 94–030F]

RIN 0583–AC80

Labeling of Natural or Regenerated Collagen Sausage Casings

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requiring that the source of natural sausage casings be disclosed on the product label if the casings are derived from a different type of meat or poultry than the meat or poultry encased in the sausage. Establishments producing, manufacturing, or using natural sausage casings are also required to maintain records documenting the source of the casings. FSIS is requiring that the labels of sausage products encased in regenerated collagen casings disclose the use of the regenerated collagen casing. However, FSIS is not requiring that records on the source of regenerated collagen casings be kept.

EFFECTIVE DATE: September 5, 2001. Manufacturers may use their existing label stocks until exhausted.

FOR FURTHER INFORMATION CONTACT: Robert Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1997, FSIS published a proposed rule in the **Federal Register** (62 FR 38220) to amend the Federal meat and poultry products inspection regulations to require that labels of sausages encased in natural casings or regenerated collagen casings identify the type of meat or poultry from which the casings were derived, such as beef, swine, or sheep, if the casings were derived from a different type of meat or poultry than any meat or poultry ingredient of the sausage. FSIS also proposed to require that establishments that produce, manufacture, or use natural or regenerated sausage casings maintain records identifying the source of the casings.

FSIS received 30 comments during the comment period that ended on September 15, 1997. Two additional comments were received after that comment period closed; however these were also included as part of the administrative record.

Eleven favorable comments were submitted by individual consumers, religious organizations, and a member of the House of Representatives.

The groups that supported the proposal felt that people have a right to know what they eat, whether for health, religious, or other reasons, and that the proposal would allow health-conscious and interested consumers to accurately identify foods with substances to which they are allergic or food that they did not want to consume.

Twenty-one comments were opposed to the proposal. These comments were from the sausage casings industry, the meat and poultry industry, and a law firm.

The industry comments that opposed the proposal argued that it would not provide all consumers with more information but, rather, would only enable consumers with specific religious dietary concerns to avoid eating casings derived from a different species than the encased meat or poultry block. They asserted that the proposal was not based on a food safety issue. These comments argued that the people with dietary concerns could rely on a private mechanism, such as Kosher or Halal certification, to ensure that they do not consume non-pork sausages that are encased with a pork-derived casing.

While FSIS agrees that buying Kosher or Halal certified products ensures that individuals who do not want to eat pork can comply with religious requirements, FSIS disagrees that the purpose of the proposal was solely to provide a limited number of individuals with information concerning dietary requirements. The intent of the rule is to ensure that all consumers, not just consumers with religious interests, are not misled into believing that they are purchasing a product composed entirely of one species, e.g., beef, when, in fact, it is in a sheep or pork casing. Thus, the rule requires the disclosure of a material fact about the nature of the product.

Some commenters opposing the proposal also stated that if FSIS believed that consumers have a ''right to know'' what they eat, then FSIS should require that labels of sausage products disclose all ingredients, including gelatin, amino acids, and proteins. One casing manufacturer pointed out that the proposal is inconsistent with FSIS and Food and Drug Administration policy, which does not require source labeling, in general.

The purpose of the proposal was not to address the ''right to know'' for all ingredients in sausages. FSIS's proposal was narrowly crafted to address a situation where consumers may be misled.

FSIS is, therefore, requiring the source labeling of natural sausage casings, if they are derived from a different type of meat or poultry than the meat or poultry encased in the sausage. FSIS is also requiring establishments producing, manufacturing, or using natural sausage casings to maintain records documenting the source of the casings.

With regard to the proposed requirements for regenerated collagen casings, several commenters from the meat and poultry industry and the sausage casings' industry opposed the labeling and recordkeeping requirements for regenerated collagen casings. These commenters stated that the processing of regenerated collagen casings renders the detection of identifiable species protein impossible.

FSIS agrees with the comments in part. Therefore, FSIS is amending the meat and poultry product regulations to require that the labels of sausage products encased in regenerated collagen casings disclose the use of the regenerated collagen casing, but not the source of the casing. FSIS understands that the processing of regenerated collagen casings renders the detection of the species protein impossible; therefore, no recordkeeping for collagen casings is required.

FSIS concludes that providing the information that the casing is from regenerated collagen will indicate to consumers that they are purchasing a sausage product with a casing not necessarily made from the same type of meat or poultry enclosed in the casing. Thus, this material fact about the nature of the product would be disclosed, and the product would not be misbranded.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different from, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported products, that are not at such an establishment, after their entry into the United States.

This final rule is not intended to have retroactive effect.

Under this rule, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to any matters under the FMIA and the PPIA.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant and therefore has not been reviewed by OMB under Executive Order 12866.

In accordance with 5 U.S.C. 603, FSIS performed a regulatory flexibility analysis, which is set out below, regarding the impact of the rule on small entities. FSIS invited comments concerning potential effects on the number, kind and characteristics of small firms that would incur benefits or costs from implementation of this rule.

This final rule will require manufacturers of sausages encased in natural casings to label the source of those casings, if the casings are derived from a different type of meat or poultry than the encased sausage meat or poultry. This rule will also require that sausages encased in a regenerated collagen casing have a statement on the label indicating that the casing is regenerated collagen. FSIS believes the associated labeling costs will be low. Manufacturers will be able to defer the development of new labels for sausage products in natural casings and regenerated collagen casings until their existing stocks of labels are exhausted. Moreover, the new labels can be generically approved; manufacturers will not have to prepare and submit FSIS Form 7234–1, ''Application for Labels, Marking, or Device,'' or the new label for approval. Identification of the source of natural sausage casings may also be a selling point for some manufacturers.

This regulation will be beneficial to consumers because it will reduce confusion about the source of the casings on sausages and give them additional information with which to make informed choices about the sausages they purchase.

Paperwork Requirements

The paperwork and recordkeeping requirements in this final rule have been approved on an emergency basis by OMB under control number 0583–0119. FSIS is seeking comments on the paperwork and recordkeeping requirements in this rule so that the Agency may receive a three year approval for these requirements.

Abstract: Under this final rule, sausage manufacturers will need to label the source of natural sausage casings if they are derived from a different type of meat or poultry than the meat or poultry encased in the sausage and sausage products encased in regenerated collagen casings will have to have a statement on the label disclosing the use of regenerated collagen casings. FSIS will consider the labels they develop to make these declarations to be generically approved in accordance with 9 CFR 317.5 and 381.133.

Establishments producing, manufacturing, or using natural sausage casings, or sausages encased in natural casings, will be required to maintain records documenting the source of the casings.

Estimate of Burden: FSIS estimates that it will take 15 minutes for establishments to make the appropriate labeling changes. FSIS estimates that the recordkeeping for the origin of the casing will occur once a day and take establishments 2 minutes to complete.

Respondents: Establishments manufacturing natural and regenerated collagen sausage casings, and establishments manufacturing sausages encased in natural and regenerated collagen casings.

Estimated number of Respondents: 40 meat and poultry establishments.

Estimated number of Responses per Respondent: 10,000

Estimated Total Annual Burden on Respondents: 344 hours.

Comments are invited on: (a) Whether the final 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 the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and

poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 317.8 is amended by adding new subparagraphs (b)(37) and (b)(38) to paragraph (b) to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(37) The labels of sausages encased in natural casings made from meat or poultry viscera shall identify the type of meat or poultry from which the casings were derived, if the casings are from a different type of meat or poultry than the encased meat or poultry. The identity of the casing, if required, may be placed on the principal display panel or in the ingredient statement. Establishments producing, manufacturing, or using natural sausage casings are to maintain records documenting the meat or poultry source in accordance with part 320 of this chapter.

(38) The labels of sausages encased in regenerated collagen casings shall disclose this fact on the product label. The fact that the sausage is encased in collagen may be placed on the principal display panel or in the ingredient statement.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

4. Section 381.117 is amended by adding paragraphs (f) and (g) to read as follows:

§ 381.117 Name of product and other labeling.

* * * * *

(f) The labels of sausages encased in natural casings made from meat or poultry viscera shall identify the type of meat or poultry from which the casings were derived, if the casings are from a different type of meat or poultry than the encased meat or poultry. The identity of the casing, if required, may be placed on the principal display panel or in the ingredient statement. Establishments producing, manufacturing, or using natural sausage casings are to maintain records documenting the meat or poultry source in accordance with subpart Q of this part.

(g) The labels of sausages encased in regenerated collagen casings shall disclose this fact on the product label. The fact that the sausage is encased in collagen may be placed on the principal display panel or in the ingredient statement.

Done at Washington, DC, on July 31, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–19598 Filed 8–3–01; 8:45 am]

BILLING CODE 3410–DM–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 721

Federal Credit Union Incidental Powers Activities

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a final rule that revises a regulation by categorizing activities deemed to be within the incidental powers of a federal credit union (FCU). The final rule also describes how interested parties may request a legal opinion on whether an activity is within an FCU's incidental powers or apply to add new activities or categories to the regulation. The rule also clarifies the conflict of interest provisions applicable to activities authorized by this regulation.

DATES: The rule is effective September 5, 2001.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, or Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background
B. Overview of Regulation
C. Safety and Soundness Considerations
D. Comments
1. General
2. Other Suggestions
E. Section-by-Section Analysis
F. Regulatory Procedures

A. Background

On November 18, 1999, the NCUA Board (the Board) issued a request for comments in an Advance Notice of Proposed Rulemaking (ANPR) on whether the Board should restructure part 721 of NCUA's regulations and adopt provisions regarding incidental powers within the regulation. 64 FR 66413 (November 26, 1999). At the time, the Board envisioned that it would create four sections within part 721 and expand its test for analyzing the incidental powers of FCUs. After receiving the public's comments on the ANPR, the Board issued a Notice of Proposed Rulemaking on November 16, 2000. 65 FR 70526 (November 24, 2000).

In the proposed rule, the Board restructured part 721 into seven sections. The proposed rule established a definition for an incidental powers activity by using a three-prong test. The proposed rule also set out categories determined to be within an FCU's incidental powers. A majority of the proposed categories are activities NCUA has previously established as within the incidental powers of FCUs in legal opinions. The proposed rule identified the following twelve categories: Certification services, correspondent services, electronic financial services, excess capacity, financial counseling services, finder activities, marketing activities, monetary instrument services, operational programs, stored value products, and trustee or custodial services. Each category in the proposed rule contained examples of incidental powers activities.

The proposed rule provided that FCUs could seek advisory opinions from NCUA's General Counsel as to whether a proposed activity fits into one of the authorized categories or is otherwise an incidental powers activity. It also established a process for FCUs to petition NCUA to approve new activities or categories of activities. The proposed rule also allowed FCUs to receive compensation from any activity determined to be within their incidental powers. Finally, the proposed rule amended the conflicts of interest provision in part 721, to conform to similar conflict provisions in NCUA's regulations.

B. Overview of Regulation

Incidental Powers Authority

The legal authority for the expanded activities authorized by the final rule is the incidental powers provision of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1757(17). The FCU Act expressly grants FCUs the power to, among other activities, purchase, hold and dispose of property; make loans to members; make certain investments; accept share, share draft and share certificate accounts; and sell and cash negotiable instruments. 12

U.S.C. 1757(4)–(7), (12), (15). The accompanying incidental powers provision states that an FCU may ''exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.'' 12 U.S.C. 1757(17).

1. *Arnold Tours Standard.* To determine whether an activity is authorized under the incidental powers provision, NCUA has looked to whether the activity is convenient or useful in connection with the performance of an FCU's established activities pursuant to its express powers granted by the FCU Act. This standard was established in *Arnold Tours, Inc.* v. *Camp,* 472 F.2d 427 (1st Cir. 1972), for determining the incidental powers of national banks. *Accord Independent Insurance Agents of America, Inc.* v. *Hawke,* 211 F. 3d 638, 640 (D.C. Cir. 2000) (''Whether a particular banking device's nomenclature harkens to traditional banking activities is not dispositive''); *First National Bank of Eastern Arkansas* v. *Taylor,* 907 F.2d 775, 778 (8th Cir.), *cert. denied,* 498 U.S. 972 (1990) (''Incidental powers are not confined to activities considered essential to the exercise of express powers''); *M&M Leasing Corp.* v. *Seattle First National Bank,* 563F.2d 1377, 1382 (9th Cir. 1977), *cert. denied,* 436 U.S. 956 (1978) (''powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking''). In addition, *Arnold Tours* recognized certain ''agency or informational services'' that, although not necessarily rooted in an incidental power, represent a permissible ''goodwill'' service to customers when provided on a limited and largely uncompensated basis. 472 F.2d at 432.

The convenient or useful standard adopted in *Arnold Tours* has been acknowledged as proper for analyzing the incidental powers provision of the FCU Act. *American Bankers Association* v. *Connell,* 447 F. Supp. 296, 298 (D.D.C. 1978), *rev'd,* 595 F.2d 887 (D.C. Cir.), *cert. denied,* 444 U.S. 920 (1979). Relaxing that standard, a subsequent court pronounced it ''narrow and artificially rigid,'' preferring instead to focus on the ''essence'' of the service being provided and its functional equivalency to a permitted activity. *American Insurance Association* v. *Clarke,* 865 F.2d 278, 281, 284 (D.C. Cir. 1988).

For many years, NCUA has followed the reasoning of *Arnold Tours* in recognizing various activities either as incidental to an FCU's exercise of its express powers or simply as a permissible ''goodwill'' service to members. Upon a finding that an activity is either convenient or useful in connection with performance of an expressly granted power, NCUA has authorized FCUs to engage in a broad range of activities, including the authority to: Engage in marketing and promotional activities on behalf of the FCU, provide a variety of loan-related products, perform various payment and money exchange functions for members, make charitable donations and contributions, provide correspondent services, engage in consumer leasing, establish numerous products and services derived from share accounts, and perform various financial functions to assist member business transactions. In addition, NCUA has allowed FCUs to implement new operational programs so that FCUs and their members benefit from technological advancements in the financial services industry, such as: Electronic fund transfers, automated teller machines, payroll deduction and direct deposit services, debit cards, and wire transfer services. Further, NCUA has permitted various activities as informational or goodwill services for members, including promoting the products and services of third parties and permitting FCU endorsement, on a cost reimbursement basis. 50 FR 16462, 16463 (April 26, 1985) (final rule addressing insurance and group purchasing activities).

As shown in the Section-by-Section Analysis below, much of the final rule simply codifies the practices NCUA has approved through legal opinions over the years as incidental powers under *Arnold Tours.* Further relying on *Arnold Tours,* the final rule introduces a number of activities that, as explained below, similarly qualify as incidental powers because they are ''convenient or useful'' in performing an activity established under an express power.

2. *VALIC Standard.* The U.S. Supreme Court has broadened the standard for considering an expansion of the incidental powers of national banks. In *Nationsbank of North Carolina* v. *Variable Annuity Life Insurance Co. (VALIC),* 513 U.S. 251 (1995), the Court stated that the authorization of ''incidental powers * * * necessary to carry on the business of banking'' is an independent grant of authority, *id.* at 258, separate from the five activities specifically enumerated in the National Banking Act, 12 U.S.C 24(Seventh). *Accord Independent Insurance Agents,* 211 F. 3d at 640 (''enumeration of powers is only illustrative and Comptroller may authorize additional activities if encompassed by a reasonable interpretation''); *Norwest Bank Minnesota, N.A.* v. *Sween Corp.,* 118 F.3d 1255, 1259 (8th Cir. 1997) (analyzing whether activity is closely related to an express power and useful in carrying out business of banks). The Court rejected the argument that the powers of national banks are limited to the five specifically enumerated activities, regarding those activities as ''exemplary, not exclusive.'' 513U.S. at 258. The Court held that ''the 'business of banking' is not limited to the enumerated powers in section 24 (Seventh) and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated,'' provided that discretion is ''kept within reasonable bounds.'' *Id.* at 259 n.2.

Applying the reasoning of *VALIC* to sec. 1757, ''the business for which [a credit union] is incorporated'' is not limited to the express powers in that section. Rather than linking incidental powers to express powers, *VALIC* has provided the framework for the Board to adopt a broader and more flexible analysis, giving it discretion to authorize FCUs to engage in activities beyond those specifically enumerated in sec. 1757. Thus, activities may fall within an FCU's incidental powers if they qualify as either ''convenient or useful'' in connection with an express power or otherwise fall within the scope of ''the business for which [a credit union] is incorporated.''

NCUA has relied on the *VALIC* analysis in recent opinions. For example, a 1999 Office of General Counsel legal opinion authorized FCUs to maintain foreign currency accounts to facilitate member transactions. NCUA reasoned that, by maintaining a foreign bank account to facilitate member transactions, an FCU can: (1) Provide basic credit union services such as lending and deposit taking to members who, due to their residence in a foreign country, are unable to obtain these services from the FCU's domestic offices; and (2) benefit members by providing these services conveniently and at minimal cost in comparison to currency conversion expenses. A deposit account in a foreign bank, which is established for foreign currency exchanges and to facilitate basic services for members located in foreign countries, is closely related to an FCU's deposit taking and lending authority and is useful in carrying out the business of credit unions.

As Congress reiterated most recently in 1998, the FCU Act defines the business for which credit unions are incorporated—to promote thrift among members and to create sources of credit for provident or productive purposes. 12

U.S.C. 1752(1); Public Law No. 105–219, 112 Stat. 913, § 2 (1998). ''Thrift'' refers to ''wise economy in the management of money and other resources.'' *American Heritage Dictionary of the English Language* (4th ed. 2000) at 1802. A purpose is ''provident'' if it anticipates ''providing for future needs or events,'' *id.* at 1411; it is ''productive'' if it involves ''the creation of goods or services to produce wealth or value.'' *Id.* at 1399. NCUA has consistently construed the authority of FCUs broadly to afford them maximum flexibility in providing services to their members. 50 FR 16462, 16463 (April 26, 1985). In this instance, Congress's record of steadily expanding the range of expressly granted powers, combined with the legislative history encouraging NCUA to meet the needs of FCUs and their members, justify, if not require, a broad and ambulatory view of the business for which FCUs are incorporated.

A congressional priority in enacting the FCU Act in 1934 was to ''ensure that [credit unions] would remain responsive to members'' needs.'' *First National Bank & Trust Co.* v. *NCUA,* 988 F.2d 1272,1274 (D.C. Cir. 1993). To that end, Congress has since amended the FCU Act, steadily expanding the powers of FCUs, to ensure that they keep pace with changes and developments in the financial services marketplace. The power to make loans was expanded seven times between 1949 and 1987. 12 U.S.C. 1757(5). These amendments included: Raising the maximum maturities limits; extending the range of permissible loan types and purposes, such as loans to credit union service organizations (CUSOs) and participation loans; and even abandoning the limitation that loans be made for ''provident and productive purposes.'' The power to receive payments on shares, sec. 1757(6), was expanded five times between 1970 and 1980 and included amendments permitting FCUs to offer share certificates and share draft accounts, to accept certain types of nonmember deposits, and to receive payments on shares from the Central Liquidity Facility. The power to invest funds, sec. 1757(7) and (15), has been expanded nine times between 1937 and 1984, extending the list of permissible government guaranteed obligations and entities and allowing FCUs to invest in CUSOs, secondary market instruments, and mortgage-backed securities. The express power to sell and cash checks and money orders for a fee was added in 1959, and, in 1982, it was extended to ''similar money transfer instruments,'' allowing FCUs to charge a fee in excess of direct costs. 12 U.S.C. 1757(12).

In the course of expanding the powers of FCUs, Congress has repeatedly taken the opportunity to encourage NCUA to be flexible, innovative and responsive in meeting the needs of FCUs and their members. When Congress created NCUA in 1970, the same year that share insurance was introduced, it recognized that ''credit unions have become such a significant component of our society that they need and deserve a more responsive and independent regulatory agency.'' S. Rep. 91–518 at 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 2479, 2480. Further, Congress envisioned that NCUA would have ''a great responsibility and an opportunity to make real and substantial contributions to our society,'' and ''would be able to be more responsive to the needs of credit unions and to provide more flexible and innovative regulation.'' *Id.* at 2481.

When Congress amended the FCU Act in 1977 to add an extensive array of savings, lending and investment powers, it intended to ''allow credit unions to continue to attract and retain the savings of their members by providing essential and contemporary services,'' and acknowledged that credit unions are entitled to ''updated and more flexible authority granting them the opportunity to better serve their members in a highly-competitive and ever-changing financial environment.'' H.R. Rep. 95–23 at 7 (1977), *reprinted in* 1977 U.S.C.C.A.N. 105, 110. Congress acknowledged the difficulty in ''regulating contemporary financial institutions within the framework of an Act that has on a continuing basis required major updating by means of regulation.'' *Id.*

When Congress enacted the Garn-St. Germain Depository Institutions Act in 1982, which among other things, extended FCU real estate lending and investment powers, it noted that credit unions ''continue to face increasing competition from both within and outside of the financial system * * * as they prepare themselves for a future certain to contain a more rapidly changing financial marketplace than ever previously expected.'' S. Rep. No. 97–356 at 34 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3054, 3088. The purpose of the legislation, said Congress, is ''to help credit unions meet the challenges of today's rapidly changing and fiercely competitive financial market and to enhance NCUA's ability to more fairly and effectively carry out its responsibilities.'' *Id.* at 3089.

Following the example and encouragement of Congress to be flexible, innovative and responsive, the Board recognizes that the business of promoting thrift and providing access to credit for provident and productive purposes has witnessed a dramatic shift from the Depression-era economy of 1934, to a post-War, industrial boom economy, to the present information age economy. During this evolution, financial services and products have emerged and matured. Advances in technology and communications have improved, and will continue to improve, the delivery of financial services. The marketplace for financial services has expanded and diversified, and competition has intensified. It is, therefore, a reasonable exercise of discretion for the Board to expand the range of incidental powers accordingly to fit the contemporary business of credit unions. This will equip FCUs to deliver products and services that facilitate the modern day practice of thrift and the provident and productive use of credit.

For these reasons, the final rule authorizes as incidental powers under sec. 1757(17) certain activities that, even if not linked to an expressly granted power, nonetheless are convenient or useful in carrying out ''the business for which [credit unions] are incorporated,'' as that business has evolved since 1934; are a functional equivalent or logical outgrowth of activities within that business; and involve risks similar in nature to those already assumed as part of that business.

C. Safety and Soundness Considerations

The Board wants to emphasize that, while the final rule identifies categories of activities the Board has identified as within an FCU's incidental powers under the FCU Act, an FCU must comply with all applicable legal requirements and give due consideration to safety and soundness concerns before engaging in an incidental powers activity.[1] To carry out

[1] In addition to the FCU Act and NCUA's regulations, FCUs are subject to numerous other laws and regulations, including: Truth in Savings Act, Truth in Lending Act and Regulation Z, Equal Credit Opportunity Act and Regulation B, Electronic Funds Transfer Act and Regulation E, Preservation of Consumer's Claims and Defenses Rule, Fair Credit Reporting Act, Real Estate Settlement Procedures Act and Regulation X, Fair Debt Collection Practices Act, Home Mortgage Disclosure Act and Regulation C, Currency and Foreign Transactions Act, Flood Disaster Protection Act, Right to Financial Privacy Act, Soldier's and Sailor's Civil Relief Act, Fair Housing Act, Government Securities Act of 1986, Regulation G, Expedited Funds Availability Act and Regulation

Continued

its responsibilities, FCU management must consider whether its policies for new activities are realistic and carefully designed to enable the FCU to serve the interests and needs of the membership. In addition to meeting various legal requirements, many incidental powers activities require management to provide direction and instruction for officers, employees, and committees delegated the responsibility for implementing new activities and services.

FCU management is responsible for developing proper internal safeguards such as management oversight, internal controls and quality control. FCUs must examine the strategic risk, reputation risk, transaction risk and compliance risk before engaging in a new activity. In addition, management must exercise due diligence before devoting resources to a new activity or entering into any arrangements with third parties. Activities that involve the use of new technologies must rely on acceptable information systems and operations architecture. FCUs capable of providing advanced technological services must employ appropriate internal controls to minimize technological and legal risk and to address safety and soundness considerations. FCUs must also adjust their risk management process and insurance coverage to correlate with additional risk taken on by engaging in new activities.

NCUA has published guidance papers to assist FCUs in evaluating the risks and understanding the legal requirements involved in some of these activities. This guidance includes: (1) NCUA Letter to Credit Unions No. 01–CU–02 (February 2001), offering guidance on the privacy of consumer financial information; (2) NCUA Letter to Credit Unions No. 109 (September 1, 1989), discussing risks associated with certain computer operations; (3) NCUA Letter to Credit Unions No. 97–CU–5, addressing electronic financial services, (4) NCUA Letter to Credit Unions No. 00–CU–11, regarding risk management of outsourced technology services, and (5) NCUA Interpretive Ruling and Policy Statement 85–1, covering trustees and custodians of pension plans. NCUA's published guidance, along with NCUA's regulations, are available from the agency's website at *www.ncua.gov*. The Board also recommends that FCUs review interpretive letters and guidance issued by other federal financial institution regulators for assistance in understanding an activity's risks, for example, OCC Bulletin 2001–12 on bank-provided account aggregation services and OCC Advisory Letter 2000–9 on third-party risk. Depending on the activities an FCU undertakes, it may also need to consult with its own legal counsel and other professional advisers.

CC. FCUs are also subject to various state laws, such as commercial codes, abandoned property laws, and privacy laws.

D. Comments

1. General

In response to the proposed rule, the Board received comments on the following issues: the appropriateness of its incidental powers test, the proposed categories, suggested additions for the proposed rule, the application process for expanding the categories, the compensation provision, and the conflict of interest prohibitions. Although the Board actually received over three hundred comment letters or e-mail messages, NCUA staff has credited multiple comment letters from the same credit union as one comment, for a total of two hundred and seventy-two comment letters.

Two hundred and sixty commenters supported the proposed rule or expanding the incidental powers of FCUs in some manner. These commenters commended the Board for its review of the incidental powers of FCUs. Generally, the commenters noted that the proposal gives FCUs the ability to respond to growing member needs. A majority of these commenters supported the proposed rule because it removes regulatory uncertainty, allows FCUs to offer more services, provides income opportunities and allows FCUs to compete with other financial service providers. Several commenters noted that the regulation allows smaller credit unions that cannot afford to invest in credit union service organizations to offer expanded services to their members.

Three banking trade groups and two credit unions opposed the proposed regulation. Two banking trade groups requested that the proposed rule be withdrawn, arguing that NCUA lacks authority to interpret incidental powers in the manner proposed. These commenters stated that the incidental powers of FCUs must be incidental to the promotion of thrift or creating a source of credit. One commenter stated that FCU incidental powers must be directly tied to an expressly authorized activity. Another stated that FCUs have a limited mission in exchange for tax-exempt status. Two credit unions generally opposed the rule because it expands income generating opportunities.

2. Other Suggestions

NCUA received many comment letters from state-chartered credit unions fully supporting adoption of the proposed rule. Several of these commenters stated they will benefit from the expansion of FCU incidental powers because their state laws give state-chartered credit unions parity with FCUs operating in their states. Thirteen commenters asked for a ''wildcard'' or parity provision for FCUs whereby an FCU could engage in the same activities permitted for state-charters in the state in which the FCU is located. The FCU Act does not contemplate a parity provision as suggested by the commenters. In determining whether an FCU may engage in an activity under its incidental powers, an analysis under the FCU Act is required.

Four commenters asked that the rule also permit FCUs to engage in all of the activities permitted for CUSOs. The Board acknowledges that the final rule permits FCUs to engage in some activities traditionally performed by CUSOs. For example, both FCUs and CUSOs may offer income tax preparation. The authority of FCUs and CUSOs, however, is interpreted under separate provisions of the FCU Act. A CUSO is ''any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.'' 12 U.S.C. 1757(5)(D). Based on this statutory definition of a CUSO, the Board establishes the parameters for CUSOs in part 712. TheBoard evaluates the incidental powers of FCUs, however, based strictly on its interpretation of sec. 1757(17).

The Board presented the proposed rule in a plain English, question-and-answer format. Only two commenters disapproved of the question-and-answer format, stating it makes the rule awkward to read and difficult to understand and suggesting it is suitable only for appendices. The goal of plain language drafting is to minimize confusion, inadvertent errors and the amount of time interested parties must devote to understanding the rule. The Board believes, for many regulations including this one, it promotes regulatory comprehension, compliance and administrative efficiency.

E. Section-by-Section Analysis

Section 721.1 What Does This Part Cover?

This section describes the scope of part 721. The final rule covers the incidental powers of federally-

chartered, natural-person credit unions under 12 U.S.C. 1757(17).

Two commenters asked if the rule allows FCUs to provide expanded services to member business accounts or restricts these new powers to services for natural person members. An FCU may provide the activities and services authorized under part 721 to all of its members.

Several commenters raised questions about the application of part 721 to corporate credit unions. The Board generally interprets the powers of corporate credit unions in part 704 and does not intend part 721 to apply to corporate credit unions.

Section 721.2 What is an Incidental Powers Activity?

Following the reasoning of *VALIC* discussed in section C.1. *supra*, the Board believes that it is no longer necessary to link an incidental power directly to an express power granted in the FCU Act. Instead, an activity may generally be considered to fall within an FCU's incidental powers if it is ''necessary or requisite to enable it to carry on effectively the business for which it is incorporated.'' 12 U.S.C. 1757(17). For the reasons discussed above, the Board believes that the business of FCUs is to provide financial services to their members that, as contemplated by the FCU Act, facilitate the practice of thrift and the provident and productive use of credit.

Reflecting this view, the final rule retains the three-prong test, set forth in the proposed rule, to determine whether an activity is authorized as an appropriate exercise of an FCU's incidental powers: (1) Whether the activity is convenient or useful in carrying out the mission or business of credit unions consistent with the FCU Act; (2) whether the activity is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and (3) whether the activity involves risks similar in nature to those already assumed as part of the business of credit unions. An activity must meet all three criteria to qualify as an incidental power. The criteria are substantially similar to those used by the Office of the Comptroller of the Currency (OCC); however, for purposes of identifying the incidental powers of FCUs, they will be applied so as to take into account the distinctive features and functions of credit unions in the context of the business for which they are incorporated, as that business has evolved since 1934. Thus, while the Board may look to other laws and precedents in the financial services industry for guidance in applying these criteria, its analysis may produce a different result than in the case of other types of financial institutions.

Seventy-six commenters specifically supported the proposed three-prong test. Many of these commenters asked that the Board read the test broadly. Several of the commenters noted the similarity between the proposed criteria and the standard used by the OCC when authorizing activities for banks. These commenters found the test appropriate when considering the similarity of financial services offered by credit unions and other financial service providers.

One commenter suggested that, when NCUA analyzes the business of credit unions, it should defer to the marketplace as experienced by credit unions and their members. One commenter advocated changing the first prong of the test to replace the business of credit unions with an analysis of whether the activity is convenient and useful in meeting the economic and social well-being of members consistent with the FCU Act. Four other commenters suggested amending the third prong of the test. One recommended that NCUA look at whether the risks involved in a proposed activity exceed those already assumed as part of the business of credit unions. Another stated that the third prong of the test should require NCUA to analyze the way an FCU manages the risk associated with the proposed activity through a cost/benefit analysis. The Board believes that, after evaluating *Arnold Tours, VALIC* and the opinions of the OCC, the three-prong test adopted in the final rule is an appropriate method for determining whether an activity is a permissible exercise of an FCU's incidental powers.

Section 721.3 What Categories of Activities Are Preapproved as Incidental Powers Necessary or Requisite To Carry on a Credit Union's Business?

Section 721.3 establishes categories of activities the Board has determined to be within an FCU's incidental powers. The final rule also provides a mechanism for approving additional activities in § 721.04.

Eighty commenters supported including categories of approved activities as examples of incidental powers activities within the rule. Those commenters supporting a list generally approved of the identified categories and asked that the activities named within each category remain illustrative of permitted activities and not exclusive. One commenter suggested the rule clarify that FCUs have the authority to determine whether a proposed activity, not specifically given as an example in the rule, fits into one of the preapproved categories. Another commenter asked that the rule state that an activity is permitted unless it is expressly prohibited.

An FCU may only engage in activities that are either expressly authorized by statute or within the FCU's incidental powers. The final rule permits FCUs to analyze for themselves whether a particular activity, not provided as an example in one of the broad categories, falls into one of the preapproved categories. The analysis an FCU should follow in determining whether an activity is permissible is discussed below in the section-by-section analysis of § 721.4.

One commenter recommended that the rule require NCUA to review the list of categories biannually to determine if the agency should add new categories to the list, while two others asked for a periodic or annual review of the categories. The Board believes a periodic review requirement in the rule, itself, is unnecessary. The final rule establishes a procedure for FCUs to request amendments when they have identified activities that they contend are necessary or requisite to carry on their business. In addition, NCUA has a process for periodically updating, clarifying and simplifying all existing regulations. NCUA Interpretive Ruling and Policy Statement Number 87–2 (September 1987), 52 FR 35231 (September 18, 1987).

Ten commenters opposed using a list of categories within the regulation, stating that the use of list, although drafted with the intent of being illustrative, may be construed as precedent or exclusive over time. These commenters suggested that, instead of a list, NCUA should place the categories in a commentary or appendix to the regulation as examples of permitted activities. Forty-nine commenters disapproved of the use of categories in the rule and recommended that NCUA allow FCUs to determine on their own whether an activity is within their incidental powers. These commenters stated that the list of categories is restrictive and will become outdated. They also stated the process for expanding the list is cumbersome and time-consuming. Many suggested that the Board set a clear standard so that FCUs could determine their own incidental powers.

As discussed further below in connection with § 721.4, the final rule provides for regulatory approval to identify additional incidental powers activities, recognizing the deference to

which the NCUA as regulator is entitled in making this determination. The Board believes that regulatory identification of permissible activities, provided in the rule's list of categories or as approved through an application process, provides assurance to FCUs that the activities in which they engage are legal.

Some of the commenters asked that NCUA expand the list of categories identified; however, they did not suggest particular activities or categories. Several commenters specifically requested that NCUA add particular categories or additional activities within the existing categories. These comments are reflected below in the discussion of each category.

Certification Services

The Board has identified various certification services, such as notary services, electronic signature authentications and signature guarantees, as within the incidental powers of an FCU.

The provision of notary services has been an exercise of an FCU's incidental powers for many years. A notary administers oaths, verifies the identity of a signer, attests to the verification, records signatures, and authenticates commercial transactions. By providing notary services to members, an FCU facilitates transactions for its members that require the certification of signatures. This service allows for timely processing of credit union transactions as compared with sending members elsewhere for notarizations. Therefore, this service is convenient and useful in carrying out an FCU's business by allowing it to operate efficiently and effectively.

Similarly, the Board has determined that the authentication of electronic signatures is analogous to notarization. Like a notary, a certification authority (CA) verifies the identity of the signer and authenticates the signature or electronic equivalent in accordance with contractually agreed upon standards. Like the OCC, the Board finds that the CA activity is the functional equivalent of notary and other authentication services provided by credit unions, and a logical outgrowth of identification and verification methods. *See* OCC Conditional Approval No. 267 (January 1998). The risks borne by an FCU acting as a CA are similar to a notary's risk of improper verification and are similar to those risks inherent in providing electronic services.

FCUs, as eligible guarantor institutions, are permitted to issue signature guarantees for the transfer of securities. 17 CFR 240.17Ad-15. A signature guarantor warrants the authority of the signer as well as the genuineness of the signature. FCUs may offer signature guarantees for stock transfers and U.S. Treasury transactions, as provided by law, under their incidental powers because this type of identity verification is the functional equivalent or logical outgrowth to the provision of notarial services. Like notary services, this activity conveniently facilitates members' financial transactions. The final rule also includes share draft certifications as an example of a permissible certification service. NCUA's longstanding position has been that the certification of share drafts is convenient and useful to an FCU in carrying out its express authority to offer share draft accounts to its members.

Correspondent Services

Correspondent services have been an exercise of an FCU's incidental powers for many years. Correspondent services are services or functions provided by an FCU to another credit union that the FCU is authorized to perform for its own members or as part of its operation. Parties to a correspondent credit union arrangement must establish a written agreement addressing the credit unions' responsibilities under the service arrangement. Correspondent services may include receiving share and loan payments, disbursing share withdrawals and loan proceeds, cashing share drafts, cashing and selling money orders, processing loans, and performing other back office operations or member services for another credit union. An FCU, however, cannot be in the business of managing other credit unions. One commenter suggested that the category of correspondent services include loan servicing, escrow services and internal audits. The Board agrees that these are additional examples of correspondent services and has added them to the rule.

A correspondent service is offered in the same manner it is performed within the FCU's operation and entails the same risks as those assumed by the FCU for its operation. Correspondent service agreements enable credit unions to extend a greater array of services to their members. This activity is convenient and useful to a recipient of a correspondent service in carrying out many of its express powers when the credit union may have difficulty in performing the service on its own. Often, correspondent service programs are implemented when distance prevents members' ready access to their own credit union's place of business. Correspondent relationships also allow credit unions to assist other credit unions that lack resources or expertise.

One commenter noted that the proposed rule and preamble did not address the interplay of the proposed rule with 12 CFR 701.26, Credit Union Service Contracts. This commenter stated that the proposed rule either conflicts with § 701.26 or works to negate it. The Board wishes to clarify any perceived inconsistencies on this issue. The rule governing credit union service contracts covers contracts between FCUs and third party vendors or other organizations for assets or services related to an FCU's daily operations. It also allows an FCU to represent another credit union in contractual arrangements with vendors, but § 701.26 does not give FCUs the authority to provide services, like data processing, directly to other credit unions. 54 FR 48110 (November 21, 1989). FCUs are authorized to provide their services directly to other credit unions under various express powers and the incidental powers clause of the FCU Act, as discussed above. Therefore, the Board does not believe that a conflict exists between the correspondent services permitted under the final rule and § 701.26 because these rules govern two different types of activities.

Electronic Financial Services

The final rule provides that FCUs may offer, through electronic means and facilities, any activity, function, product or service they are otherwise authorized to provide under their express or incidental powers. FCUs may establish their own web sites to promote credit union services and effect member transactions, such as electronic bill payment, bill presentment, account aggregation, account inquiries and transfers. Web sites have become the electronic equivalent of newsletters, office signs and teller services. They provide a convenient and useful means for FCUs to carry out their business.

Through a transactional web site, an FCU may advertise and communicate with its members and others within its field of membership. Features, such as electronic bill payment and bill presentment, allow members to schedule payments and complete transactions without handwritten drafts or visits to a brick and mortar facility. As noted by the OCC, the risks confronted in providing financial services over the Internet are similar to the risks associated with the permissible activities of providing these services via electronic means generally. OCC

Interpretive Letter No. 742 (August 1996).

As part of the electronic delivery of traditional products or services, the Board believes FCUs have the authority under their incidental powers to engage in new activities or services due to the changing commercial environment, such as Internet access. By providing Internet access services to its members, an FCU offers its members a device to receive electronic products and services from the FCU. It also assures the FCU that members will access the FCU's home page when they initially connect to the Internet, positioning the FCU to market its products successfully. Members using the FCU's Internet access and transactional web site can retrieve account information and process transactions just as they would through tellers, automated teller machines or telephone response systems.

Similarly, account aggregation services over the Internet enable FCUs to serve as their members' primary financial institution. In providing this service, an FCU may gather a member's publicly available and personal account information from a variety of sources on the Web, allowing convenient access to the member's information. Members grant FCUs access to their information because they view their FCU as a trusted financial intermediary. Account aggregation services are convenient and useful to an FCU's offering of loans, share drafts and share certificates, all expressly granted powers. With access to their consolidated financial portfolio, members have the opportunity to evaluate and compare similar products sold by the FCU. The FCU may also offer members the ability to initiate transactions or obtain financial advice as a result of this service.

One commenter suggested that the electronic financial services category include automated teller machines. Four commenters suggested that the rule place account aggregation services within the category of electronic services. The Board agrees with both of these suggestions and has included these services as examples in the rule.

Excess Capacity

The Board recognizes that, in planning for future expansion and offering new products and services to their members, FCUs should be able to sell their excess capacity as a matter of good business practice. The sale of excess capacity offers FCUs the opportunity to provide financial services to its members, even though member demand for the services does not initially meet the FCU's capacity. The opportunity to sell excess capacity may involve leasing excess office space, sharing employees, or using data processing systems to process information for third parties. As the business of FCUs is to provide financial services to their members, the Board believes that the sale of excess capacity is within an FCU's incidental powers under two conditions: (1) The FCU properly established the service or made the investment with the good faith intent of serving its members; and (2) the FCU reasonably anticipates that the excess capacity will be taken up by the future expansion of services to its members.

Two commenters suggested that NCUA allow low-income credit unions and credit unions serving the underserved to build or acquire real property without a plan for the FCU's future use in order to facilitate the services to others within the low-income community. The Board does not find legal justification for establishing a different analysis of the incidental powers of FCUs that relies on the field of membership of an FCU. FCUs, including low-income credit unions and credit unions serving the underserved, may sell a service or the use of an asset in excess of the FCU's needs only under the conditions identified in this rule.

Four commenters asked for a liberalization of the concept of excess capacity. These commenters stated that an FCU should not need to anticipate that its members will eventually use any excess capacity; they should be allowed simply to take advantage of economies of scale that result from, for example, processing larger volumes of daily transactions or purchasing technology. The Board does not agree with these commenters. NCUA has consistently held the position that an FCU has limited authority in the leasing of fixed assets and the sale of excess data processing capacity. FCUs are not in the business of providing others with data processing capacity or any other service that is not within their express or incidental powers; rather, they are cooperative financial institutions organized to provide financial services to their members.

Another commenter stated that the regulatory text does not include the two-prong analysis for excess capacity as discussed in the proposed rule's preamble. The absence of this language, the commenter stated, allows for an interpretation that is broader than suggested by the preamble's discussion. The Board agrees that clarification of the definition of excess capacity is necessary and has inserted the excess capacity analysis into the final rule.

Financial Counseling Services

The Board believes that, as part of providing credit and saving opportunities for their members, FCUs have the responsibility of promoting provident planning through consumer education and responsible investment. Educating and counseling members in financial matters is convenient and useful to an FCU in exercising its express powers of lending and receiving shares. Members who are well-informed and educated in financial matters tend to be prudent and responsible when obtaining financial products and repaying debt, which in turn reduces losses at an FCU. The Board believes it is part of the business of FCUs to provide financial counseling services to their members including estate planning, income tax preparation and filing, and investment and retirement counseling. One commenter recommended that this category include debt and budget counseling. The Board has added this example to the final rule.

One commenter supported the ability of FCUs to offer financial counseling, but asked NCUA to provide guidance regarding registration requirements and cross-jurisdictional issues that may arise between NCUA and other regulators, such as the Securities and Exchange Commission. As discussed further in the analysis of § 721.5, the final rule identifies activities that are within the incidental powers of FCUs, but an FCU must still comply with other legal requirements pertaining to an identified activity. Depending on the particular activity, an FCU may be subject to other federal, state or local law. Some of these legal requirements may be extensive and it would be impossible to incorporate them completely within this rule. Just as an FCU is responsible for making its own determination regarding the safety and soundness of a particular activity, it is incumbent on an FCU to apprise itself of any legal requirements associated with the activity.

Two commenters asked that the final rule permit financial planning under the category of financial counseling. Five commenters suggested that the final rule include brokerage services in a category, such as financial counseling. One commenter supported the proposed rule's description of financial counseling but believed that the proposed rule conflicted with NCUA Letter to Credit Unions No. 150 (Letter 150), which governs sales of nondeposit investment products through third parties. This commenter asked that NCUA discuss the interplay between Letter 150 and this category.

The final rule defines financial counseling services as advice, guidance or services that an FCU offers to its members to promote thrift or to otherwise assist members in financial matters. Under this activity, FCUs may counsel members about financial matters, such as setting budgets, establishing financial goals, and managing tax liabilities. Other examples within this category may include counseling members on money management, paying down debt, saving for the future, types of investments, and diversification principles. This category applies only to financial counseling provided by an FCU to its members and does not encompass activities that require SEC registration as a broker, dealer or investment adviser.

Letter 150 provides guidance for third party sales of securities to FCU members, a finder activity. Third party sales of securities entail an FCU introducing its members to vendors who engage in the sale of nondeposit investment products. This differs from an FCU directly providing financial counseling, as defined above, to its members. Therefore, as a result of the final rule, Letter 150 remains unchanged with the exception of the Letter's paragraph f. Paragraph f of Letter 150 limits reimbursement to an FCU from a third party vendor at the total direct and indirect costs of any administrative functions the FCU performed for the vendor. As addressed in detail in the following category and in the discussion regarding § 721.6, the final rule removes compensation restrictions on finder activities as contemplated in Letter 150. FCUs, should note however, that they may be subject to other regulatory restrictions regarding commissions or fees paid to an FCU in conjunction with the sale of mutual funds or nondeposit investment products.

Finder Activities

The final rule allows FCUs to engage in finder activities through their role as financial service providers and intermediaries of financial services. The rule authorizes an FCU to introduce or otherwise bring together outside vendors with its members for the negotiation and consummation of transactions. Another fundamental aspect to finder activities is providing information to members about the products or services of third parties.

The Board believes that finder activities are member services that are necessary or requisite to enable FCUs to carry on their business effectively. FCUs can serve as their members' primary financial institution by bringing members together with providers of services and products. Although the FCU does not act as a broker, the FCU may negotiate group discounts or benefits on behalf of its membership with vendors. Additionally, these referrals enhance the quality of service FCUs offer their members and afford the FCU the opportunity to promote its own products as well. Examples of finder activities include placing third party vendor advertisements in the FCU's account statements, newsletters or as a link to the vendor's web site on the FCU's home page.

One commenter requested that NCUA offer guidance that distinguishes finder activities from marketing activities. Under the category of finder activities, FCUs are authorized to act as an intermediary between their members and outside parties for the sole purpose of bringing the parties together. Although this activity may subject an FCU to reputation risk by identifying particular vendors to its membership, an FCU does not represent the vendor or the member when the two parties negotiate or enter into a transaction. Finder activities differ from the category of marketing activities because, as the ''finder,'' an FCU simply identifies an outside party with a product or service the FCU believes its members would be interested in obtaining. The category of marketing activities consists of an FCU's promotion or marketing of its own products and operation.

One commenter asked that the finder activities category include the finding of real estate brokers and agents, but that NCUA warn FCUs to comply with other applicable laws, such as the Real Estate Settlement Procedures Act. Similarly, another commenter suggested that the rule authorize FCUs to offer real-estate services under their finder authority, including assistance to members in finding a home mortgage loan, real estate broker or real estate agent. One commenter asked that NCUA allow debt and budget counseling to members through third-party arrangements. An FCU may act as a finder for a variety of products or services that it finds suitable to introduce to its members. An FCU may find real estate brokers or insurance companies, among the numerous possibilities. Therefore, the Board, has removed any reference to a particular product or service in the final rule. This category simply provides examples of types of finder activities.

The proposed rule specifically noted that the offering of a third party's insurance products as an example in the category of finder activities. One commenter found that the insurance products or activities listed in the category could be construed to limit an FCU's offering of insurance products to only those listed, all of which are related to the share or loan products. One commenter stated that the activities listed in the rule should include property and casualty insurance products. Another commenter requested that this category also include long-term care insurance products. One commenter found the regulatory text unclear as to whether FCUs could offer automobile, term and whole life, homeowner's liability, and healthcare insurance products. As mentioned above, the Board recognized from the comment letters that, for clarity, the rule should avoid references to particular products offered by third party vendors. Therefore, while insurance products from third party insurers are examples within the category of finder activities, the Board has removed this reference from the regulatory text. FCUs are not limited in the types of products they may introduce to their members. Rather, an FCU must exercise judgment and due diligence when choosing to introduce or bring together an outside vendor with its members.

The Board notes that the final rule describes finder activities to include the sale of statistical information about an FCU's membership and consumer financial information to outside vendors to facilitate the sale of their products to members. The Board reminds FCUs that, as discussed throughout the preamble, although an activity is authorized as within an FCU's incidental powers, an FCU must comply with all applicable laws prior to engaging in the activity. FCUs must comply with NCUA's privacy of consumer financial information regulation (12 CFR part 716), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and any applicable state laws before selling or otherwise communicating consumer information to third parties.

Loan-Related Products

This category recognizes the ability of FCUs to engage in credit-related activities to protect the FCU against credit-related risks. The FCU Act grants FCUs the express authority to lend. 12 U.S.C. 1757(5) In a lending transaction, the terms of a loan include interest rates, payment dates, and the consequences of default, such as repossession. This category provides examples of activities, services, or products an FCU may negotiate and provide to its members that are incidental to the exercise of an FCU's express power to lend. The Board notes, however, that FCUs must ensure that members receive all of the necessary consumer protections provided in

applicable laws and regulations, such as the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226, so that members make informed choices about whether to purchase these ancillary products or services.

In the proposed rule, the Board identified debt cancellation and debt suspension agreements as permissible activities within the incidental powers of FCUs. The proposed rule, however, placed these activities within the category of finder activities. Three commenters asked that the final rule create an additional category for certain two-party agreements such as debt cancellation, payment suspension and waiver products. The Board agrees that these two-party agreements between an FCU and its member are not finder activities but activities engaged in directly by the FCU with its member to mitigate loan loss.

Both debt cancellation and debt suspension agreements provide a convenient and useful way for an FCU and its members to manage the risk of nonpayment due to financial hardship. FCUs receive compensation for assuming the risk of nonpayment and the additional cost of foregoing the collection of principal or interest. These agreements are appropriate financial tools for FCUs and their members. They provide a source of compensation to the FCU for the credit risk implicit in a lending transaction, and they protect the member from credit damage during a period of financial hardship. Similarly, FCUs may negotiate compensation for uninsured physical damage loss to repossessed property used in a lending transaction.

To clarify the extent of this category further, the Board also has identified two, additional products that NCUA has long considered to be within the incidental powers of FCUs: Leases and letters of credit. The preamble of the Board's recent final leasing regulation contains a discussion regarding an FCU's authority to engage in direct or indirect leasing. 65 FR 34581 (May 31, 2000). A letter of credit is a commitment on the part of the issuing FCU that it will pay a draft presented to it under the terms of credit. If the obligation is to be discharged by the payment of money into a share account, the letter of credit is incidental to the creation of the account. If the obligation is to be discharged by a loan to the member, then the letter of credit is incidental to the FCU's loan commitment under its lending authority. In either case, the letter of credit is incidental to an expressly granted power.

Marketing

This section states that credit union management may use its longstanding incidental power to advertise and market its services in any legally permissible manner. The Board received no comments on this category and has adopted it in the final rule as proposed. The Board has added language to the final rule to clarify that an FCU may market membership in the credit union, as well as the products and services offered to members.

Monetary Instruments

This section allows an FCU to provide monetary instrument services to its members. This section derives from and expands on the express authority of an FCU ''to sell to members negotiable checks (including travelers checks), money orders and other similar money transfer instruments; and to cash checks and money orders for members, for a fee. * * *'' 12 U.S.C. 1757(12).

The section allows an FCU to maintain deposits in foreign financial institutions to facilitate member transactions. The provision does not, however, allow an FCU to maintain foreign accounts for speculative purposes.

Two commenters requested that this provision include check-cashing authority for nonmembers. As noted above however, this section of the rule is based on expressed statutory authority that is limited to members. Also, one commenter requested the authority to offer international monetary transfer services to both members and nonmembers. International monetary transfers for members are included as a permissible service in this section.

There may be circumstances where it would permissible to provide a monetary service to a nonmember, for example cashing paychecks issued by the credit union's sponsor company. Any other circumstance that might warrant the provision of monetary services to certain nonmembers would necessarily be addressed on a separate basis, outside the scope of this section.

One credit union commenter requested authority to provide services under this category to an underserved community. As stated in the excess capacity discussion, the Board does not find legal justification for establishing a different analysis of the incidental powers of FCUs based upon an FCU's field of membership. The Board notes, however, that there are two other ways in which low-income individuals may receive FCU services. First, FCUs may apply to add underserved areas to their fields of membership without regard to the location of the underserved area. The requirements and process for adding an underserved area are set out in the NCUA Field of Membership and Chartering Manual (NCUA Chartering Manual). NCUA Chartering Manual, Chapter 3, Section III. Once added, anyone in the underserved area is eligible to join the credit union. Second, an FCU with a low-income designation may open share accounts, including regular share, share certificate and share draft accounts, for nonmembers. 12 U.S.C. 1757(6); 12 CFR 701.32. 701.34; NCUA Chartering and Field of Membership Manual (Chartering Manual), Chapter 3, Section II.B.

Operational Programs

The final rule identifies certain operational programs as within an FCU's incidental powers. Operational programs are programs that an FCU establishes within its business to establish or deliver products and services that enhance member service and promote safe and sound operation. One commenter asked NCUA to expand the operational programs category to include the following activities: Money orders, remote cash dispensing, savings bond purchases and redemptions, drafts (vehicle and sight), collections, traveler's checks, cashier's checks, tax payment services, treasury security redemptions, and wire transfers. Another commenter suggested that the category of operational programs include, in addition to safe deposit boxes, other repositories for items of value. The Board has included several of these suggestions in the final rule. The Board excluded the remaining suggested programs because they are already within an FCU's express powers, within another incidental powers activity category such as monetary instruments, or substantially similar to examples in this category.

Stored Value Products

This category in the final rule identifies stored value products or alternate media as within an FCU's incidental powers. As noted in an OCC decision, these products represent a member's prepayment for a merchant's goods or services and are, therefore, a form of bill payment. OCC Interpretive Letter No. 718 (April 1996). An FCU simply transfers funds from a member's share account to a merchant's account. The FCU acts as an intermediary by transferring funds from a member to a merchant, a traditional role for FCUs. Therefore, the activity poses no more additional risk than that already assumed by credit unions.

Two commenters suggested that the definition of stored value products should include products to which an FCU transfers non-monetary information of value to members. These commenters did not elaborate on the type of information or product they envisioned. The Board has determined to leave this category unchanged from the proposed but recognizes that developing technology may affect future interpretation of this category.

Trustee or Custodial Services

Although FCUs do not have express trust powers under the FCU Act, they have long served as trustees and custodians where that authority has been granted under other provisions of law such as the Internal Revenue Code. Under this authority, FCUs are able to provide individual retirement accounts (IRA), education saving accounts such as the Roth IRA, and other savings opportunities that are of importance to modest savers. The ability of FCUs to provide these saving opportunities to their members fits within the historic role of FCUs in encouraging thrift among their members and creating a source of credit for provident purposes.

Four commenters suggested that NCUA authorize FCUs to offer full trust company services to members. The Board disagrees. Under the National Bank Act, the OCC is authorized to ''grant by special permit to national banks * * * the right to act as trustee, executor, administrator * * * or in any other fiduciary capacity in which State banks, trust companies, or other corporations * * * are permitted to act'' in the state in which the bank is located. 12 U.S.C. 92a. The FCU Act does not provide equivalent authority for FCUs to act in a fiduciary capacity for its members.

Two commenters suggested that this category include medical savings accounts. Likewise, one of these commenters recommended that the category of trustee or custodial services include special accounts for first-time homebuyers or other similar accounts authorized under state law. The Board will not include the accounts suggested by the commenter at this time. The Board is considering an amendment to part 724 to authorize FCUs to serve as trustees for tax-deferred medical savings accounts but has not yet made a determination. *See* 64 FR 55871, 55872 (October 15, 1999). As for those accounts created under state law, NCUA evaluates each statute to ascertain whether an FCU has only limited custodial responsibilities under the governing law.

Section 721.4 How May a Credit Union Apply To Engage in an Activity That Is Not Preapproved as Within a Credit Union's Incidental Powers?

This section allows FCUs to seek approval from NCUA to engage in an activity that is not within the ambit of the broad categories in the rule. It provides that an application for a new activity is treated as an application to amend the regulation. It does not set time frames in which NCUA must respond to a request for a new activity or category although the preamble to the proposed rule states that ''NCUA will endeavor to respond * * * within 60 days as to whether it will propose an amendment.'' 65 FR 70526, 70531 (November 24, 2000). This section also permits FCUs to seek an advisory opinion from NCUA's Office of General Counsel before engaging in the petition process to determine whether a proposed activity fits into one of the authorized categories or is otherwise within an FCU's incidental powers. Thirty-three commenters supported the proposed application process. Seven commenters approved of an application process but suggested that NCUA amend the process. One commenter supported the voluntary nature of the process and agrees that FCUs will rarely need to use the process.

Nine commenters asked that the proposed rule place a time limitation on NCUA to respond to an applicant seeking approval of an activity or category not previously approved as within the incidental powers authority. These commenters suggested various time frames. The Board believes that setting a time frame to act on an application could result in less activities being approved. These activities may involve complex issues that require not only a thorough legal analysis but an assessment of risk. The Board's experience in dealing with the issue of incidental powers leads it to believe that maximum flexibility is necessary when reviewing these applications. Although the applicant may want an expeditious decision, most importantly, it wants a correct decision. This decision is not only important for the applicant but also for the agency and the National Credit Union Share Insurance Fund. The Board, therefore, is not setting a definitive time frame for rendering a decision, but will attempt to notify an applicant anytime a decision cannot be reached within 60 days. The Board is cognizant of the need for an applicant to receive a decision as soon as reasonably possible. Accordingly, every effort will be made to process and consider all applications expeditiously for approval of an activity or category not previously approved as within the broad incidental power categories.

One commenter supported the NCUA's Office of General Counsel's authority to determine whether an activity not found within the list of categories is permissible under the incidental powers of an FCU. One commenter disagreed with this approach. One commenter requested that the final rule clarify that an FCU need only seek an advisory opinion from the Office of General Counsel if a proposed activity clearly fails to fall within one of the preapproved categories. This commenter is correct. If a proposed activity does not appear to fall within one of the preapproved categories, FCUs may seek an advisory opinion from the Office of General Counsel as to whether the activity fits within a category or is otherwise an incidental powers activity.

A number of commenters misconstrued the Board's description of the review and approval process for activities that are not provided as examples within the preapproved categories. In general, these commenters were confused about when the General Counsel advisory opinion process is used and when it would be necessary to apply to the Board to amend the regulation. Forty-nine commenters generally opposed the use of categories and the application process. Many of these commenters found the application process burdensome and recommended a more streamlined process or no application process at all. Again, the Board believes some of these commenters misconstrued how the Board intends the process to work.

The Board wishes to clarify how it intends the process to work and the analytic steps an FCU should follow in determining if an activity is permissible. The activities listed under the broad categories are intended as illustrations, not an exhaustive list of what is permissible under the categories set out in the rule. Therefore, the first step, if an FCU does not find an activity identified in the rule, is to consider whether, although not listed as a specific example, it is within the ambit of one of the broad categories in the rule. If an FCU concludes that it is within the ambit of one of the broad categories of the rule, an FCU need not contact NCUA for a legal opinion or apply for an amendment of the rule. FCUs are encouraged to consult with their own legal counsel in making this determination.

Second, if an FCU is not sure if an activity fits within a preapproved category, it may request a legal opinion

or consult informally with NCUA's Office of General Counsel. AnFCU is not required to obtain an opinion from NCUA's Office of General Counsel, however, there are several advantages in doing so. If it is unclear whether an activity is permissible, an FCU runs the risk of engaging in an impermissible activity and being subject to supervisory action. NCUA, not FCUs, has the discretion to determine if an activity is within an FCU's incidental powers. The Office of General Counsel, which is specifically authorized to provide the public with legal interpretations of the FCU Act andNCUA regulations, 12 CFR 790.2(b)(8), may determine that an activity is already covered by one of the rule's broad categories although not specifically identified. The Office of General Counsel may also, as it has done in the past, render a legal opinion that an activity is a permissible exercise of an FCU's incidental powers even though the activity is not covered by the broad categories in the rule. The Board contemplates that new activities identified by the Office of General Counsel will be routinely added to the rule as part of the Office of General Counsel's ongoing regulatory review process.

Third, an FCU may go through the application process set out in the rule. The Board wants to reiterate that it believes the application process will rarely be necessary because of the manner in which the categories are set out in § 721.3.

One commenter stated that the rule should require an FCU applicant to include only a description of the proposed activity, an explanation of how the activity qualifies as an incidental power and any other information as necessary to describe the activity. This commenter noted that the rule should not require the applicant to provide any business considerations in the application. Two commenters stated that NCUA's determination to approve an activity should not be based on whether it is a good business decision for the particular applicant but whether the activity is within the incidental powers of all FCUs. In general, the Board agrees that business considerations should not be part of the decision on whether an activity is deemed incidental and has modified the rule accordingly. Three commenters requested that the final rule clarify that an activity approved for one applicant is permissible for all FCUs. The Board agrees with this comment and is clarifying that once an activity is approved for one credit union it is legally permissible for all FCUs to engage in this activity.

Finally, most of the commenters who objected to the application process favored a flexible approach that they contend is similar to the OCC's. They advocated an incidental powers analysis whereby NCUA establishes broad parameters of what constitutes a permissible activity so that FCUs could determine whether an activity falls within their incidental powers. These commenters requested that the final rule grant FCU boards of directors or their private attorneys the ability to assess whether an activity is legal without seeking approval from the NCUA. Many commenters also objected to the statement in the proposed rule's preamble that indicates NCUA may reach a different conclusion in its analysis of incidental powers than the OCC. Two commenters suggested that NCUA should routinely review the powers granted to banks and conclude that these activities are permissible for FCUs unless they pose safety and soundness concerns or are contrary to the FCU Act. These commenters apparently misunderstand the OCC's approach.

Banks and their operating subsidiaries may engage in activities the OCC has authorized through regulations as within the powers of a bank. In addition, the OCC determines whether a novel activity is within the business of banking or incidental thereto, through interpretive letters that rely on the facts presented by the applicant. As explained earlier, NCUA has the authority and responsibility to determine whether an activity is incidental. The Board believes it cannot and should not delegate that authority and responsibility. The Board is concerned about potential safety and soundness concerns as well as the problems that could ensue if an FCU invested a significant amount of personnel and dollars in an activity that was later determined to be impermissible. Finally, an FCU's incidental authority is different than the incidental authority of a bank and, therefore, requires a distinct and separate analysis.

Section 721.5 What Limitations Apply to a Credit Union Engaging in Activities Approved Under This Part as Within a Credit Union's Incidental Powers?

This section acknowledges the distinction between an FCU's authority to engage in an activity deemed to be within its incidental powers and the requirement that an FCU comply with any conditions or regulations that apply to the activity. When engaging in an authorized activity, FCUs must comply with conditions or constraints on the activity established in applicable federal and state law, NCUA regulations, and legal opinions. For example, FCUs are responsible for ensuring their compliance with applicable state licensing laws relating to insurance sales. Another example is the use of raffles in promotional activities that may be regulated or prohibited under local law. The regulation does not preempt FCUs from compliance with these laws.

One commenter suggested that the Board remove this section as unnecessary because FCUs are already obligated to obey such laws. The Board disagrees. The Board believes that including this provision enhances awareness of the compliance risk involved in new activities. Before engaging in any of the activities identified in the final rule, FCUs must ascertain whether they need to obtain licenses or meet other legal requirements before engaging in an activity.

Section 721.6 May a Credit Union Derive Income From Activities Approved Under This Part?

The proposed rule provided that an FCU may receive unlimited compensation from its incidental powers activities. For finder activities, the proposed rule would allow FCUs to charge third parties that solicit members through the FCU.

One hundred and forty-one commenters agreed that compensation should be unlimited. Although FCUs are currently authorized to conduct administrative work in connection with a group purchasing activity and receive reimbursement of their cost amount for extending group purchasing plans, many commenters supported the proposal because they stated a need to increase income due to decreasing operating and interest rate margins. Those in support of this provision uniformly stated that only the business decisions of FCU directors should limit the amount of income an FCU receives when engaging in incidental powers activities. Two credit union commenters objected to the ability of FCUs to obtain unlimited compensation from their incidental powers. In light of the overwhelming number of comments in favor of proposed § 721.6 and the fact that this derivation of income is simply an extension of fees the FCU already has received in connection with the current group purchasing authority, the Board is adopting this section in the final rule as proposed.

Section 721.7 What Are the Potential Conflicts of Interest for Officials and Employees When Credit Unions Engage in Activities Approved Under This Part?

This section prohibits senior management employees, officials, and their immediate family members from receiving any compensation or benefit, directly or indirectly, from activities covered in the regulation. Of the twenty-four commenters that expressed an opinion on the conflicts of interest provision, fourteen stated that the provision is adequate. One stated that the provision prevents the misappropriation of funds and is in the best interests of an FCU's membership. Nine commenters suggested several amendments to this section. One commenter suggested that the reference to ''indirectly receiving'' requires clarification because it could be subject to wide interpretation. The preamble to the proposed rule stated that this section only prohibits compensation that is linked to products or services provided by third party vendors. In addition, the NCUA Board provided an example of compensation that is not prohibited. 65 FR 70526, 70531 (November 24, 2000).

One commenter requested that the final rule clarify proposed § 721.7(a). Two commenters believed that the reference to compensation received ''directly or indirectly'' could disallow salaries for senior management. The Board is clarifying that this conflicts of interest section does not prohibit salaries for senior management.

Four commenters stated that the rule should allow senior management to receive bonuses or incentives for finder activities or other incidental powers activities. The Board disagrees. As with other activities that can lead to significant abuse, the Board believes senior management should be primarily concerned with the financial health of the institution and be free from the undue influences of third party vendors. Such a prohibition is a good policy for the FCU, its members and ultimately senior management officials. Avoiding the appearance of a conflict of interest will insulate senior management from charges that their business decisions are based on their own pecuniary interest. This type of conflict of interest provision adopted in the final rule has worked extremely well in the context of other NCUA regulations and the Board believes such a provision is necessary in the context of expanded incidental powers activities.

One commenter asked that the rule establish an exception allowing an official to receive dividends from publicly traded corporations if the official does not have a material ownership interest in the corporation. The Board wishes to clarify that the conflict of interest provision does not apply to the situation presented by this commenter.

One commenter stated that § 721.7(b) is inconsistent with the conflicts provision of NCUA's lending regulation, which governs compensation in connection with any loan made by an FCU. 12 CFR 701.21(c)(8). This commenter asserted that many third party loan-related products and services will be offered under part 721 and that compensation arrangements related to these products and services will be subject to different requirements under the two rules. The Board appreciates the need to provide further guidance regarding the final rule's conflict of interest provision and has amended the language in the final rule to simplify this provision consistent with the Board's intent and other conflict of interest provisions throughout NCUA's regulations.

As noted above, the final rule prohibits compensation to a senior management employee, official, or his or her immediate family member that is received directly or indirectly by such individual as a result of third-party products or services. The Board does not prohibit compensation to these individuals, however, if the compensation is: (1) Fixed in amount; (2) not related to the amount of products sold or services used; and (3) received by no more than one director or official of the credit union, who is recused from the credit union decision concerning its business with the third party vendor. The Board again provides the following example of permissible compensation:

> An FCU official, Ms. Smith, is also on the board of directors of Company DMH, which sells phone cards. Ms. Smith is paid $5,000 a year by Company DMH for her services as a director. The FCU contracts with Company DMH to provide prepaid phone cards to its members. Ms. Smith is not involved in the decision making process, and her compensation from the DMH Company is not linked to the FCU's phone card sales.

The rule also prohibits compensation to non-senior management employees or their immediate family members that is received directly or indirectly by such individual as a result of third-party products or services, unless the FCU's board of directors has established written policies regarding third-party compensation and has determined that no conflict of interest exists. This provision allows employees to receive compensation from persons other than the FCU provided that the employee's relationship with the third-party does not conflict with the interests of the FCU or its members.

Under this exception, an employee may not receive a commission or other compensation from a third-party for referring members to the third-party because an inherent conflict exists in the employee's promotion of a particular third-party product or service for the employee's pecuniary interest. If the employee's motivation is purely self-interest, this incentive works to the detriment of the FCU or its members. The final rule, however, allows the FCU to pay incentives to non-senior management employees in connection with incidental powers activities when an FCU's board of directors determines that an incentive or bonus is an appropriate means to promote its business as an FCU. In addition, the final rule permits employees to receive compensation from a third-party when no conflict of interest exists, such as in a dual employment scenario when the employee's position outside of the FCU does not affect the FCU.

These restrictions are consistent with the intent of NCUA's other conflicts of interest provisions. The Board, however, maintains that conflicts of interest provisions tailored to particular activities are still necessary. Therefore, individuals affiliated with FCUs are still required to comply with conflicts of interest provisions within other sections of NCUA's regulations. The final rule provides that where a specific conflicts of interest provision applies to a particular activity, that provision controls the conduct of the parties. For example, the conflicts of interest provision in the lending regulation was adopted to ''ensure that lending decisions are made in the best interests of the credit union and its members, and not in the personal interests of individual officials or employees.'' 48 FR 52475 (November 18, 1983). The Board continues to believe that this provision in the lending regulation is necessary to promote the safety and soundness of FCUs. Therefore, individuals subject to the conflicts of interest provision in the lending rule remain subject to this provision when offering loan-related products, an activity authorized under part 721.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. For purposes of this analysis, credit unions

under $1 million in assets will be considered small entities.

The Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule identifies activities that FCUs are authorized to engage in under their incidental powers without imposing any additional regulatory burden or expense to credit unions. Accordingly, NCUA has determined that a Regulatory Flexibility Analysis is not required.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

Paperwork Reduction Act

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule applies only to federally-chartered credit unions. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 721

Credit unions.

By the National Credit Union Administration Board on July 26, 2001.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR Chapter VII by revising part 721 to read as follows:

PART 721—INCIDENTAL POWERS

Sec.

721.1 What does this part cover?
721.2 What is an incidental powers activity?
721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?
721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union's incidental powers?
721.5 What limitations apply to a credit union engaging in activities approved under this part?
721.6 May a credit union derive income from activities approved under this part?
721.7 What are the potential conflicts of interest for officials and employees when credit unions engage in activities approved under this part?

Authority: 12 U.S.C. 1757(17), 1766 and 1789.

§ 721.1 What does this part cover?

This part authorizes a federal credit union (you) to engage in activities incidental to your business as set out in this part. This part also describes how interested parties may request a legal opinion on whether an activity is within a federal credit union's incidental powers or apply to add new activities or categories to the regulation. An activity approved in a legal opinion to an interested party or as a result of an application by an interested party to add new activities or categories is recognized as an incidental powers activity for all federal credit unions. This part does not apply to the activities of corporate credit unions.

§ 721.2 What is an incidental powers activity?

An incidental powers activity is one that is necessary or requisite to enable you to carry on effectively the business for which you are incorporated. An activity meets the definition of an incidental power activity if the activity:

(a) Is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act;

(b) Is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and

(c) Involves risks similar in nature to those already assumed as part of the business of credit unions.

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

The categories of activities in this section are preapproved as incidental to carrying on your business under § 721.2. The examples of incidental powers activities within each category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

(a) *Certification services.* Certification services are services whereby you attest or authenticate a fact for your members' use. Certification services may include such services as notary services, signature guarantees, certification of electronic signatures, and share draft certifications.

(b) *Correspondent services.* Correspondent services are services you provide to other credit unions that you are authorized to perform for your members or as part of your operation. These services may include loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling money orders, performing internal audits, and automated teller machine deposit services.

(c) *Electronic financial services.* Electronic financial services are any services, products, functions, or activities that you are otherwise authorized to perform, provide, or deliver to your members but performed through electronic means. Electronic services may include automated teller machines, electronic fund transfers, online transaction processing through a web site, web site hosting services, account aggregation services, and Internet access services to perform or deliver products or services to members.

(d) *Excess capacity.* Excess capacity is the excess use or capacity remaining in facilities, equipment, or services that: You properly invested in or established, in good faith, with the intent of serving your members; and you reasonably anticipate will be taken up by the future expansion of services to your members. You may sell or lease the excess capacity in facilities, equipment or services such as office space, employees and data processing.

(e) *Financial counseling services.* Financial counseling services means advice, guidance or services that you offer to your members to promote thrift or to otherwise assist members on financial matters. Financial counseling

services may include income tax preparation service, electronic tax filing for your members, counseling regarding estate and retirement planning, investment counseling, and debt and budget counseling.

(f) *Finder activities.* Finder activities are activities in which you introduce or otherwise bring together outside vendors with your members so that the two parties may negotiate and consummate transactions. Finder activities may include offering third party products and services to members through the sale of advertising space on your web site, account statements and receipts, or selling statistical or consumer financial information to outside vendors to facilitate the sale of their products to your members.

(g) *Loan-related products.* Loan-related products are the products, activities or services you provide to your members in a lending transaction that protect you against credit-related risks or are otherwise incidental to your lending authority. These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit and leases.

(h) *Marketing activities.* Marketing activities are the activities or means you use to promote membership in your credit union and the products and services you offer to your members. Marketing activities may include advertising and other promotional activities such as raffles, membership referral drives, and the purchase or use of advertising.

(i) *Monetary instrument services.* Monetary instrument services are services that enable your members to purchase, sell, or exchange various currencies. These services may include the sale and exchange of foreign currency and U.S. commemorative coins. You may also use accounts you have in foreign financial institutions to facilitate your members' transfer and negotiation of checks denominated in foreign currency or engage in monetary transfer services for your members.

(j) *Operational programs.* Operational programs are programs that you establish within your business to establish or deliver products and services that enhance member service and promote safe and sound operation. Operational programs may include electronic funds transfers, remote tellers, point of purchase terminals, debit cards, payroll deduction, pre-authorized member transactions, direct deposit, check clearing services, savings bond purchases and redemptions, tax payment services, wire transfers, safe deposit boxes, loan collection services, and service fees.

(k) *Stored value products.* Stored value products are alternate media to currency in which you transfer monetary value to the product and create a medium of exchange for your members' use. Examples of stored value products include stored value cards, public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, postage stamps, electronic benefits transfer script, and similar media.

(l) *Trustee or custodial services.* Trustee or custodial services are services in which you are authorized to act under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension or profit-sharing plan, as authorized under the Internal Revenue Code. These services may include acting as a trustee or custodian for member retirement and education accounts.

§ 721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union's incidental powers?

(a) *Application contents.* To engage in an activity that may be within an FCU's incidental powers but that does not fall within a preapproved category listed in § 721.3, you may submit an application by certified mail, return receipt requested, to the NCUABoard. Your application must describe the activity, your explanation, consistent with the test provided in paragraph (c) of this section, of why this activity is within your incidental powers, your plan for implementing the proposed activity, any state licenses you must obtain to conduct the activity, and any other information necessary to describe the proposed activity adequately. Before you engage in the petition process you should seek an advisory opinion from NCUA's Office of General Counsel, as to whether a proposed activity fits into one of the authorized categories or is otherwise within your incidental powers without filing a petition to amend the regulation.

(b) *Processing of application.* Your application must be filed with the Secretary of the NCUA Board. NCUA will review your application for completeness and will notify you whether additional information is required or whether the activity requested is permissible under one of the categories listed in § 721.3. If the activity falls within a category provided in § 721.3, NCUA will notify you that the activity is permissible and treat the application as withdrawn. If the activity does not fall within a category provided in § 721.3, NCUA staff will consider whether the proposed activity is legally permissible. Upon a recommendation by NCUA staff that the activity is within a credit union's incidental powers, the NCUA Board may amend § 721.3 and will request public comment on the establishment of a new category of activities within § 721.3. If the activity proposed in your application fails to meet the criteria established in paragraph (c) of this section, NCUA will notify you within a reasonable period of time.

(c) *Decision on application.* In determining whether an activity is authorized as an appropriate exercise of a federal credit union's incidental powers, the Board will consider:

(1) Whether the activity is convenient or useful in carrying out the mission or business of credit unions consistent with the Act;

(2) Whether the activity is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and

(3) Whether the activity involves risks similar in nature to those already assumed as part of the business of credit unions.

§ 721.5 What limitations apply to a credit union engaging in activities approved under this part?

You must comply with any applicable NCUA regulations, policies, and legal opinions, as well as applicable state and federal law, if an activity authorized under this part is otherwise regulated or conditioned.

§ 721.6 May a credit union derive income from activities approved under this part?

You may earn income for those activities determined to be incidental to your business.

§ 721.7 What are the potential conflicts of interest for officials and employees when credit unions engage in activities approved under this part?

(a) *Conflicts.* No official, employee, or their immediate family member may receive any compensation or benefit, directly or indirectly, in connection with your engagement in an activity authorized under this part, except as otherwise provided in paragraph (b) of this section. This section does not apply if a conflicts of interest provision within another section of this chapter applies to a particular activity; in such case, the more specific conflicts of interest provision controls. For example: An official or employee that refers loan-related products offered by a third-party to a member, in connection with a loan made by you, is subject to the conflicts

of interest provision in § 701.21(c)(8) of this chapter.

(b) *Permissible payments.* This section does not prohibit:

(1) Payment, by you, of salary to your employees;

(2) Payment, by you, of an incentive or bonus to an employee based on your overall financial performance;

(3) Payment, by you, of an incentive or bonus to an employee, other than a senior management employee or paid official, in connection with an activity authorized by this part, provided that your board of directors establishes written policies and internal controls for the incentive program and monitors compliance with such policies and controls at least annually; and

(4) Payment, by a person other than you, of any compensation or benefit to an employee, other than a senior management employee or paid official, in connection with an activity authorized by this part, provided that your board of directors establishes written policies and internal controls regarding third-party compensation and determines that the employee's involvement does not present a conflict of interest.

(c) *Business associates and family members.* All transactions with business associates or family members not specifically prohibited by paragraph (a) of this section must be conducted at arm's length and in the interest of the credit union.

(d) *Definitions.* For purposes of this part, the following definitions apply.

(1) *Senior management employee* means your chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g. Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller).

(2) *Official* means any member of your board of directors, credit committee or supervisory committee.

(3) *Immediate family member* means a spouse or other family member living in the same household.

[FR Doc. 01–19103 Filed 8–3–01; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–298–AD; Amendment 39–12355; AD 2001–15–20]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires a one-time inspection to detect the presence of filler plates of the engine support fittings, and corrective action, if necessary. The actions specified by this AD are intended to detect and correct fatigue and stress corrosion in the U-shaped upper and lower legs of the engine support fittings, which could result in reduced structural integrity of the engine support structure. This action is intended to address the identified unsafe condition.

DATES: Effective September 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; 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 all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the **Federal Register** on June 11, 2001 (66 FR 31192). That action proposed to require a one-time inspection to detect the presence of filler plates of the engine support fittings, 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

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

Cost Impact

The FAA estimates that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,640, or $120 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:

2001–15–20 Fokker Services B.V.: Amendment 39–12355. Docket 2000–NM–298–AD.

Applicability: All Model F.28 Mark 1000, 2000, 3000, and 4000 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 (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 detect and correct fatigue and stress corrosion in the U-shaped upper and lower legs of the engine support fittings, which could result in reduced structural integrity of the engine support structure, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD: Except as required by paragraph (b) of this AD, perform a general visual inspection to detect the presence of filler plates of the engine support fittings, and accomplish all applicable corrective actions (including removing any filler plates, inspecting the support fitting to detect cracks and other discrepancies by using a nondestructive test method, and repairing discrepancies); in accordance with Fokker Service Bulletin F28/53–149, dated November 15, 1999.

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.''

(b) If the service bulletin specifies to contact Fokker Services for appropriate action: Prior to further flight repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA Transport Airplane Directorate; or the Rijksluchtvaartdienst (RLD) (or its delegated agent).

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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD: The actions shall be done in accordance with Fokker Service Bulletin F28/53–149, dated November 15, 1999. This 2 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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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 Dutch airworthiness directive 1999–153, dated November 30, 1999.

Effective Date

(f) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19246 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–412–AD; Amendment 39–12356; AD 2001–15–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A310; and A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4; A310; and A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; that requires modification of certain components related to the fuel level sensors. This action is necessary to prevent the possibility of overheating of the fuel level sensors, which could lead to the risk of explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective September 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; 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 Airbus Model A300 B2 and B4; A310; and A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; was published in the **Federal Register** on May 2, 2001 (66 FR 21893). That action proposed to require modification of certain components related to the fuel level sensors.

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.

Remove Paragraph (b)—Spare Parts

One commenter asks that the ''spare parts'' paragraph in the proposed rule be deleted for the following reasons:

• This is not a requirement of the French airworthiness directive.

• It is not clear to the commenter why the spares paragraph is necessary. It will force operators to accomplish at least a portion of the referenced service bulletin prior to the effective date of the AD. The level sensor connectors are not unsafe components, and replacing a connector with a new, improved connector does not improve safety. The intent of the proposed AD is to address a possible 115V alternating current short somewhere upstream of the tank, not to replace faulty connectors. A mechanic may wish to replace a level sensor connector for troubleshooting, or because the existing connector is damaged, but that connector position is as safe as other tank connectors on the airplane that have not been replaced and do not require replacement until 18 months after the effective date of the proposed rule. This type of requirement is used in other ADs when the part being replaced may create a safety problem, which does not apply in this case.

• Prohibiting the use of the spare parts specified in paragraph (b) as of the effective date of the proposed rule creates an undue burden for the operator. Parts to accomplish the referenced service bulletins may not be available at that time, and this could cause an operator to ground an airplane while waiting for parts to be obtained. The airplane mechanic uses the Illustrated Parts Catalog, wiring diagrams, maintenance manuals, etc., when replacing parts on the airplane, and this requirement does not allow time to revise these manuals and create other documentation that will address the procedures specified in the service bulletins. Mechanics may inadvertently violate the proposed rule because the manual used is not revised to include the latest information.

The FAA agrees with the commenter for the reasons submitted, and has removed paragraph (b) of the final rule. By removing the spare parts paragraph, the operators are given time to acquire the redesigned part from the supplier, and install the spare parts specified during the 18-month timeframe required by paragraph (a) of the final rule.

Add Certain Wording to Proposed Rule

One commenter asks that the proposed rule be revised to add a statement specifying that previous accomplishment of the French airworthiness directive is acceptable for compliance with the actions specified in the proposed rule, and adds that the French airworthiness directive includes a statement that reads, ''All later approved revisions of these service bulletins are acceptable.'' The commenter states that adding these statements would save both the commenter and the FAA the time and effort it takes to go through the alternative method of compliance process.

The FAA partially agrees, as follows:

We agree that previous accomplishment of the French airworthiness directive (which references accomplishment of the actions specified in the service bulletins) is acceptable for compliance with the actions specified in the final rule. However, all ADs contain the phrase, ''Compliance: Required as indicated, unless accomplished previously,'' so no change to the final rule is necessary in this regard.

We do not agree that subsequent revisions of the referenced service bulletins are acceptable for accomplishment of the actions required by the final rule. To use the phrase, ''or later approved revisions,'' in an AD when referring to the service document violates Office of the Federal Register (OFR) regulations regarding approval of materials ''incorporated by reference'' in rules. In general terms, these OFR regulations require that either the service document contents be published as part of the actual AD language, or the service document be submitted for approval by the OFR as ''referenced'' material, in which case it may be only referred to in the text of an AD. The AD may only refer to the service document that was submitted and approved by the OFR for ''incorporation by reference.'' In order for operators to use later revisions of the referenced document (issued after the publication of the AD), either the AD must be revised to reference the specific later revisions, or operators must request the approval to use them as an alternative method of compliance with this final rule under the provisions of paragraph (b) of the final rule.

Extend Compliance Time

Two commenters ask for an extension of the compliance time specified in the proposed rule. One commenter states that the parts manufacturer it orders from will have an influx of purchase orders when the final rule is published, which will delay deliveries. The commenter asks that the FAA allocate time to receive all the parts required to modify its airplanes before releasing the final rule. The commenter also asks for an extension of the compliance time from 18 to 30 months after the effective date of the AD because such an increase would allow it to accomplish the requirements of paragraph (a) of the proposed AD during a regular maintenance check. The commenter adds that any less than 30 months would require field accomplishment.

Another commenter asks that the compliance time in paragraph (a) of the proposed rule be extended from 18 to 24 months after the effective date of the AD. The commenter states that if the 18-month limitation is equivalent to most ''C'' check intervals, allowing for a heavy check in order to comply with the modification, airlines operating under Section 19 of the Airbus A300 Maintenance Planning Document should be given similar consideration for the ''Low Utilization Program (LUP).'' The commenter adds that, for the LUP operator, the heavy check equivalent to a ''C'' check is the ''M24'' check, which is accomplished every 24 months. The ''M24'' check also is limited to 4,000 flight hours, which is the same flight hour limitation specified in the Airbus service bulletin referenced in the proposed rule. The commenter notes that it will probably accomplish the modification on some of its airplanes during a light check if the 18-month limitation is not changed, but adds that opening and venting every fuel tank is a complex task to accomplish during a light check.

The FAA does not agree with the commenters' requests. Although the referenced service bulletins specify accomplishment of the modification required by paragraph (a) of this final rule within 4,000 flight hours after the effective date of the AD, the French airworthiness directive clearly specifies an 18-month compliance time. In developing an appropriate compliance time for this action, we considered not

only the degree of urgency associated with addressing the subject unsafe condition, but the Direction Générale de l'Aviation Civile recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. We have determined that within 18 months after the effective date of this AD represents an appropriate compliance time allowable for the modification to be accomplished during scheduled maintenance intervals. However, under the provisions of paragraph (b) 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.

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 described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 157 airplanes of U.S. registry will be affected by this AD, that it will take approximately the number of work hours per airplane specified in the table below to accomplish the required modifications, and that the average labor rate is $60 per work hour. Approximate required parts costs and costs per airplane are listed in the table below:

Airplane Model	Work hours	Parts cost	Approximate cost per airplane
A300 B2 Post Modification 03082S4068	8	$18,241	$18,721
A300 B2 Pre Modification 03082S4068	8	16,690	17,170
A300 B4 Post Modification 01664S2368	16	24,512	25,472
A300 B4 Pre Modification 01664S2368	16	22,811	23,771
A310–200	10	11,972	12,572
A310–300	12	16,125	16,845
A300–600	2	3,805	3,925

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:

2001–15–21 Airbus Industrie: Amendment 39–12356. Docket 2000–NM–412–AD.

Applicability: Model A300 B2 and B4 series airplanes; Model A310 series airplanes, except those on which Airbus Modification 12201 has been embodied in production; and Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, except those on which Airbus Modification 12202 has been embodied in production; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (b) 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 the possibility of overheating of the fuel level sensors, which could lead to the risk of explosion in the fuel tank, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, modify the electrical connectors to the fuel sensors by the installation of new connectors and new sensors, or fused adapters for the sensors, as applicable, in accordance with Airbus

Service Bulletin A300–28–0078 (for Model A300 B2 and B4 series airplanes), A300–28–6063 (for Model A300–600 series airplanes), or A310–28–2141 (for Model A310 series airplanes), all dated September 27, 2000; as applicable.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) 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

(d) The modification shall be done in accordance with Airbus Service Bulletin A300–28–0078, dated September 27, 2000; Airbus Service Bulletin A300–28–6063, dated September 27, 2000; or Airbus Service Bulletin A310–28–2141, including Appendix 1, dated September 27, 2000; 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 French airworthiness directive 2000–481–324(B), dated November 29, 2000.

Effective Date

(e) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19247 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–397–AD; Amendment 39–12359; AD 2001–15–24]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (including CL–601–3A and CL–601–3R) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B16 series airplanes, that requires modification of the wiring for the internal fuel/defuel panel. The actions specified by this AD are intended to prevent the loss of engine and fuel indications essential for safe flight and landing. This action is intended to address the identified unsafe condition.

DATES: Effective September 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: 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: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; 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–600–2B16 series airplanes was published in the **Federal Register** on May 23, 2001 (66 FR 28402). That action proposed to require modification of the wiring for the internal fuel/defuel panel.

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.

Cost Impact

The FAA estimates that 18 Model CL–600–2B16 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of labor and replacement parts. As a result, those costs are not attributable to this AD.

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:

2001–15–24 Bombardier, Inc. (Formerly Canadair): Amendment 39–12359. Docket 2000–NM–397–AD.

Applicability: Model CL–600–2B16 (including CL–601–3A and CL–601–3R) series airplanes, certificated in any category, as listed in the following table:

TABLE 1.—APPLICABILITY

Serial No.	Transport Canada limited supplemental type certificate (STC)	FAA STC
5064	SA90–128	ST00873NY.
5075	SA91–22	SA861NE.
5080	SA91–42	SA860NE.
5092	Q–LSA91–52/D	SA965NE/ST00470NY.
5096	Q–LSA91–52/D	SA965NE.
5102	Q–LSA92–2/D	ST00364NY.
5111	Q–LSA92–1011/D	SA1029NE.
5123	Q–LSA93–1002/D	ST00001NY.
5125	Q–LSA93–1007/D	No record of FAA STC.
5130	Q–LSA93–1023/D	ST00049NY.
5139	Q–LSA94–1002/D	ST00086NY.
5142	Q–LSA94–1011/D	ST00216NY.
5154	Q–LSA94–1023/D	ST00273NY.
5156	Q–LSA94–1025/D	ST00423NY.
5159	Q–LSA95–1002/D	ST01228NY.
5162	Q–LSA95–1003/D	No record of FAA STC.
5163	Q–LSA95–1011/D	ST00343NY.
5194	Q–LSA96–1006/D	ST00769NY.

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 (b) 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 loss of engine and fuel indications essential for safe flight and landing, accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD, modify the wiring for the internal fuel/defuel panel, in accordance with Bombardier Service Bulletin S.B. GEN–28–010, Revision A, dated May 15, 2000.

Alternative Methods of Compliance

(b) 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 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

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

Incorporation by Reference

(d) The modification shall be done in accordance with Bombardier Service Bulletin S.B. GEN–28–010, Revision A, dated May 15, 2000. 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 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–24, dated August 15, 2000.

Effective Date

(e) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19248 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–06–AD; Amendment 39–12358; AD 2001–15–23]

RIN 2120–AA64

Airworthiness Directives; Bae Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAe Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes, that requires identifying the discharge valves and cabin pressure controllers, and replacing them with new parts if necessary. The actions specified by this

AD are intended to prevent the installation of incorrect pressurization discharge valves and cabin pressure controllers, which could subject the airframe to excess stress and adversely affect the airframe fatigue life. This action is intended to address the identified unsafe condition.

DATES: Effective September 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; 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 BAe Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes was published in the **Federal Register** on June 5, 2001 (66 FR 30103). That action proposed to require identifying the discharge valves and cabin pressure controllers, and replacing them with new parts 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.

Change to Paragraph (b) of Proposed AD

The FAA notes a typographical error in paragraph (b) of the proposed AD. The final rule has been revised to correctly identify the foreign civil airworthiness authority in that paragraph as ''the Civil Aviation Authority (CAA).''

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,600, or $180 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:

2001–15–23 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–12358. Docket 2001–NM–06–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category, as listed in BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, Revision 1, dated February 6, 2001.

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 prevent the installation of incorrect pressurization discharge valves and cabin pressure controllers, which could subject the airframe to excess stress and adversely affect the airframe fatigue life, accomplish the following:

Parts Identification

(a) As specified in paragraph (a)(1) or (a)(2), as applicable, of this AD: Identify the part numbers of the pressurization discharge valves and cabin pressure controllers to determine if any installed part is incorrect, as defined by and in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, Revision 1, dated February 6, 2001.

(1) For airplanes post-Modification HCM50258A: Identify the part numbers

within 30 days after the effective date of this AD; and, if any part is incorrect, limit the airplane ceiling to 31,000 feet until the incorrect part is replaced, as specified by paragraph (b) of this AD.

(2) For airplanes pre-Modification HCM50258A: Identify the part numbers within 6 months after the effective date of this AD.

Corrective Action

(b) For any incorrect part identified in accordance with paragraph (a) of this AD: Within 500 flight cycles thereafter, replace it with a new, correct part, in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, Revision 1, dated February 6, 2001. Prior to further flight thereafter, perform a structural inspection and accomplish applicable corrective actions, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Note 2: Accomplishment of the actions specified in this AD in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, dated November 17, 2000, is also acceptable for compliance with the requirements of 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) Except as required by paragraph (b) of this AD: The actions shall be done in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21–148, Revision 1, dated February 6, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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 British airworthiness directive 003–11–2000.

Effective Date

(f) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19249 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–383–AD; Amendment 39–12357; AD 2001–15–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires modifications of route segregation between the low voltage wire bundles of the fuel quantity indicating system and the high voltage wire bundles of the ground power control unit. This amendment is prompted by mandatory continuing airworthiness information from a civil airworthiness authority. The actions specified by this AD are intended to prevent injection of 115 volt alternating current (VAC) into 28 volt direct current (VDC) wire bundles, which could result in high voltage conditions within the fuel tank and the potential for damage to equipment, electrical arcing, and fuel vapor ignition on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective September 10, 2001.

The incorporation by reference of Airbus Service Bulletin A320–92–1007, Revision 02, dated August 4, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; 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 Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on May 15, 2001 (66 FR 26815). That action proposed to require modifications of route segregation between the low voltage wire bundles of the fuel quantity indicating system and the high voltage wire bundles of the ground power control unit.

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

Cost Impact

The FAA estimates that 291 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 to 42 work hours per airplane to accomplish the required modifications, depending on the wiring configuration of the airplane, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,300 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $797,340 and $1,111,620, or between $2,740 and $3,820 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:

2001–15–22 Airbus Industrie: Amendment 39–12357. Docket 2000–NM–383–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; except those on which Airbus Industrie Modification 28289 has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (b) 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 injection of 115 volt alternating current (VAC) into 28 volt direct current (VDC) wire bundles, which could result in high voltage conditions within the fuel tank and the potential for damage to equipment, electrical arcing, and fuel vapor ignition on the ground, accomplish the following:

Modification

(a) Within 4 years after the effective date of this AD, install additional protective conduits and new supports to ensure physical route segregation between the low voltage wire bundles of the fuel quantity indicating system (FQIS) and the high voltage wire bundles of the ground power control unit (GPCU), in accordance with Airbus Service Bulletin A320–92–1007, Revision 02, dated August 4, 2000.

Note 2: Modifications accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–92–1007, dated January 12, 2000; or Airbus Service Bulletin A320–92–1007, Revision 01, dated June 29, 2000; are considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send them to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The modification shall be done in accordance with Airbus Service Bulletin A320–92–1007, Revision 02, dated August 4, 2000. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 French airworthiness directive 2000–407–150(B), dated September 20, 2000.

Effective Date

(e) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19250 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–274–AD; Amendment 39–12360; AD 2001–15–25]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Series Airplanes and Model Hawker 800 (U–125A Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800XP series airplanes and certain Model Hawker 800 (U–125A military) airplanes, that requires a one-time inspection of an attachment bolt in the main landing gear (MLG) door system to determine whether the bolt's protruding threads have been peened; and corrective action, if necessary. The actions specified by this AD are intended to prevent the disconnection of the retaining hook (which holds the MLG door up and locked) from its means of actuation, which could result in a gear-up landing and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Effective September 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company,

Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

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 Raytheon Model Hawker 800XP series airplanes and certain Model Hawker 800 (U–125A military) airplanes was published in the **Federal Register** on May 4, 2001 (66 FR 22482). That action proposed to require a one-time inspection of an attachment bolt in the main landing gear (MLG) door system to determine whether the bolt's protruding threads have been peened; 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

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

Cost Impact

The FAA estimates that 115 Model Hawker 800XP series airplanes and certain Model Hawker 800 (U–125A military) 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, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,900, or $60 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:

2001–15–25 Raytheon Aircraft Company: Amendment 39–12360. Docket 2000–NM–274–AD.

Applicability: Model Hawker 800XP series airplanes, and Model Hawker 800 (U–125A military) airplanes; certificated in any category; as listed in Raytheon Service Bulletin SB 32–3386, dated June 2000.

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 (b) 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 a main landing gear (MLG) gear-up landing and possible injury to passengers and crew, accomplish the following:

Inspection and Corrective Action

(a) Within 100 flight hours after the effective date of this AD: Perform a general visual inspection of the MLG attachment bolt at the interface between the right and left MLG door retaining hooks and the uplock spring struts to determine whether the bolt's protruding threads next to the nuts have been peened, in accordance with Raytheon Service Bulletin SB 32–3386, dated June 2000. If the threads have not been peened, prior to further flight, peen the threads in accordance with the service bulletin.

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.''

Alternative Methods of Compliance

(b) 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, Wichita 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, Wichita ACO.

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Raytheon Service Bulletin SB 32–3386, dated June 2000. 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 Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19251 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–211–AD; Amendment 39–12363; AD 2001–15–28]

RIN 2120–AA64

Airworthiness Directives; BAe Systems (Operations) Limited Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAe Systems (Operations) Limited Model Avro 146-RJ series airplanes, that requires modification of the passenger service units. The actions specified by this AD are intended to prevent failure of the passenger service units to deliver oxygen to the passengers in the event of decompression of the airplane, which could result in injury to the passengers. This action is intended to address the identified unsafe condition.

DATES: Effective September 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; 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 BAe Systems (Operations) Limited Model Avro 146-RJ series airplanes was published in the **Federal Register** on May 1, 2001 (66 FR 21703). That action proposed to require modification of the passenger service units.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments have been received.

Conclusion

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

Cost Impact

The FAA estimates that 40 Model BAe Systems (Operations) Limited Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,000, or $300 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:

2001–15–28 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–12363. Docket 2000–NM–211–AD.

Applicability: Model Avro 146–RJ series airplanes, certificated in any category, as listed in BAe Systems (Operations) Limited Service Bulletin SB.25–418–36215A, Revision 1, dated October 17, 2000.

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 (b) 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 failure of the passenger service units (PSUs) to deliver oxygen to the passengers in the event of decompression of the airplane, which could result in injury to the passengers, accomplish the following:

Modification

(a) Within 90 days after the effective date of this AD, modify the PSUs by relocating the lanyard, in accordance with Bae Systems (Operations) Limited Service Bulletin SB.25–418–36215A, dated April 5, 2000; or Revision 1, dated October 17, 2001.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) 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

(d) The modification shall be done in accordance with BAe Systems (Operations) Limited Service Bulletin SB.25–418–36215A, dated April 5, 2000; or BAe Systems (Operations) Limited Service Bulletin SB.25–418–36215A, Revision 1, dated October 17, 2000. Revision 1 of BAe Systems (Operations) Limited Service Bulletin SB.25–418–36215A contains the following effective pages:

Page No.	Revision level shown on page	Revision date
1, 9	1	October 17, 2000.
2–8, 10, 11	Original	April 5, 2000.

(The revision date is listed only on the first page of the document; no other page contains this information.) 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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 British airworthiness directive 004–04–2000.

Effective Date

(e) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19252 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–179–AD; Amendment 39–12368; AD 2001–15–33]

RIN 2120–AA64

Airworthiness Directives; BAe Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all BAe Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ series airplanes, that currently requires a one-time inspection for ''drill marks'' and corrosion on the underside of the wing top skin, and corrective actions, if necessary. For certain airplanes, this amendment requires repetitive inspections for ''drill marks'' or corrosion on the underside of the wing top skin, and corrective actions, if necessary, until all corrective actions and protective treatment actions are done. For certain airplanes, this amendment adds a requirement for one-time detailed and borescopic inspections of the fuel tank, pump, and stringers for paint debris and inadequacy of the existing protective treatment coating; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent corrosion from developing on the underside of the top skin of the center wing, which could result in reduced structural integrity of the airplane.

DATES: Effective September 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–16–24,

amendment 39–10701 (63 FR 42220, August 7, 1998), which is applicable to all British Aerospace Model BAe 146 and certain Model Avro 146–RJ series airplanes, was published as a supplemental Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on February 21, 2001 (66 FR 10976). The action proposed to require repetitive inspections for ''drill marks'' and corrosion on the underside of the wing top skin, and corrective actions, if necessary, until all corrective actions and protective treatment actions are done.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the supplemental NPRM 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 by the supplemental NPRM.

Cost Impact

There are approximately 39 Model BAe 146 and Model Avro 146–RJ series airplanes of U.S. registry that will be affected by this AD.

The repetitive inspection for ''drill marks'' and corrosion that is required by this AD will take approximately 10 work hours per airplane (including access and close) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this repetitive inspection on U.S. operators is estimated to be $600 per airplane, per inspection cycle.

The one-time inspection for paint debris and inadequacy of the existing protective treatment coating that is required by this AD will take approximately 8 work hours per airplane (including access and close) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this one-time inspection on U.S. operators is estimated to be $480 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 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 removing amendment 39–10701 (63 FR 42220, August 7, 1998), and by adding a new airworthiness directive (AD), amendment 39–12368, to read as follows:

2001–15–33 BAe Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–12368. Docket 2000–NM–179–AD. Supersedes AD 98–16–24, Amendment 39–10701.

Applicability: All Model BAe 146 series airplanes and Model Avro 146–RJ airplanes, as listed in British Aerospace (Operations) Limited Inspection Service Bulletin ISB.57–57, dated February 25, 2000; 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 (d) 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 corrosion from developing on the underside of the top skin of the center wing, which could result in reduced structural integrity of the airplane, accomplish the following:

Intrascopic Inspection: ''Drill Marks'' and Corrosion

(a) For airplanes on which protective treatment coating has NOT been applied per British Aerospace Service Bulletin SB.57–50 (reference Repair Instruction Leaflet (R.I.L.) HC573H9014), and for airplanes on which the inspection required by AD 98–16–24, amendment 39–10701, has not been accomplished as of the effective date of this AD: Within 6 months after the effective date of this AD, perform an intrascopic inspection for ''drill marks'' and corrosion on the underside of the wing top skin, per British Aerospace (Operations) Limited Inspection Service Bulletin ISB.57–57, dated February 25, 2000.

(1) If no ''drill mark'' or corrosion is detected, repeat the intrascopic inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 4 years, until the terminating action required by paragraph (c) of this AD is done.

(2) If any corrosion is detected, prior to further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Directorate; or the Civil Aviation Authority (CAA) of the United Kingdom (or its delegated agent).

(3) If any ''drill mark'' is detected, or if any corrosion is detected and repaired, prior to further flight, do the terminating action required by paragraph (c) of this AD.

Note 2: Accomplishment of an intrascopic inspection for ''drill marks'' and corrosion prior to the effective date of this AD, per British Aerospace Service Bulletin SB.57–50, Revision 2, dated March 20, 1997, is acceptable for compliance with the inspection requirements of paragraph (a) of this AD.

Detailed Visual and Borescopic Inspections: Paint Debris and Inadequate Protective Treatment Coating

(b) For airplanes on which protective treatment coating HAS been applied prior to the effective date of this AD per British Aerospace (Operations) Limited Service

Bulletin SB.57–50 (reference R.I.L. HC573H9014): At the next scheduled maintenance inspection (''C-check'') or within 6 months after the effective date of this AD, whichever occurs first, do one-time detailed visual and borescopic inspections of the fuel tank, pump, and stringers to detect discrepancies (including paint debris and inadequacy of existing protective treatment coating); per Paragraph D. of the Accomplishment Instructions of British Aerospace Inspection Service Bulletin ISB. 57–57, dated February 25, 2000.

(1) If no discrepancy is found, no further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, do all applicable corrective actions (including removal of paint debris and testing of paint adhesion), and the terminating action required by paragraph (c) of this AD, per British Aerospace (Operations) Limited Inspection Service Bulletin ISB. 57–57, dated February 25, 2000.

Note 3: Paragraph B. of the Accomplishment Instructions of British Aerospace (Operations) Limited Inspection Service Bulletin ISB.57–57, dated February 25, 2000, references R.I.L. HC573H9024 as an additional source of service information for accomplishing the intrascopic inspection. Paragraph C. of the Accomplishment Instructions of the service bulletin references R.I.L. HC573H9032 as an additional source of service information for applying the protective treatment coating.

Note 4: For the purposes of this AD, a detailed visual 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.''

Terminating Action

(c) Application of the protective treatment coating, per Paragraph C. of the Accomplishment Instructions of British Aerospace (Operations) Limited Inspection Service Bulletin ISB. 57–57, dated February 25, 2000, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with British Aerospace (Operations) Limited Inspection Service Bulletin ISB.57–57, dated February 25, 2000. 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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

(g) This amendment becomes effective on September 10, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19254 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–235–AD; Amendment 39–12361; AD 2001–15–26]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Astra SPX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes. This action requires a one-time inspection to detect insufficient clearance on the electrical wire bundles routed next to the pilot and copilot air data reference and reversionary switching panels; and corrective action, if necessary. This action is necessary to prevent chafing of the electrical wire bundles, which could result in loss of flight-critical displays or system functions, and potential fire. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–235–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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. 2001–NM–235–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 Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Tamra Elkins, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2669; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes. The CAAI advises that inspection of some affected airplanes revealed insufficient clearance on the left and right electrical wire bundles routed next to the pilot and copilot air data reference and reversionary switching panels. This location is subject to frequent handling by mechanics. During ground inspection of an affected airplane, a chafed wine

bundle was discovered. Such chafing, if not corrected, could result in loss of flight-critical displays or system functions, and potential fire.

Explanation of Relevant Service Information

Israel Aircraft Industries, Ltd., has issued Astra Alert Service Bulletin 1125–31A–236, dated April 16, 2001, which describes procedures for a one-time inspection to detect insufficient clearance on the left and right electrical bundles routed next to the pilot and copilot air data reference and reversionary switching panels. The alert service bulletin also describes procedures for installing additional clamping to electrical bundles that have insufficient clearance. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 31–01–04–10, dated May 8, 2001, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, 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 is being issued to prevent chafing of the electrical wire bundles, which could result in loss of flight-critical displays or system functions, and potential fire. This AD requires accomplishment of the actions specified in the service bulletin described previously.

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 2001–NM–235–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 adding the following new airworthiness directive:

2001–15–26 Israel Aircraft Industries, Ltd: Amendment 39–12361. Docket 2001–NM–235–AD.

Applicability: Model Astra SPX series airplanes, certificated in any category, serial numbers 073, 079 through 125 inclusive, and 127.

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 (b) 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 chafing of the electrical wire bundles, which could result in loss of flight-critical displays or system functions, and potential fire, accomplish the following:

Inspection

(a) Within 25 flight hours after the effective date of this AD, inspect the clearance between the electrical bundles and air data reference and reversionary switching panels, in accordance with Astra (Israel Aircraft Industries, Ltd.) Alert Service Bulletin 1125–31A–236, dated April 16, 2001. If any clearance is less than 0.25 inch (6.35 mm): Prior to further flight, install additional clamping to the electrical wire bundles in accordance with the alert service bulletin.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Astra (Israel Aircraft Industries, Ltd.) Alert Service Bulletin 1125–31A–236, dated April 16, 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 Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. 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 Israeli airworthiness directive 31–01–04–10, dated May 8, 2001.

Effective Date

(e) This amendment becomes effective on August 21, 2001.

Issued in Renton, Washington, on July 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19255 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–136–AD; Amendment 39–12369; AD 2001–16–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, and –342 Series Airplanes, and Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A330–301, –321, –322, –341, and –342 series airplanes, and certain Model A340 series airplanes. This action requires repetitive inspections to detect cracking of the aft cargo compartment door, and corrective action if necessary. This action also provides for optional terminating action for the repetitive inspections. This action is necessary to detect and correct cracking of the aft cargo compartment door, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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. 2001–NM–136–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–301, –321, –322, –341, and –342 series airplanes, and certain Model A340 series airplanes. The DGAC advises that, during fatigue tests, cracking was found in several structural parts of the aft cargo compartment door. The cracking was detected between 42,944 and 67,605 simulated flights. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–52–3043 (for Model A330 series airplanes) and A340–52–4053 (for Model A340 series airplanes), both dated March 2, 2001. The service bulletins describe procedures for repetitive detailed visual inspections to detect cracking of the aft cargo compartment door, and corrective action, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directives 2001–126(B) and 2001–124(B), both dated April 4, 2001, to ensure the continued airworthiness of these airplanes in France.

Airbus has also issued Service Bulletins A330–52–3044 (for Model A330 series airplanes) and A340–52–4054 (for Model A340 series airplanes), both dated March 2, 2001. These service bulletins describe procedures to modify the aft cargo compartment door. The

modification involves either cold expanding the fastener holes and installing interference fit fasteners, or reinforcing the affected area. Accomplishment of the modification eliminates the need to continue the repetitive inspections.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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 the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to detect and correct cracking of the aft cargo compartment door, which could result in reduced structural integrity of the airplane. This AD requires accomplishment of the actions specified in Service Bulletins A330–52–3043 and A340–52–4053, except as discussed below in ''Differences Between the AD and the Service Bulletins.'' This AD also provides for optional terminating action for the repetitive inspections.

Operators should note that, to be consistent with the findings of the DGAC, the FAA has determined that the repetitive inspections required by this AD can be allowed to continue in lieu of accomplishment of a terminating action. Additionally, the FAA has determined that, for certain instances where cracking is detected, the repair may be deferred for a specified period of time. In making these determinations, the FAA considers that, in the case of this AD, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane, and by accomplishing repairs within the specified time limits.

Interim Action

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

Differences Between the AD and the Service Bulletins

Although Service Bulletins A330–52–3043 and A340–52–4053 specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with the requirements of this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 8 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $480 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action, the cost would vary depending on the kit installed. It would take approximately 2 to 45 work hours to accomplish the modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $60 to $5,010 per airplane. Based on these figures, the cost impact of this AD would be as little as $180, and as much as $7,710, per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 proposed 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 2001–NM–136–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.

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:

2001–16–01 Airbus Industrie: Amendment 39–12369. Docket 2001–NM–136–AD.

Applicability: The following airplanes, certificated in any category:

—Model A330–301, –321, –322, –341, and –342 series airplanes; excluding those that have received Airbus Modification 44852 (reference Airbus Service Bulletin A330–52–3044, dated March 2, 2001) or Airbus Modification 44854.

—Model A340 series airplanes, excluding those that have received Airbus Modification 44852 (reference Airbus Service Bulletin A340–52–4054, dated March 2, 2001) or Airbus Modification 44854.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (d) 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 detect and correct cracking of the aft cargo compartment door, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Before the accumulation of 12,000 total flight cycles, perform a detailed visual inspection to detect cracking of the aft cargo compartment door, in accordance with Airbus Service Bulletin A330–52–3043 (for Model A330 series airplanes) or A340–52–4053 (for Model A340 series airplanes), both dated March 2, 2001; as applicable. Perform applicable follow-on and corrective actions at the applicable threshold in accordance with the applicable service bulletin, except as required by paragraph (b) of this AD. Repeat the inspection thereafter at least every 4,000 flight cycles.

Note 2: For the purposes of this AD, a detailed visual 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.''

(b) If any crack is found during any inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

Optional Terminating Action

(c) Modification of the aft cargo compartment door terminates the repetitive inspections required by this AD, if the modification is accomplished in accordance with Airbus Service Bulletin A330–52–3044 (for Model A330 series airplanes) or A340–52–4054 (for Model A340 series airplanes), both dated March 2, 2001; as applicable.

Alternative Methods of Compliance

(d) 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) 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

(f) Except as required by paragraph (b) of this AD: The inspection must be done in accordance with Airbus Service Bulletin A330–52–3043, dated March 2, 2001; or Airbus Service Bulletin A340–52–4053, dated March 2, 2001; as applicable. The modification, if accomplished, must be done in accordance with Airbus Service Bulletin A330–52–3044, dated March 2, 2001; or Airbus Service Bulletin A340–52–4054, dated March 2, 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 French airworthiness directives 2001–126(B) and 2001–124(B), both dated April 4, 2001.

Effective Date

(g) This amendment becomes effective on August 21, 2001.

Issued in Renton, Washington, on July 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19257 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–340–AD; Amendment 39–12366; AD 2001–15–31]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–311 and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–311 and –315 series airplanes. This action requires replacement of the door stops on the baggage bulkhead

with new, improved door stops. This action is necessary to prevent the internal door on the baggage bulkhead from jamming in the closed position, precluding access to the baggage compartment, which is critical for fire fighting during flight. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–340–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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. 2000–NM–340–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., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, 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 Parillo, 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: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–311, –314, and –315 series airplanes. TCCA advises that distorted door stops on the baggage bulkhead may prevent the internal baggage door from latching or may cause the door to jam in the closed position. This condition, if not corrected, could result in the inability to gain access to the baggage compartment for fire fighting during flight.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 8–25–306, dated May 5, 2000, which describes procedures for replacing the door stops on the baggage bulkhead with new, improved door stops. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2000–22, dated August 4, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

Differences Between Foreign Airworthiness Directives and this AD

While the Canadian airworthiness directive applies to certain Model DHC–8–311, –314, and –315 series airplanes, this AD applies only to certain Model DHC–8–311 and –315 series airplanes. Model DHC–8–314 series airplanes are not type certificated for operation in the United States.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) 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 the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent the internal door on the baggage bulkhead from jamming in the closed position, precluding access to the baggage compartment, which is critical for fire fighting during flight. This AD requires replacement of the door stops on the baggage bulkhead with new, improved door stops. The actions are required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

None of the Bombardier Model DHC–8–311 and –315 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts are available from the manufacturer at no charge to operators. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 2000–NM–340–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.

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:

2001–15–31 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12366. Docket 2000–NM–340–AD.

Applicability: Model DHC–8–311 and –315 airplanes, certificated in any category, as listed in Bombardier Service Bulletin 8–25–306, dated May 5, 2000.

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 (b) 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 the internal door on the baggage bulkhead from jamming in the closed position during flight, precluding access to the baggage compartment, which is critical for fire fighting, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD: Replace the door stops on the baggage bulkhead with new, improved door stops, in accordance with Bombardier Service Bulletin 8–25–306, dated May 5, 2000.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The replacement shall be done in accordance with Bombardier Service Bulletin 8–25–306, dated May 5, 2000. 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., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected 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.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–22, dated August 4, 2000.

Effective Date

(e) This amendment becomes effective on August 21, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19258 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–141–AD; Amendment 39–12367; AD 2001–15–32]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes. This action requires installation of a filler plate and a doubler to reinforce the area under the top antenna for the Traffic Collision Avoidance System (TCAS). This action is necessary to prevent cracking due to fatigue in the area under the antenna for the TCAS, which could result in

reduced structural capability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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. 2001–NM–141–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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, ANM–116, FAA, Transport Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 050 series airplanes. The RLD advises that, during a product review, Fokker discovered that the standards for installation of the top antenna for the TCAS are structurally inadequate. If an antenna for the TCAS is installed in accordance with those standards, the area under the antenna will be subject to fatigue. This condition, if not corrected, could result in cracking due to fatigue in the area under the antenna for the TCAS, which could result in reduced structural capability of the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF50–53–054, dated May 1, 2000, which describes procedures for installing a filler plate and a doubler as reinforcement under the top antenna for the TCAS. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 2000–152, dated November 30, 2000, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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 the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent cracking due to fatigue in the area under the antenna for the TCAS, which could result in rapid depressurization, followed by uncontrolled flight, due to structural failure of the airplane. This AD requires installation of a filler plate and a doubler to reinforce the area under the top antenna for the TCAS. The actions are required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

None of the Fokker Model F27 Mark 050 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $240 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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 2001–NM–141–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.

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:

2001–15–32 Fokker Services B.V: Amendment 39–12367. Docket 2001–NM–141–AD.

Applicability: Model F27 Mark 050 series airplanes, as listed in Fokker Service Bulletin SBF50–53–054, dated May 1, 2000, 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 (b) 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 cracking due to fatigue in the area under the antenna for the Traffic Collision Avoidance System (TCAS), which could result in reduced structural capability of the airplane, accomplish the following:

Reinforcement

(a) Within 12,000 flight cycles after installation of the antenna for the TCAS: Install a filler plate and a doubler to reinforce the area under the top antenna for the TCAS, in accordance with Fokker Service Bulletin SBF50–53–054, dated May 1, 2000.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The installation shall be done in accordance with Fokker Service Bulletin SBF50–53–054, dated May 1, 2000. This incorporation by reference is 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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw Vennep, the Netherlands. 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 Dutch airworthiness directive 2000–152, dated November 30, 2000.

Effective Date

(e) This amendment becomes effective on August 21, 2001.

Issued in Renton, Washington, on July 25, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19260 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–137–AD; Amendment 39–12371; AD 2001–16–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F, and –400ER Series Airplanes Equipped with General Electric Model CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, –300F, and –400ER series airplanes equipped with General Electric Model CF6–80C2 series engines. This action requires various repetitive inspections and tests of certain fail-safe features of the thrust reverser control system; and corrective actions, if necessary. This action is necessary to ensure that the fail-safe features of the thrust reverser are fully functional and to protect against an in-flight thrust reverser deployment, which could result in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 2001.

Comments for inclusion in the Rules Docket must be received on or before October 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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. 2001–NM–137–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Dennis Kammers, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2956; fax (425) 227–5210.

SUPPLEMENTARY INFORMATION: The FAA has received numerous reports of failures of the flexshaft of the thrust reverser actuation system (TRAS) lock (also known as electro-mechanical brake) between the upper actuator and the TRAS lock on Boeing Model 767–200, –300, –300F, and –400ER series airplanes equipped with General Electric Model CF6–80C2 series engines. These failures were detected during operational checks required by paragraph (f) of AD 2000–09–04, amendment 39–11712 (65 FR 25833, May 4, 2000) (described further below). The TRAS lock provides a fail-safe level of protection against in-flight deployment of the thrust reverser by retaining the thrust reverser drive shaft. Investigation revealed that when the flexshaft fails, the TRAS lock cannot retain the thrust reverser drive shaft and is effectively removed from the thrust reverser system. There is no airplane system to detect this failure and the cause is unknown at this time. This condition, if not corrected, could result in the loss of the fail-safe level of protection against an in-flight thrust reverser deployment. Such a loss increases the risk of an in-flight thrust reverser deployment, which could result in loss of controllability of the airplane.

Other Relevant Rulemaking

The FAA has previously issued AD 2000–09–04, which requires tests, inspections, and adjustments of the thrust reverser on Boeing Model 767 series airplanes equipped with General Electric Model CF6–80C2 series engines. That AD also requires installation of a terminating modification, and repetitive follow-on actions. The tests and inspections of the TRAS lock (electro-mechanical brake) required by paragraph (f) of that AD were intended to detect and correct latent failures of the TRAS lock. Because of the numerous reports above, we find that further rulemaking action is necessary to address the identified unsafe condition. However, this AD will not affect the current requirements of AD 2000–09–04.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–78A0090, Revision 1, dated July 5, 2001 (for Model 767–200, –300, and –300F series airplanes), and Boeing Alert Service Bulletin 767–78A0091, Revision 1, dated July 5, 2001 (for Model 767–400ER series airplanes). The service bulletins describe the following procedures:

1. Repetitive general visual inspections of the bullnose seal to detect discrepancies (i.e., wear, tears, cracks, missing segments, and improper folds, as applicable) and assess damage; and replacement of the bullnose seal with a new bullnose seal, if necessary.

2. Repetitive tests of the electrical connector P3/P4 of the left and right position switch modules of the center drive unit (CDU) of the thrust reverser for electrical continuity (0.50 ohms or less) between pins 3 and 4 and between pins 5 and 6; and replacement of the left and right position switch modules with new modules, if necessary.

3. Repetitive ''hot short'' protection tests to verify that the resistance between pins 1 and 2 of each connector of the TRAS lock on the left and right engines is 4.0 ohms or less; and corrective actions (i.e., additional testing, replacement of the relay, and troubleshoot the connecting wires; as applicable), if necessary.

4. Repetitive ''hot short'' protection tests to verify that the resistance between pins 1 and 2 of connection P5 of the directional pilot valve (DPV) is 4.0 ohms or less, and corrective actions, if necessary.

In addition, the FAA has reviewed and approved Boeing Alert Service Bulletin 767–78A0081, Revision 2, dated April 19, 2001 (for Model 767–200, –300, and –300F series airplanes), and Boeing Alert Service Bulletin 767–78A0088, dated April 19, 2001 (for Model 767–400ER series airplanes). These service bulletins describe procedures for a functional test on both thrust reversers for the electro-mechanical brakes (i.e., TRAS locks) and CDU cone brakes of both engines to verify proper holding torque; and corrective actions, if necessary. The corrective actions involve ensuring proper torque, installing or replacing components with new components, and performing additional inspections; as applicable.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767–200, –300, –300F, and –400ER series airplanes equipped with General Electric Model CF6–80C2 series engines of the same type design, this AD is being issued to ensure that the fail-safe features of the thrust reverser are fully functional and to protect against an in-flight thrust reverser deployment, which could result in loss of controllability of the airplane. This AD requires accomplishment of the actions specified in the applicable service bulletins described previously, except as discussed below.

Differences Between the Service Bulletins and AD

The 767 Master Minimum Equipment List (MMEL) allows the thrust reverser under certain conditions, to be deactivated for up to 10 days; however, it does not describe procedures for accomplishment of such a task. The deactivation procedures are described in Section 2–78–31–1 of Boeing Document D630T002, ''Boeing 767 Dispatch Deviation Guide,'' Revision 20, dated August 18, 2000. Therefore, the FAA finds that, in lieu of certain corrective actions described in Boeing Alert Service Bulletin 767–78A0090, Revision 1, dated July 5, 2001 (for Model 767–200, –300, and –300F series airplanes), and Boeing Alert Service Bulletin 767–78A0091, Revision 1, dated July 5, 2001 (for Model 767–400ER series airplanes), the thrust reverser may be deactivated per the MMEL for up to 10 days provided that the following actions are done:

1. Before further flight, the deactivation is done per Section 2–78–31–1 of Boeing Document D630T002,

''Boeing 767 Dispatch Deviation Guide,'' Revision 20, dated August 18, 2000;

2. Within 10 days following accomplishment of the deactivation, the applicable corrective action(s) specified in paragraph (b) of this AD are done; and

3. Before further flight following accomplishment of the applicable corrective action(s), the thrust reverser is reactivated.

We find that accomplishment of the optional deactivation procedures above for up to 10 days is acceptable for affected airplanes to continue to operate without compromising safety.

Operators should note that, although Boeing Alert Service Bulletin 767–78A0081, Revision 2, dated April 19, 2001 (for Model 767–200, –300, and –300F series airplanes), and Boeing Alert Service Bulletin 767–78A0088, dated April 19, 2001 (for Model 767–400ER series airplanes), recommend accomplishing the functional test on both thrust reversers for the electro-mechanical brakes (i.e., TRAS lock) and CDU cone brakes of both engines within 650 flight hours (after the receipt of the service bulletin), the FAA has determined that an interval of 650 flight hours would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, as well as the numerous reports of failures of the flexshaft of the TRAS lock (described above). In light of all of these factors, we find that accomplishing the functional test prior to installation of a General Electric Model CF6–80C2 engine to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Interim Action

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

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 2001–NM–137–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 adding the following new airworthiness directive:

2001–16–03 Boeing: Amendment 39–12371. Docket 2001–NM–137–AD.

Applicability: Model 767–200, –300, –300F, and –400ER series airplanes, equipped with General Electric Model CF6–80C2 series engines; 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 ensure that the fail-safe features of the thrust reverser are fully functional and to protect against an in-flight thrust reverser deployment, which could result in loss of

controllability of the airplane, accomplish the following:

Note 2: Where there are differences between this AD and the referenced service bulletins or the 767 Master Minimum Equipment List (MMEL), the AD prevails.

Repetitive Inspections and Tests of Thrust Reverser Control System

(a) Within 1,000 flight hours after the effective date of this AD, do a general visual inspection to detect discrepancies (i.e., wear, tears, cracks, missing segments, and improper folds, as applicable) and assess damage of the certain fail-safe features of the thrust reverser control system, and test for electrical continuity and resistance of those fail-safe features; per Section 3., ''Accomplishment Instructions,'' of Boeing Alert Service Bulletin 767–78A0090, Revision 1, dated July 5, 2001 (for Model 767–200, –300, and ''300F series airplanes), or Boeing Alert Service Bulletin 767–78A0091, Revision 1, dated July 5, 2001 (for Model 767–400ER series airplanes); as applicable. Repeat the inspection and tests thereafter every 1,000 flight hours.

Note 3: 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.''

Corrective Actions, If Necessary

(b) Except as provided by paragraph (c) of this AD, do the applicable corrective actions specified in paragraph (b)(1), (b)(2), (b)(3), and (b)(4) of this AD per Boeing Alert Service Bulletin 767–78A0090, Revision 1, dated July 5, 2001 (for Model 767–200, –300, and ''300F series airplanes), or Boeing Alert Service Bulletin 767–78A0091, Revision 1, dated July 5, 2001 (for Model 767–400ER series airplanes); as applicable; at the time indicated in those paragraphs.

(1) If any discrepancy is detected as indicated in Figure 1 of the applicable service bulletin, replace the bullnose seal with a new bullnose seal, per Figure 1 of the applicable service bulletin, at the applicable time indicated in paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) For assessed cumulative damage between one and ten inches: Replace within 650 flight hours after the inspection.

(ii) For assessed cumulative damage ten inches or more: Replace before further flight.

(2) If the electrical continuity on the position switch module of the center drive unit (CDU) of the thrust reverser is found to be outside the limits (greater than 0.50 ohms) during any applicable test required by paragraph (a) of this AD, before further flight, do the corrective actions (i.e., replace discrepant position switch module with a new module, or replace the CDU with a new CDU), per Part 2 of Section 3., ''Accomplishment Instructions,'' of the applicable service bulletin.

(3) If the resistance between pins 1 and 2 of either connector in the thrust reverser actuation system (TRAS) lock for ''hot short'' protection is greater than 4.0 ohms, before further flight, do the corrective actions (i.e., additional testing, replacement of the relay, and troubleshoot the connecting wires; as applicable) per Part 3 of Section 3., ''Accomplishment Instructions,'' of the applicable service bulletin.

(4) If the resistance between pins 1 and 2 of the connector in the directional pilot valve (DPV) for ''hot short'' protection is greater than 4.0 ohms, before further flight, do the corrective actions (i.e., additional testing, replacement of the microswitch pack, and troubleshoot the connecting wires; as applicable) per Part 4 of Section 3., ''Accomplishment Instructions,'' of the applicable service bulletin.

Exception to Corrective Action(s)

(c) For those conditions identified in paragraph (b)(1) of this AD: The thrust reverser may be deactivated per the Master Minimum Equipment List (MMEL) for up to 10 days provided that, before further flight, the deactivation is done per Section 2–78–31–1 of Boeing Document D630T002, ''Boeing 767 Dispatch Deviation Guide,'' Revision 20, dated August 18, 2000. Within 10 days following accomplishment of the deactivation, do the applicable corrective action(s) specified in paragraph (b)(1), (b)(2), or (b)(4) of this AD. Before further flight following accomplishment of the applicable corrective action(s), reactivate the thrust reverser. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph.

Engine Replacement

(d) Prior to installation of a General Electric Model CF6–80C2 engine on any airplane, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD, per Boeing Alert Service Bulletin 767–78A0081, Revision 2, dated April 19, 2001 (for Model 767–200, –300, and ''300F series airplanes), or Boeing Alert Service Bulletin 767–78A0088, dated April 19, 2001 (for Model 767–400ER series airplanes), as applicable.

(1) Do a functional test on both thrust reversers for the electro-mechanical brakes (i.e., TRAS locks) and CDU cone brakes of both engines to verify proper holding torque per the Accomplishment Instructions of the applicable service bulletin. If any improper holding torque is detected, before further flight, accomplish corrective actions (e.g., ensure proper torque, replacement or installation of components, and additional inspections), as applicable, per the Accomplishment Instructions of the applicable service bulletin.

(2) Do a test for electrical continuity of the position switch module of the CDU of the thrust reverser, per Part 2 of Section 3., ''Accomplishment Instructions,'' of the applicable service bulletin, and before further flight, do corrective actions, if necessary, as specified in paragraph (b)(2) 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, 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–78A0090, Revision 1, dated July 5, 2001; Boeing Alert Service Bulletin 767–78A0091, Revision 1, dated July 5, 2001; Boeing Alert Service Bulletin 767–78A0081, Revision 2, dated April 19, 2001; and Boeing Alert Service Bulletin 767–78A0088, dated April 19, 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 August 21, 2001.

Issued in Renton, Washington, on July 27, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19385 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–202–AD; Amendment 39–12362; AD 2001–15–27]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra series airplanes. This action requires replacing certain fuel-immersed electrical harnesses in the fuel tank with modified harnesses. This action is necessary to prevent electrical arcing in the area of fuel vapors, which could result in a potential explosion and/or fire in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective August 21, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–202–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. 2001–NM–202–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 Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model 1125 Westwind Astra series airplanes. The CAAI advises that certain fuel-immersed electrical harnesses are made with Kapton insulation, which can crack over time. Cracked Kapton wire insulation could result in electrical arcing in the area of fuel vapors and consequent explosion and/or fire in the fuel tank.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued Astra Alert Service Bulletin 1125–28A–230, dated March 13, 2001. The alert service bulletin describes procedures for removing the left and right transfer valve/jettison valve electrical harnesses and the forward and aft interconnect valve electrical harnesses, and replacing them with modified parts. The replacement harnesses are sealed and will therefore have no direct contact with fuel. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this alert service bulletin as mandatory and issued Israeli airworthiness directive 28–01–02–08, dated May 30, 2001, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, 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 is being issued to prevent electrical arcing in the area of fuel vapors, which could result in potential explosion and/or fire in the fuel tank. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

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 2001–NM–202–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 adding the following new airworthiness directive:

2001–15–27 Israel Aircraft Industries, Ltd.: Amendment 39–12362. Docket 2001–NM–202–AD.

Applicability: Model 1125 Westwind Astra series airplanes, certificated in any category, serial numbers 004 through 024 inclusive.

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 prevent electrical arcing in the area of fuel vapors, which could result in a potential explosion and/or fire in the fuel tank, accomplish the following:

Replacement

(a) Within 150 flight hours after the effective date of this AD: Remove the left and right transfer valve/jettison valve electrical harnesses and the forward and aft interconnect valve electrical harnesses, and replace them with modified parts. Perform the actions in accordance with Astra (Israel Aircraft Industries) Alert Service Bulletin 1125–28A–230, dated March 13, 2001.

Spare Parts

(b) As of the effective date of this AD, no person may install on any airplane any part listed in the following table:

TABLE 1.—PROHIBITED SPARE PARTS

Part	Part No.
(1) Transfer valve/jettison valve electrical harness.	25W812030–501 (left wing) or 25W812040–501 (right wing)
(2) Forward interconnect valve electrical harness.	25W813150–503
(3) Aft interconnect valve electrical harness.	25W813160–501

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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Astra (Israel Aircraft Industries) Alert Service Bulletin 1125–28A–230, dated March 13, 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 Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. 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 Israeli airworthiness directive 28–01–02–08, dated May 30, 2001.

Effective Date

(f) This amendment becomes effective on August 21, 2001.

Issued in Renton, Washington, on July 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19256 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–44626]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its rules to delegate to the Director of the Division of Market Regulation authority to extend deadlines for submission of comments to applications for registration as a national securities exchange filed under Section 6 of the Exchange Act of 1934, applications for exemption from registration based on limited volume filed under Section 6 of the Exchange Act, and amendments to such applications. This delegation will facilitate and expedite the process of exchange registration and exemption from registration based on limited volume.

EFFECTIVE DATE: August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Rebekah Liu, Special Counsel, at (202) 942–0133; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') has adopted an

amendment to Rule 30–3 of its Rules of Organization and Program Management governing Delegations of Authority to the Director of the Division of Market Regulation (''Director'').[1] The amendment adds new subparagraph (iii) to paragraph (a)(73) of Rule 30–3 authorizing the Director to extend deadlines for submission of comments to (a) applications for registration as a national securities exchange filed under Section 6 of the Exchange Act of 1934 (''Exchange Act''),[2] (b) applications for an exemption from registration based on limited volume filed under Section 6 of the Exchange Act, and (c) amendments to such applications.

The delegation of authority to the Director to extend deadlines for submission of comments is intended to conserve Commission resources by permitting Division staff to extend the deadline for submission of comments to such applications and amendments to such applications. The Division has received several applications for registration as a national securities exchange that must be published for comment. The Division anticipates that, when an application for registration as a national securities exchange or exemption from registration based on limited volume is filed and published for comment, there will be significant comment on the application. Granting the Division delegated authority to extend deadlines for submission of comments to applications and amendments to such applications filed pursuant to Section 6 of the Exchange Act will provide the Division with greater flexibility to respond to commenters' requests, and may expedite the process of publishing amendments to the Form 1. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,[3] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

[1] 17 CFR 200.30–3.

[2] 15 U.S.C. 78f.

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

Text of Amendment

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3, paragraph (a)(73), is amended by removing the word ''and'' at the end of paragraph (a)(73)(i); removing the period at the end of paragraph (a)(73)(ii) and adding;'' and''; and adding paragraph (a)(73)(iii) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a)* * *

(73) Pursuant to section 6(a) of the Act, 15 U.S.C. 78f(a), and Rule 6a–1 thereunder, 17 CFR 240.6a–1:

* * * * *

(iii) To extend deadlines for submission of comments to an application for registration as a national securities exchange, or for exemption from registration based on limited volume; and amendments to an application for registration as a national securities exchange, or for exemption from registration based on limited volume.

By the Commission.

Dated: July 31, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19521 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 640

[Docket No. 98N–0673]

Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma to be more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. FDA is issuing this final rule as part of the agency's ''Blood Initiative'' in which FDA is reviewing and revising, when appropriate, its regulations, policies, guidance, and procedures related to blood, blood components, and Source Plasma.

DATES: This rule is effective September 5, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 19, 1999 (64 FR 45375), FDA published a proposed rule to amend the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, and Source Plasma. The proposed rule was intended to make the regulations more consistent with current practices in the blood industry and to remove unnecessary or outdated requirements. The proposed rule was a companion document to a direct final rule published in the **Federal Register** of August 19, 1999 (64 FR 45366). Written comments were to be submitted on or before December 3, 1999. FDA stated that the effective date of the direct final rule would be February 11, 2000, unless any significant adverse comment was submitted to FDA during the comment period. If a significant adverse comment applies to an amendment, paragraph, or section of the rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

Eight letters of comment were submitted to the docket. After reviewing the comments, the agency issued in the **Federal Register** on January 10, 2001 (66 FR 1834), a confirmation in part of the direct final rule and technical amendment which confirmed the effective date of February 11, 2000, for those provisions that did not receive

significant comment and a technical amendment which reinstated the former provisions that received significant adverse comments. The document also made editorial corrections to the regulations.

II. Comments on the Proposed Rule and FDA Responses

FDA received eight letters of comment on the proposed rule. The comments were submitted by manufacturers, blood establishments, trade associations, and individuals. Two of the eight comments specifically supported FDA's goal of removing, revising, or updating the specific regulations to be more consistent with current practices in the blood industry. Each of the eight comments submitted recommended changes to certain provisions of the rule. FDA summarizes and responds to the received comments in the following section.

A. Compatibility Testing (Proposed §§ 606.3(j) and 606.151(c))

The proposed rule would amend the sections by removing the reference to serological tests and making the definition more general to apply to all tests performed, including computer crossmatching to establish the matching of a donor's blood or blood components with that of a recipient.

(Comment 1) One comment on § 606.3(j) suggested that the proposed term ''tests performed'' be changed to another term such as ''procedures performed.'' Another comment noted that the same terminology occurs in § 606.151(c) and suggested that the phrase be changed to ''Procedures to demonstrate incompatibility between the donor's cell type and the recipient's serum type.''

FDA agrees that the use of the proposed term ''tests performed'' in §§ 606.3(j) and 606.151(c) should be clarified. The use of the term ''tests performed'' could be interpreted to not allow for computer crossmatching. Therefore, FDA is amending these sections in the final rule. Section 606.3(j) will define compatibility testing to mean ''procedures performed to establish the matching of a donor's blood or blood components with that of a potential recipient'' and § 606.151(c) will require standard operating procedures for compatibility testing to include ''procedures to demonstrate incompatibility between the donor's cell type and the recipient's serum or plasma type.''

B. Use of Serum or Plasma for Compatibility Testing (Proposed § 606.151(b) and (c))

The proposed rule would amend these sections to be more consistent with current practices with respect to compatibility testing.

(Comment 2) Two comments on § 606.151(b) and (c) stated that the use of either serum or plasma should be permitted for compatibility testing/pretransfusion testing, as the use of plasma samples is not uncommon for some tests.

FDA agrees with the comment and has made the appropriate changes in the final rule to § 606.151(b) and (c).

C. Entering Blood Containers Prior to Issue (Proposed § 640.2)

The proposed rule would amend the section to be consistent with current practices with regard to entering containers of blood and blood components prior to issue.

(Comment 3) One comment on proposed § 640.2 requested clarification of the proposed language that ''blood containers shall not be entered prior to issue for any purpose except for blood collection.'' The comment asked if FDA intends to preclude activities such as filtering to make a unit leukoreduced, washing to make a unit IgA deficient, splitting to make a unit appropriate for a transfusion to a neonate, and pooling of platelets or cryoprecipitate since all these procedures involved entering the unit for special processing.

FDA does not intend to preclude activities such as those described in the comment, and is revising the first sentence in § 640.2(b) of the final rule to read ''[T]he blood container shall not be entered prior to issue for any purpose except for blood collection or if the method of processing requires the use of a different container.''

D. History of Hepatitis (Proposed §§ 640.3(c)(1) and 640.63(c)(11))

The proposed rule would amend these sections to specify that donors who have a history of hepatitis before the age of 11 could be eligible to be donors of Whole Blood or Source Plasma. The proposed change is consistent with current FDA recommendations in the FDA memorandum dated April 23, 1992, entitled ''Exemptions to Permit Persons With a History of Viral Hepatitis Before the Age of Eleven to Serve as Donors of Whole Blood and Plasma: Alternative Procedure.''

(Comment 4) One comment on proposed §§ 640.3(c)(1) and 640.63(c)(11) stated that reference is made to a person with a history of hepatitis ''after the age of eleven'' and that the meaning of ''after the age of eleven'' is unclear and needs further clarification.

FDA agrees and is changing the phrase to ''after the eleventh birthday'' for clarification in both sections.

E. Samples and Segments (Proposed §§ 640.4(g) and 640.15)

The proposed rule would amend these sections with regard to use of current terminology for test specimens.

(Comment 5) One comment stated that the proposed change of terminology from ''pilot tubes,'' ''pilot sample tubes,'' and ''pilot samples,'' to ''samples'' and ''segments'' in §§ 640.4(g) and 640.15 is confusing. The comment also asked if FDA meant to imply that ''segment identification'' must occur and if this excludes the more critical sample identification that must occur at the time of the collection of the unit.

FDA is not implying any procedural changes by changing the phrases ''pilot tubes'' and ''pilot sample tubes'' to ''samples'' and the phrase ''pilot samples'' to ''segments.'' FDA is making the changes as proposed, to reflect current terminology used for test specimens. The proposed headings and introductory text for §§ 640.4(g) and 640.15 are revised in the final rule to be consistent with the terminology change.

F. Rh Factor Terminology (Proposed § 640.5)

The proposed rule would amend the section to be more consistent with current terminology used in the determination of the Rh factors.

(Comment 6) One comment stated that in § 640.5 the use of the term ''D^u'' is inappropriate as the term ''weak D'' is currently accepted and reflects the significant changes in Anti-D reagents over the past years.

FDA agrees with the comment and is replacing the term ''Rh_o variant (D^u)'' with the term ''weak D (formerly D^u).''

G. Specified Timeframes for Component Preparation (Proposed §§ 640.16(a), 640.24(b), 640.34(a) through (d) and (e)(1), and 640.54(a)(2))

The proposed rule would amend these sections by changing the specific timeframes prescribed for certain practices and procedures in component preparation. The proposed changes would allow more flexibility by permitting different timeframes depending upon the directions for use of the particular blood collection device (blood collecting, processing, and storage system) being used.

(Comment 7) Four comments requested clarification of the phrase ''within the timeframe specified in the directions for use for the specific device.'' (See proposed §§ 640.16(a), 640.24(b), 640.34(a) through (d) and (e)(1), and 640.54(a)(2).) One comment stated that due to the solution components, the blood collection bags (or systems) are approved for use as ''drugs'' not ''devices.'' The comment requested clarification as to whether the proposed rule is applicable to blood collecting, processing, and storage systems approved as ''drugs.'' Another comment stated that manufacturers would now be required to include information concerning specified timeframes in their product labeling. Two comments requested that the current language be retained for the most part by keeping the present timeframes but that some added flexibility could be allowed by adding the phrase ''or within the timeframe specified in the directions for use of the specific device.'' The concern was that few, if any, manufacturers include this time period in their labeling and choose instead to refer to the regulations as well as industry standards. Another comment stated that the proposed rule as written would remove from 21 CFR part 640 detailed requirements for manufacturing blood components, and as a result these would be required as part of the drug or device product labels. The comment also stated that to add the detailed requirements to the drug or device product labels would be burdensome on manufacturers of manual blood collecting, processing, and storage systems, and it would take 2 to 3 years to exhaust existing product inventories and make appropriate changes.

FDA agrees that the use of the word ''device'' in the phrase ''within the timeframe specified in the directions for use for the specific device'' is inadequate and confusing in describing the blood collecting, processing, and storage system (or blood bag). The use of the word ''device'' is confusing because: (1) These systems are approved as ''drugs'' due to the solution components, and (2) the instructions for use are currently in the package inserts for the approved systems. Therefore, FDA is replacing the word ''device'' used in the proposed phrase with ''blood collecting, processing, and storage system'' so that the revised phrase reads ''within the timeframe specified in the directions for use for the blood collecting, processing, and storage system used.'' In response to the request for flexibility, FDA is retaining where appropriate the specific timeframes for component preparation, and adding the alternative phrase ''within the timeframe specified in the directions for use for the blood collecting, processing, and storage system.''

H. Reducing Repeat Testing in Plasmapheresis (Proposed § 640.23(a))

The proposed rule would amend the section by reducing the requirements for repeat testing of blood samples from donors participating in frequent plateletpheresis collection procedures.

In § 640.23(a) the agency proposed the revision ''Results of tests performed in accordance with § 640.5(b) and (c) for Platelets, Pheresis products shall be valid for a period not to exceed 3 months.''

(Comment 8) One comment stated that this revision may introduce the potential for error in that other tests, which should have been performed, will inadvertently be omitted. Another comment stated that with respect to the revision of § 640.23(a), the rationale why ABO/Rh testing is valid for only 3 months is not clear since donors do not change blood type and that the testing is done only to confirm that samples are from the correct donor.

After reviewing the comments, FDA recognizes that the issues concerning this section are more complex than can be addressed in this rule. Therefore, FDA is retaining the wording for this section as it is currently written. If an establishment wishes to perform testing at intervals other than those stated in the regulation, they may request a variance for alternative testing under § 640.120.

I. Timeframes for Freezing Plasma (Proposed §§ 640.34(b) and 640.54(a)(2))

The proposed rule would amend the sections concerning the timeframes for freezing plasma.

(Comment 9) Two comments on proposed § 640.34(b) concern the use of the term ''frozen solid.'' The comments stated that use of the proposed term ''frozen solid'' seems to imply that the FDA memorandum of November 13, 1989, entitled ''Eight-Hour Hold'' would no longer be in effect. The memorandum states that plasma should be placed in a freezer within 8 hours.

FDA agrees with the comment and the term ''frozen solid'' is replaced with the phrase ''separated and placed in a freezer within 8 hours'' in § 640.34(b) and for consistency, in the standards for cryoprecipitate in § 640.54(a)(2).

J. Availability of a Qualified Licensed Physician (Proposed § 640.62)

The proposed rule would require a qualified licensed physician to be available on the premises or available to attend the donor within 15 minutes when certain procedures concerning blood and blood products are performed.

(Comment 10) Five comments were submitted on the proposed revision in § 640.62 as to the availability of a licensed physician at a collection facility. One comment said that the new section was potentially confusing and compliance would be difficult at individual blood collection centers and at mobile activities. A second comment requested that ''the services of a licensed physician'' be changed to ''emergency medical services'' since the ability to call 911 is usually readily available. A third comment stated that the proposed rule did not give any rationale for the specification of the time constraint nor did the proposed rule define the phrase ''available to attend'' as indicative that the physician was physically present or whether telephone advice and consultation is authorized. A fourth comment stated that potential donor safety concerns could be better served through a requirement for documented standard operating procedures within the donor center as outlined in § 640.4(a) for the collection of whole blood. A fifth comment applauded the fact that the agency relaxed the requirement for the physical presence of a physician for plasmapheresis, and the collection of Source Plasma.

Due to the variety of comments received on this section, FDA is retaining the present language in § 640.62 and intends to address this requirement in a future rulemaking. Comments submitted concerning this section will be considered at that time.

III. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104-121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosopy and principles identified in the Executive order. In addition, this final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact of a rule on small business entities. Because the final rule amendments have no compliance costs and do not result in any new requirements, the agency certifies that the final rule will not have a significant negative impact on a substantial number of small entities. Therefore under the Regulatory Flexibility Act, no further analysis is required. This final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in that order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated by the Commissioner of Food and Drugs, 21 CFR parts 606 and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

2. Section 606.3 is amended by revising paragraph (j) to read as follows:

§ 606.3 Definitions.

* * * * *

(j) *Compatibility testing* means the procedures performed to establish the matching of a donor's blood or blood components with that of a potential recipient.

* * * * *

3. Section 606.151 is amended by revising paragraphs (b) and (c) to read as follows:

§ 606.151 Compatibility testing.

* * * * *

(b) The use of fresh recipient serum or plasma samples less than 3 days old for all pretransfusion testing if the recipient has been pregnant or transfused within the previous 3 months.

(c) Procedures to demonstrate incompatibility between the donor's cell type and the recipient's serum or plasma type.

* * * * *

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

4. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

5. Section 640.2 is amended by revising paragraph (b) to read as follows:

§ 640.2 General requirements.

* * * * *

(b) *Blood container*. The blood container shall not be entered prior to issue for any purpose except for blood collection or when the method of processing requires use of a different container. The container shall be uncolored and transparent to permit visual inspection of the contents and any closure shall be such as will maintain an hermetic seal and prevent contamination of the contents. The container material shall not interact with the contents under the customary conditions of storage and use, in such a manner as to have an adverse effect upon the safety, purity, or potency of the blood.

* * * * *

6. Section 640.3 is amended by revising paragraph (c)(1) to read as follows:

§ 640.3 Suitability of donor.

* * * * *

(c) * * *

(1) A history of viral hepatitis after the 11th birthday;

* * * * *

7. Section 640.4 is amended by revising the introductory text of paragraph (g) and paragraphs (g)(1), (g)(2), (g)(4), and (g)(5) to read as follows:

§ 640.4 Collection of the blood.

* * * * *

(g) *Samples and segments for laboratory tests*. Samples and segments for laboratory tests shall meet the following standards:

(1) One or more segments shall be provided with each unit of blood when issued or reissued except as provided in § 640.2(c)(2) and all segments shall be from the donor who is the source of the unit of blood.

(2) All samples for laboratory tests performed by the manufacturer and all segments accompanying a unit of blood shall be collected at the time of filling the original blood container.

* * * * *

(4) All segments accompanying a unit of blood shall be attached to the whole blood container before blood collection, in a tamperproof manner that will conspicuously indicate removal and reattachment.

(5) Segments for compatibility testing shall contain blood mixed with the appropriate anticoagulant.

* * * * *

8. Section 640.5 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 640.5 Testing the blood.

All laboratory tests shall be made on a specimen of blood taken from the

donor at the time of collecting the unit of blood, and these tests shall include the following:

* * * * *

(c) *Determination of the Rh factors.* Each container of Whole Blood shall be classified as to Rh type on the basis of tests done on the sample. The label shall indicate the extent of typing and the results of all tests performed. If the test, using Anti-D Blood Grouping Reagent, is positive, the container may be labeled ''Rh Positive.'' If the test is negative, the results shall be confirmed by further testing which shall include tests for the ''weak D (formerly D^u).'' Blood may be labeled ''Rh Negative'' if further testing is negative. Units testing positive after additional more specific testing shall be labeled as ''Rh Positive.'' Only Anti-Rh Blood Grouping Reagents licensed under, or that otherwise meet the requirements of, this subchapter shall be used, and the technique used shall be that for which the reagent is specifically designed to be effective.

* * * * *

9. Section 640.15 is revised to read as follows:

§ 640.15 Segments for testing.

Segments collected in integral tubing shall meet the following standards:

(a) One or more segments shall be provided with each unit of Whole Blood or Red Blood Cells when issued or reissued.

(b) Before they are filled, all segments shall be marked or identified so as to relate them to the donor of that unit of red cells.

(c) All segments accompanying a unit of Red Blood Cells shall be filled at the time the blood is collected or at the time the final product is prepared.

10. Section 640.16 is amended by revising paragraph (a) to read as follows:

§ 640.16 Processing.

(a) *Separation.* Within the timeframe specified in the directions for use for the blood collecting, processing, and storage system used, Red Blood Cells may be prepared either by centrifugation, done in a manner that will not tend to increase the temperature of the blood, or by normal undisturbed sedimentation. A portion of the plasma sufficient to insure optimal cell preservation shall be left with the red cells except when a cryoprotective substance or additive solution is added for prolonged storage.

* * * * *

11. Section 640.24 is amended by revising paragraph (b) to read as follows:

§ 640.24 Processing.

* * * * *

(b) Immediately after collection, the whole blood or plasma shall be held in storage between 20 and 24 °C unless it must be transported from the collection center to the processing laboratory. During such transport, all reasonable methods shall be used to maintain the temperature as close as possible to a range between 20 and 24 °C until it arrives at the processing laboratory where it shall be held between 20 and 24 °C until the platelets are separated. The platelet concentrate shall be separated within 4 hours or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system.

* * * * *

12. Section 640.34 is amended by revising paragraphs (a) through (d) and (e)(1) to read as follows:

§ 640.34 Processing.

(a) *Plasma.* Plasma shall be separated from the red blood cells and shall be stored at -18 °C or colder within 6 hours after transfer to the final container or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system unless the product is to be stored as Liquid Plasma.

(b) *Fresh Frozen Plasma.* Fresh frozen plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and minimal manipulation of the donor's tissue. The plasma shall be separated from the red blood cells, and placed in a freezer within 8 hours or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system, and stored at -18 °C or colder.

(c) *Liquid Plasma.* Liquid Plasma shall be separated from the red blood cells and shall be stored at a temperature of 1 to 6 °C within 4 hours after filling the final container or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system.

(d) *Platelet Rich Plasma.* Platelet rich plasma shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and manipulation of the donor's tissue. The plasma shall be separated from the red blood cells by centrifugation within 4 hours after completion of the phlebotomy or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system. The time and speed of the centrifugation shall have been shown to produce a product with at least 250,000 platelets per microliter. The plasma shall be stored at a temperature between 20 and 24 °C immediately after filling the final container. A gentle and continuous agitation of the product shall be maintained throughout the storage period, if stored at a temperature of 20 to 24 °C.

(e) * * *

(1) Platelets shall be separated as prescribed in subpart C of part 640, prior to freezing the plasma. The remaining plasma may be labeled as ''Fresh Frozen Plasma,'' if frozen within 6 hours after filling the final container or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system.

* * * * *

13. Section 640.54 is amended by revising paragraph (a)(2) to read as follows:

§ 640.54 Processing.

(a) * * *

(2) The plasma shall be placed in a freezer within 8 hours after blood collection or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system. A combination of dry ice and organic solvent may be used for freezing: *Provided*, That the procedure has been shown not to cause the solvent to penetrate the container or leach plasticizer from the container into the plasma.

* * * * *

14. Section 640.63 is amended by revising paragraph (c)(11) to read as follows:

§ 640.63 Suitability of donor.

* * * * *

(c) * * *

(11) Freedom from a history of viral hepatitis after the 11th birthday;

* * * * *

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–19461 Filed 8–3–01; 8:45 am]

BILLING CODE 4160–01–S

POSTAL SERVICE

39 CFR Part 266

Privacy Act of 1974; Implementation

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. This amendment modifies existing regulations (39 CFR 266.9) to exempt system of records, Office of Inspector

General-Investigative File System, USPS 300.010, from certain provisions of the Act and corresponding agency regulations.

DATES: This rule is effective on August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Cox, Acting Legal Director, Office of Inspector General (703) 248–2164.

SUPPLEMENTARY INFORMATION: The Postal Service published a proposed rule on December 27, 2000, to amend 39 CFR 266.9 to apply certain Privacy Act exemptions to the OIG Investigative File System. The Office of Inspector General (OIG) is a component of the Postal Service that performs as one of its principal functions investigations into violations of criminal law in connection with Postal Service programs and operations, pursuant to the Inspector General Act of 1978, as amended. 5 U.S.C. App.3. The OIG Investigative File System falls within the scope of subsections (j)(2), (k)(2), and (k)(5) of the Act. Comments on the proposed rule were due on or before January 26, 2001. We did not receive any comments. Therefore, the rule is adopted as final without any changes.

The Postal Service has exempted certain systems of records that it maintains from specific provisions of the Privacy Act. At the time it adopted the exemptions contained in its Privacy Act regulations (39 CFR 266.9), the Postal Service stated its reason for each exemption in the preamble of the notice of proposed rulemaking (40 FR 37227, August 26, 1975). These reasons were added to the text of § 266.9 by final rule published July 13, 1994 (59 FR 35625). This proposed rule does not change the current application of exemptions, except to apply certain exemptions to the OIG Investigative File System.

List of Subjects in 39 CFR Part 266

Privacy.

PART 266—[AMENDED]

Accordingly, 39 CFR is amended as set forth below:

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. In § 266.9 revise paragraphs (b)(1)(vii), (b)(2) introductory text, (b)(2)(i), (b)(2)(ii), (b)(2)(iii) and add paragraph (b)(2)(viii) to read as follows:

§ 266.9 Exemptions.

* * * * *

(b) * * *

(1) * * *

(vii) Subsection (e)(4)(G) and (H) requires an agency to publish a **Federal Register** notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content. Subsection (e)(4)(I) requires the foregoing notice to include the categories of sources in the system.

* * * * *

(2) Inspection Requirements—Investigative File System, USPS 080.010, Inspection Requirements—Mail Cover Program, USPS 080.020, and Office of Inspector General-Investigative File System, USPS 300.010. These systems of records are exempt from 5 U.S.C. 552a (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (e)(4) (G) and (H), (e)(5) and (8), (f), (g), and (m). In addition, system 300.010 is exempt from 5 U.S.C. 552a(e)(4)(I). The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to subsections (c)(3), (c)(4), or (d)(1)–(4) could:

(A) Alert subjects that they are targets of an investigation or mail cover by the Postal Inspection Service or an investigation by the Office of Inspector General;

(B) Alert subjects of the nature and scope of the investigation and of evidence obtained;

(C) Enable the subject of an investigation to avoid detection or apprehension;

(D) Subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation;

(E) Constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation;

(F) Intimidate potential witnesses and cause them to be reluctant to offer information;

(G) Lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and

(H) Seriously impede or compromise law enforcement, mail cover, or background investigations that might involve law enforcement aspects as a result of the above. (ii) Application of subsections (e)(1) and (e)(5) is impractical because the relevance, necessity, or correctness of specific information might be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Inspection Service investigation or Office of Inspector General investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General, Postal Inspection Service, and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation by the Office of Inspector General, or an investigation or mail cover by the Postal Inspection Service, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation is not required to provide information to investigators, and information must be collected from other sources.

* * * * *

(viii) The requirement of subsection (e)(4)(I) does not apply to system 300.010, because identification of record source categories could enable the subject of an investigation to improperly interfere with the conduct of the investigation.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–19474 Filed 8–3–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4105a; FRL–7021–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Twenty-Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the

Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions establish and impose reasonably available control technology (RACT) for twenty-five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in Pennsylvania. EPA is approving these in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on October 5, 2001 without further notice, unless EPA receives adverse written comment by September 5, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to, David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or via e-mail at harris.betty@epa.gov. While information may be requested via e-mail, any comments must be submitted, in writing, as indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources. The regulations imposing RACT for these non-CTG major sources were to be submitted to EPA as SIP revisions by November 15, 1992 and compliance required by May of 1995.

The Pennsylvania SIP already includes approved RACT regulations for all sources and source categories covered by the CTGs. On February 4, 1994, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements. The regulations contain technology-based or operational ''presumptive RACT emission limitations'' for certain major NO_X sources. For other major NO_X sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a ''generic'' RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP. On March 23, 1998 EPA granted conditional limited approval to the Commonwealth's generic VOC and NO_X RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to the Pennsylvania Department of Environmental Protection (PADEP); *or* (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_X RACT regulations by submitting 485 case-by-case VOC/NO_X RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfied the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. The regulation currently retains its limited approval status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP to satisfy the conditional approval, limited approval of Pennsylvania's generic VOC and NO_X RACT regulations shall convert to a full approval.

It must be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That rule's compliance date is May 1999. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted regulations to satisfy Phase I of the NO_X SIP call and submitted those regulations to EPA for SIP approval. Pennsylvania's SIP revision to address the requirements of the NO_X SIP Call Phase I consists of the adoption of Chapter 145—Interstate Pollution Transport Reduction and amendments to Chapter 123—Standards for Contaminants. On May 29, 2001 (66 FR 29064), EPA proposed approval of the Commonwealth's NO_X SIP call rule SIP submittal. EPA expects to publish the final rulemaking in the **Federal Register** in the near future. Federal approval of a case by case RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

II. Summary of the SIP Revision

On August 1, 1995, November 15, 1995, December 8, 1995, January 10, 1996, February 20, 1996, April 16, 1996, May 2, 1996, September 13, 1996, October 18, 1996, January 21, 1997, May 29, 1998, April 9, 1999, April 20, 1999, October 26, 1999 and May 1, 2000, PADEP submitted formal revisions to its SIP to establish and impose case by case RACT for several major sources of VOC and NO_X. This rulemaking pertains to twenty-five of those sources. The other

sources are the subject of separate rulemaking actions.

On September 13, 1996, November 15, 1995, December 8, 1995, January 10, 1996, October 18, 1996, May 29, 1998 and October 26, 1999, the Commonwealth submitted supplemental information pertaining to Armstrong World Industries; Bemis Company Inc., Film Division; Brentwood Industries, Inc.; Certainteed Corp., Mountaintop; CNG Transmissions, Ardell and Finnefrock Stations; Consolidated Rail Corporation, Holiday and Juanita locations; Equitrans Inc., Pratt and Rogersville Stations; Erie Coke Corp.; Fleetwood Folding Trailer Inc.; Gichner Systems Group Inc.; Offset PaperBack Manufacturing Inc.; and Stroehmann Bakeries Inc. On May 1, 2000, PADEP made a submittal for Gichner Systems Group Inc. which replaced the earlier February 20, 1996 submittal.

It is important to note that none of the sources covered by this rulemaking are located in the Philadelphia-Wilmington-Trenton or Pittsburgh-Beaver Valley designated ozone nonattainment areas. Accordingly, no emission reductions achieved by imposing RACT at these sources has been credited in any rate-of-progress plan or attainment demonstration.

EPA is approving revisions to the Pennsylvania SIP establishing and requiring VOC and/or NO_X RACT for these twenty-five major sources. The RACT determinations and requirements are included in plan approvals or operating permits. Several of the plan approvals and operating permits issued by PADEP contain provisions which are no relevant to its case by case RACT determinations for NO_X and/or VOC. These provisions are not part of Pennsylvania's SIP revision requests.

The following table identifies the individual plan approval (PA) or operating permits (OP) that EPA is approving.

Pennsylvania—VOC and NO_X RACT determinations for individual sources

Source	County	OP or PA # Date of issuance	Source type	Major source pollutant
1 Advanced Glassfiber, Yarns LLC	Huntingdon	OP–31–02002 04/13/99.	Fiberglass manufacturing	VOC
2. Armstrong World Industries, Inc., Beech Creek	Clinton	OP–18–0002 07/06/95.	Printing	VOC/NO_X
3. Bemis Company, Inc. Film Division	Luzerne	OP–40–0007A 10/10/95.	Printing	VOC
4. Brentwood Industries, Inc.	Berks	PA–06–1006A 06/03/99.	Plastics Manufacturing	VOC
5. Certainteed Corp., Mountaintop	Luzerne	OP–40–0010 05/31/96.	Synthetic materials manufacturing (fiberglass).	VOC/NO_X
6. CNG Transmission Corp., Ardell Station	Elk	OP–24–120 09/30/95.	Natural gas transmission	VOC/NO_X
7. CNG Transmission Corp., Finnnefrock Station	Clinton	PA–18–0003A 02/29/96.	Natural gas transmision	VOC/NO_X
8. Consol Pennsylvania Coal Company, Bailey Prep Plant.	Greene	OP–30–000–072 03/23/99.	Coal preparation	VOC/NO_X
9. Consolidated Rail Corp., Hollidaysburg	Blair	OP–07–2002 08/29/95.	Metal—railroad equipment manufacturing.	VOC
10. Consolidated Rail Corp., Juniata	Blair	OP–07–2003 08/29/95.	Metal—railroad equipment manufacturing.	VOC/NO_X
11. Containment Solutions, Inc.	Huntington	OP–31–02005 4/09/99.	Fiberglass reinforced plastics manufacturer.	VOC
12. Cooper-Bessemer, Grove City	Mercer	OP–43–003 07/25/96.	Foundry	VOC/NO_X
13. Cyprus Cumberland Resources Corp.	Greene	OP–30–000–040 03/26/99.	Coal preparation plant	VOC/NO_X
14. Defense Distribution Region East	York	OP–67–02041 02/01/00.	Industrial boilers	VOC/NO_X
15. EMI Company	Erie	OP–25–070 10/24/96.	Foundry iron/steel	VOC
16. Empire Sanitary Landfill, Inc.	Lackawanna	OP–35–0009 10/17/96.	Landfill flares	VOC
17. Equitrans, Inc.—Rogersville Station	Greene	OP–30–000–109 07/10/95.	Natural gas transmission	VOC/NO_X
18. Equitrans, Inc.—Pratt Station	Greene	OP–30–000–110 07/10/95.	Natural gas transmission	VOC/NO_X
19. Erie Coke Corp.—Erie	Erie	OP–25–029 07/27/95.	Coke manufacturing	VOC/NO_X
20. Fleetwood Folding Trailers, Inc.	Somerset	OP–56–000–151 02/28/96.	Surface coating (metal trailers).	VOC
21. Gichner Systems Group, Inc.	York	OP–67–2033 08/05/97.	Portable shelter manufacturing.	VOC
22. Offset Paperback Manufacturing, In.,	Luzerne	OP–40–0008 04/16/99.	Lithographic Printing	VOC
23. Overhead Door Corporation	Mifflin	OP–44–2011 06/04/97.	Sectional door manufacturing	VOC
24. Sanyo Audio Manufacturing	Mifflin	OP–44–2003 06/30/95.	Wood cabinet manufacturing	VOC
25. Stroehmann Bakeries, Inc.	Luzerne	PA–40–0014A 05/30/95.	Baking Ovens	VOC

III. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for the twenty-five major sources of VOC and NO_X listed in this document. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on October 5, 2001 without further notice unless we receive adverse comment by September 5, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if adverse comment is received for a specific source or subset of source(s) covered by an amendment, paragraph, or section, only that amendment, paragraph, or section of this rule for that source or sources will be withdrawn.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' See 66 FR 28355, May 22, 2001. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have 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), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for 25 named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2001. 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 approving the Commonwealth's source-specific RACT requirements to control VOC and NO_X from 25 individual sources in Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen Oxides, Ozone, Reporting and record keeping requirements.

Dated: July 19, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(149) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(149) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining

to VOC and NO_X RACT, submitted on August 1, 1995, November 15, 1995, December 8, 1995, January 10, 1996, February 20, 1996, April 16, 1996, May 2, 1996, September 13, 1996, October 18, 1996, January 21, 1997, May 29, 1998, April 9, 1999, April 20, 1999, October 26, 1999 and May 1, 2000.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals, operating permits, or compliance permits, or supplementary information, on the following dates: On August 1, 1995, November 15, 1995, December 8, 1995, January 10, 1996, February 20, 1996, April 16, 1996, May 2, 1996, September 13, 1996, October 18, 1996, January 21, 1997, May 29, 1998, April 9, 1999, April 20, 1999, October 26, 1999 and May 1, 2000.

(B) Plan approvals (PA) or Operating permits (OP):

(*1*) Advanced Glassfiber Yarns LLC, Huntingdon County, OP–31–02002, effective April 13, 1999, except for the expiration date and condition 3.

(*2*) Armstrong World Industries, Inc., Beech Creek, Clinton County, OP–18–0002, effective July 6, 1995, except for the expiration date and conditions 3, 4, 5, 7, 10, and 17 through 20 inclusive.

(*3*) Bemis Company, Inc., Luzerne County, OP–40–0007A, effective October 10, 1995, except for the expiration date and conditions 11 through 14 inclusive.

(*4*) Brentwood Industries Inc., Berks County, PA–06–1006A, effective June 3, 1999, except for the expiration date and conditions 4 and 14.

(*5*) CertainTeed Corporation, Mountaintop, Luzerne County, OP–40–0010, effective May 31, 1996, except for the expiration date and conditions 6 through 11 inclusive.

(*6*) CNG Transmission Corp., Ardell Station, Elk County. OP 24–120, effective September 30, 1995, except for the expiration date and conditions 3, 6, and 8 through 11 inclusive.

(*7*) CNG Transmission Corporation, Finnnefrock Station, Clinton County, PA–18–0003A, effective February 29, 1996, except for the expiration date and conditions 6, 7, and 9 through 19 inclusive.

(*8*) Consol Pennsylvania Coal Company, Bailey Prep Plant, Greene County, OP–30–000–072, effective March 23, 1999, except for the expiration date and conditions 11 through 14 inclusive.

(*9*) Consolidated Rail Corporation (CONRAIL), Hollidaysburg Car Shop, Blair County, OP–07–2002, effective August 29, 1995, except for the expiration date and conditions 3, 5, 6, 11 and 12.

(*10*) Consolidated Rail Corporation (CONRAIL), Juniata Locomotive Shop, Blair County, OP–07–2003, effective August 29, 1995, except for the expiration date and conditions 3, 5, 7, 8, and 9.

(*11*) Containment Solutions, Inc., Huntingdon County, OP–31–02005, effective April 9, 1999, except for the expiration date and condition 3.

(*12*) Cooper Energy Services, Grove City, Mercer County, OP–43–003, effective July 25, 1996, except for conditions 3, 4, 10 and 11.

(*13*) Cyprus Cumberland Resources Corp., Greene County, OP–30–000–040, effective March 26, 1999, except for the expiration date and conditions 7, 8, 10, 11 and 12.

(*14*) Defense Distribution Susquehanna, York County, OP–67–02041, effective February 1, 2000, except for the expiration date and condition 3; Condition 4. (Sources, Continued), Paragraphs I.d. and III; General Conditions, conditions 5 and 8; Presumptive RACT, conditions 9 and 10; Stack Test, conditions 11 through 14 inclusive, 16 and 17; and Recordkeeping and Reporting, conditions 18 through 22 inclusive.

(*15*) EMI Company, Erie County, OP–25–070, effective October 24, 1996.

(*16*) Empire Sanitary Landfill, Inc., Lackawanna County, OP–35–0009, effective October 17, 1996, except for the expiration date and conditions 14, 15 and 16.

(*17*) Equitrans, Inc., Rogersville Station, Greene County, 30–000–109, effective July 10, 1995, except for the expiration date and conditions 4, 5 and 6.

(*18*) Equitrans, Inc., Pratt Station, Greene County, 30–000–110, effective July 10, 1995, except for the expiration date and conditions 4, 5, 6, 9 and 11 through 20 inclusive.

(*19*) Erie Coke Corporation, Erie County, OP 25–029, effective June 27, 1995, except for conditions 5, and 10 through 15 inclusive.

(*20*) Fleetwood Folding Trailers, Inc., Somerset County, 56–000–151, effective February 28, 1996, except for the expiration date and condition 5.

(*21*) Gichner Systems Group, Inc., York County, 67–2033, effective August 5, 1997, except for the expiration date and conditions 3, 5, 6 and 7.

(*22*) Offset Paperback Manufacturers, Inc, Luzerne County, 40–0008, effective April 16, 1999, except for the expiration date and conditions 3, 4 and 16 through 20 inclusive.

(*23*) Overhead Door Corporation, Mifflin County, 44–2011, effective June 4, 1997, except for the expiration date and conditions 3 and 11.

(*24*) Sanyo Audio Manufacturing (USA), 44–2003, effective June 30, 1995, except for the expiration date and conditions 3, 4, and 7 through 10 inclusive.

(*25*) Stroehmann Bakeries, Inc., Luzerne County, 40–0014A, effective May 30, 1995, except for the expiration date and conditions 4, 7, 8, 9, 10 and 12.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in (i) (B), above.

[FR Doc. 01–19316 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI76–01–7285a, FRL–7023–2]

Approval and Promulgation of Maintenance Plan Revisions; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a March 22, 2001, request from Michigan for a State Implementation Plan (SIP) revision of the Muskegon County ozone maintenance plan. The maintenance plan revision establishes a new transportation conformity Mobile Vehicle Emissions Budget (MVEB) for the year 2010. EPA is approving the allocation of a portion of the safety margin for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) to the area's 2010 MVEB for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations.

DATES: This rule is effective on October 5, 2001, unless EPA receives adverse written comments by September 5, 2001. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section,

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

Please contact Michael Leslie at (312) 353–6680 before visiting the Region 5 office.

Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized as follows:

What action is EPA taking today?
Who Is affected by this action?
How did the State support this request?
What is transportation conformity?
What is an emissions budget?
What is a safety margin?
How does this action change the Muskegon County ozone maintenance plan?
Why is the request approvable?
When will EPA take comments on this action?
EPA Action
Administrative Requirements

What Action Is EPA Taking Today?

EPA is approving a revision to the ozone maintenance plan for Muskegon County, Michigan. The revision will change the MVEB for VOC and NO_X that is used for transportation conformity purposes. The revision will keep the total emissions for the area below the attainment level required by law. This action will allow state or local agencies to maintain air quality while providing for transportation growth.

Who Is Affected by This Action?

Primarily, this revision will affect the transportation sector represented by West Michigan Regional Planning Commission, the Michigan Department of Transportation and persons traveling through Muskegon County. The conformity rule, provides that if a ''safety margin'' exists in a state's maintenance plan, then the state may allocate the safety margin to the transportation sector via the mobile source budget.

How Did the State Support This Request?

On March 22, 2001, Michigan submitted to EPA a SIP revision request for the Muskegon County ozone maintenance area. The Michigan Department of Environmental Quality (MDEQ) held a public hearing on this proposal on March 1, 2001. No one from the public commented on the proposed revisions.

In the submittal, Michigan requested a new 2010 MVEB for VOC and NO_X for the Muskegon County, Michigan, ozone maintenance area. The State requested that 2.14 tons/day VOC and 3.27 tons/day of NO_X be allocated from the maintenance plan's safety margin to the MVEB. The MVEB is used for transportation conformity purposes.

What Is Transportation Conformity?

Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. Section 176(c) of Clean Air Act, 42 U.S.C. 7506(c), that transportation plans, programs and projects conform to an effective implementation plan. On November 24, 1993, EPA published a final rule establishing criteria and procedures for determining whether transportation plans, programs and projects funded or approved under Title 23 of the U.S. Code or the Federal Transit Act conform to the SIP.

The transportation conformity rules require an ozone maintenance area, such as Muskegon County, to compare the actual projected emissions from cars, trucks and buses on the highway network, to the MVEB established by a maintenance plan. The Muskegon County area has an approved ozone maintenance plan. Our approval of the maintenance plan established the MVEB for transportation conformity purposes.

What Is An Emissions Budget?

An emissions budget is the level of controlled emissions from the transportation sector (mobile sources) projected by the state and included in the SIP. The SIP controls emissions through regulation, for example, of fuels and exhaust levels for cars. The emissions budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how states establish the MVEB in the SIP and revise the emissions budget. The transportation conformity rule allows a state to change its MVEB as long as the total level of emissions from all sources remains below the attainment level.

What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. For example: Muskegon County monitored attainment of the one hour ozone standard during the 1996–1998 time period. The State used 1996 as the attainment level of emissions for Muskegon County. The emissions from point, area and mobile sources in 1996 equaled 32.54 tons per day of VOC and 32.21 tons per day of NO_X. The MDEQ projected emissions out to the year 2010 and projected a total of 24.36 tons per day of VOC and 25.93 tons per day of NO_X from all sources in Muskegon County. The safety margin for Muskegon County is the difference between these amounts, or 8.18 tons per day of VOC and 6.28 tons per day of NO_X.

Tables 1 and 2 give detailed information on the estimated emissions from each source category and the safety margin calculation. The 2010 emission projections reflect the point, area and mobile source reductions and are illustrated in Tables 1 and 2

TABLE 1.—MUSKEGON COUNTY VOC EMISSIONS BUDGET

Source category	1996	2010
Point	5	4
Area	19	14
On-Road Mobile	8.54	6.36
Total	32.54	24.36

Safety Margin = 1996 total emissions − 2010 total emissions = 8.18 tons/day VOC

TABLE 2.—MUSKEGON COUNTY NO_X EMISSIONS BUDGET

Source category	1996	2010
Point	16	15
Area	6	4
On-Road Mobile	10.21	6.93
Total	32.21	25.93

Safety Margin = 1996 total emissions − 2010 total emissions = 6.28 tons/day NO_X

The emissions are projected to maintain the area's air quality consistent with the air quality health standard. Michigan requests that only a portion of the safety margin credit be allocated to the transportation sector. The total emission level, even with this

allocation, will be below the attainment level or safety level and, therefore, is acceptable.

How Does This Action Change the Muskegon County Ozone Maintenance Plan?

Approval of Michigan's revised safety margin and MVEB raises the VOC and NO_X emissions for the MVEB. The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population, and traffic is offset with reductions from cleaner cars and other emission reduction programs. Through the maintenance plan the state and local agencies can manage and maintain air quality while providing for growth.

In the submittal, Michigan allocates part of the Muskegon County area's safety margin to the MVEB. The area's safety margin is the difference between the 1996 attainment inventory year and the 2010 projected emissions inventory (8.18 tons/day VOC safety margin, and 6.28 tons/day NO_X safety margin) as shown in Tables 1 and 2. The SIP revision requests the allocation of 2.14 tons/day VOC and 3.27 tons/day of NO_X into the area's MVEB from the safety margin. The 2010 VOC and NO_X MVEB budget showing the safety margin allocations that will be used for transportation conformity purposes are outlined in Tables 3 and 4.

Tables 3 and 4, below, illustrate that the requested portion of the safety margin can be allocated to the 2010 mobile source budget and that total emissions will still remain below the 1996 attainment level of total emissions for the Muskegon County maintenance area. Since the area would still be below the 1996 attainment level for the total emissions, the conformity rule allows this allocation.

TABLE 3.—ALLOCATION OF SAFETY MARGIN TO THE 2010 MVEB, MUSKEGON COUNTY VOC EMISSIONS (TONS/DAY)

Source category	2010
Point	14
Area	4
On-Road Mobile	8.5
Total	26.5

Remaining Safety Margin = 1996 total emissions − 2010 total emissions = 6.04 tons/day VOC

TABLE 4.—ALLOCATION OF SAFETY MARGIN TO THE 2010 MVEB, MUSKEGON COUNTY NO_X EMISSIONS (TONS/DAY)

Souce category	2010
Point	15
Area	4
On-Road Mobile	10.2
Total	29.2

Remaining Safety Margin = 1996 total emissions − 2010 total emissions = 3.01 tons/day VOC

Why Is the Request Approvable?

The requested allocation of the safety margin for the Muskegon County area is approvable because the new MVEB for VOC and NO_X maintains the total emissions for the area below the attainment year inventory level as required by the transportation conformity regulations. The conformity rule allows this allocation because the area would still be below the 1996 attainment level for the total emissions.

The EPA believes the motor vehicle emissions budgets for VOC and NO_X are adequate for conformity purposes and approvable as part of the maintenance plan.

When Will EPA Take Comments on This Action?

Interested parties may comment on the adequacy and approval of the budgets by submitting their comments on this direct final rule.

If EPA receives adverse written comments with respect to the adequacy and approval of the Muskegon budgets, or any other aspect of our approval of this SIP, by the time the comment period closes, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. In this case, we will either respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

We will also announce our action on the Muskegon emissions budgets on EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

EPA Action

EPA is approving the requested allocation of the safety margin to the VOC and NO_X MVEB for the Muskegon County ozone maintenance area.

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comments by September 5, 2001. Should the Agency receive such comment, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on October 5, 2001.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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, nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have 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), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking. 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 has submitted 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. section 804(2). This rule will be effective October 5, 2001 unless EPA receives adverse written comments by September 5, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compound, Transportation conformity.

Dated: July 23, 2001.

David Ullrich,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Michigan

2. Section 52.1174 is amended by adding paragraph (u) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(u) Approval—On March 22, 2001, Michigan submitted a revision to the ozone maintenance plan for the Muskegon County area. The revision consists of allocating a portion of the Muskegon County area's Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) safety margin to the transportation conformity Motor Vehicle Emission Budget (MVEB). The MVEB for transportation conformity purposes for the Muskegon County area are now: 8.5 tons per day of VOC emissions and 10.2 tons per day of NO_X emissions for the year 2010. This approval only changes the VOC and NO_X transportation conformity MVEB for Muskegon County.

* * * * *

[FR Doc. 01–19458 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0284; FRL–7008–5]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) concerning particulate matter (PM–10) emissions and carbon monoxide (CO) emissions from incineration and from fuel burning equipment, respectively. EPA is also finalizing full approval of a revision to the Bay Area Air Quality Management District (BAAQMD) concerning tuning boilers. The proposed rule was in the **Federal Register** on March 29, 2001. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), the final rule approves local rules that regulate these emission sources and directs California to correct deficiencies in certain rules.

EFFECTIVE DATE: This rule is effective on September 5, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94105.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1135.

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

I. Proposed Action

On March 29, 2001 (66 FR 17131), EPA proposed actions on the rules in Table 1 that were submitted for incorporation into the California SIP.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted.
BAAQMD	Manual of Procedures, volume I, section 5..	Boiler, Steam Generator, and Process Heater Tuning Procedure..	09/16/93	07/23/96
VCAPCD	57	Combustion Contaminants—Specific	06/14/77	01/21/00
VCAPCD	68	Carbon Monoxide	06/14/77	01/21/00

We proposed a limited approval of VCAPCD Rules 57 and 68, because we determined that the rules improve the SIP and are largely consistent with the relevant CAA requirements. The limited approval implied that these rules were also given a limited disapproval, because some rule provisions conflict with section 110 and part D of the CAA. We also proposed a full approval of the BAAQMD Manual of Procedures, volume I, section 5, because the rule met all the requirements of the CAA. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. We received comments on the VCAPCD rules after the comment period closed, but we are considering these comments from the following party:

- Ashley Garrigan, Bryn Mawr College; letter postmarked May 1, 2001 and received May 4, 2001.

The comments and our responses are summarized below.

Comment I: Ms. Garrigan requested clarification of the meaning of ''These small uncontrolled sources are included in the air quality management plan for the District without any credit taken for controls.''

Response: This refers to the District's PM–10 Maintenance Attainment Plan. Such a Plan is required, when a District is now in attainment with the National Ambient Air Quality Standards (NAAQS) but was once in nonattainment, to show what emission reductions through controls are needed to maintain attainment. In this case, the District does not take any credit for PM–10 emission reduction from controls on the exempted sources in order to maintain attainment. Allowing no PM–10 controls on the exempted sources is consistent with section 110(l) of the CAA, which requires that plan revisions would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA.

The District is in attainment for CO and has made a demonstration that allowing no controls for CO on the exempted sources would be consistent with section 110(l) of the CAA.

Comment II: Ms. Garrigan is concerned that the point of revisions is to strengthen the SIP and not weaken it (such as by allowing exemptions). Ms. Garrigan is also concerned that any amount of PM–10 and CO emissions is considered approved when such emissions harm human health and the environment.

Response: Strengthening the SIP is usually the goal of revisions. Exemptions are allowed only if they comply with section 110(l) of the CAA, thus maintaining attainment. In the case of test jet engines, the District granting exemptions is reasonable, due to the experimental nature of the test jet engines and the difficulty and cost of applying controls.

EPA is required by the CAA to set NAAQS to protect human health and the environment. This implies that, unless the NAAQS are zero, some emission of pollutants is ''approved''. We may not approve emissions that exceed the NAAQS.

III. EPA Action

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of VCAPCD Rules 57 and 68. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of these rules. This limited disapproval, although not specifically stated in the proposed rule, is implied by the limited approval. No sanctions under section 179 are associated with this final action, because control of these sources is not required for attainment of the NAAQS. Note that the submitted rules have been adopted by the VCAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

EPA is also finalizing full approval of BAAQMD Manual of Procedures, volume I, section 5.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. Submission to Congress and the Comptroller General

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 rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 20, 2001

Jane Diamond,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(239)(i)(E)(*7*) and (c)(278)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(E) * * *

(*7*) Manual of Procedures, volume I, section 5, adopted on September 16, 1993.

* * * * *

(278) * * *

(i) * * *

(C) * * *

(*2*) Rules 57 and 68, adopted on June 14, 1977.

* * * * *

[FR Doc. 01–19460 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 120–1120a; FRL–7024–3]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) and part 70 Operating Permits Program. EPA is approving a revision to Missouri rule ''Submission of Emission Data, Emission Fees, and Process Information.'' This revision will ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revision pursuant to both section 110 of the Clean Air Act and part 70 Operating Permits Program.

EFFECTIVE DATE: This direct final rule will be effective October 5, 2001 unless EPA receives adverse comments by September 5, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we, us, or our'' is used, we mean EPA.

This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to me?
What is the Part 70 Operating Permits Program?
What is Being Addressed in this Document?
Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgations of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the 40 CFR part 70 operating permits program is to improve

enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

What Is Being Addressed in This Document?

The state of Missouri has requested that EPA approve as a revision to the Missouri SIP and the 40 CFR part 70 Operating Permits Program recently adopted revisions to rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information.''

This rule applies to sources that are required to obtain a construction or Title V permit and to sources seeking an exemption from major source permitting requirements. The rule requires the submittal of an Emission Inventory Questionnaire (EIQ) and payment of emission fees based on information submitted in the EIQ.

Revisions made in this annual update include no longer requiring the payment of a service fee by Phase I acid rain sources. However, these sources will now be required to pay Title V emission fees. The state deleted the requirement for payment of fees by charcoal production sources. Both of these provisions were included in the state statute which established the Title V operating permit program. Other minor revisions, corrections, and clarifications were also made. The annual emission fee was not revised, so it remains at twenty-five dollars and seventy cents ($25.70) per ton. This fee, along with program cash reserves, is sufficient to fund the cost of administering the 40 CFR part 70 program.

Further discussion and background information is contained in the technical support document prepared for this action, which is available from the EPA contact listed above.

Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the submittal meets the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and make regulatory revisions required by state statute. Therefore, we do not anticipate any adverse comments.

Final action: EPA is approving as an amendment to the Missouri SIP revisions to rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' pursuant to section 110. EPA is also approving this rule as a program revision to the state's part 70 Operating Permits Program pursuant to part 70.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have 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 CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2001. 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 Parts 52 and 70

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

Dated: July 17, 2001.

William A. Spratlin,

Acting Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for ''10–6.110'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
*	*	*	*	*
	Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri			
*	*	*	*	*
10–6.110 ...	Submission of Emission Data, Emission Fees, and Process Information.	11/30/00	8/6/01 FR 40903	Section (5), Emission Fees, has not been approved as part of the SIP.
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

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

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

2. Appendix A to Part 70 is amended by adding under ''Missouri''paragraph (j) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(j) The Missouri Department of Natural Resources submitted Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on November 27, 2000, approval effective October 5, 2001.

* * * * *

[FR Doc. 01–19454 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7025–2]

RIN: 2060–AH47

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments and denial of petitions.

SUMMARY: The EPA promulgated the Group IV Polymers and Resins national emission standards for hazardous air pollutants (NESHAP) on September 12, 1996. The EPA was petitioned to reconsider the equipment leak detection and repair (LDAR) standards contained in the promulgated rule as they pertain to polyethylene terephthalate (PET) facilities. On June 8, 1999, we issued a proposed denial of the petitions for reconsideration and issued a direct final rule amendment to extend the compliance dates specified for equipment leaks for PET affected sources, as a result of the petitions to reconsider the equipment leak standards for PET facilities.

After revising costs and hazardous air pollutant (HAP) emissions reductions using data provided by petitioners and other commenters, the EPA is retaining the equipment leak provisions of the promulgated rule with one exception; we are modifying the definition of a leak for certain ethylene glycol pumps. In addition, we are extending the compliance dates for the PET affected sources to comply with the equipment leak provisions to August 6, 2002, in order to provide PET facilities time to develop an LDAR program.

EFFECTIVE DATE: August 6, 2001.

ADDRESSES: Docket No. A–92–45 contains information considered by EPA in the development of the standards for the Group IV Polymers and Resins. The docket is available for public inspection and copying between 8:00 a.m. and 5:00

p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5605, fax (919) 541–3470, and electronic mail: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket reflects the full administrative record for this action and includes all the information relied upon by EPA in the development of these petition denials. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this final rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's action will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	SIC codes	NAICS	Examples of regulated entities
Industry	2821	325211	Facilities manufacturing PET resin using a batch dimethyl terephthalate (DMT), continuous DMT, batch terephthalic acid (TPA), or continuous TPA process.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the amendments to the standards affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1310 of the Group IV Polymers and Resins NESHAP. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

On September 12, 1996, the EPA promulgated the Group IV Polymers and Resins NESHAP (61 FR 48208). Following promulgation, we received two petitions for reconsideration regarding the LDAR program provisions of the rule, and additional data in support of these petitions. The EPA also received petitions regarding other sections of the promulgated rule and is responding to those separately.

The petitions raised two primary issues. One issue stated that the light liquid LDAR program was more costly than EPA estimated, was not cost effective, and should not have been required. The other issue contended that we had not performed a substantive analysis on the heavy liquid LDAR program, which was added between proposal and promulgation, to determine whether the cost per ton of HAP emissions reductions was reasonable; thus, the EPA failed to meet its obligation under section 112(d)(2) of the CAA. The petitioners requested that we revise the cost and cost per ton of HAP emissions reductions of the equipment leak program based on new cost and emissions data they provided in support of the petitions. The petitioners stated that this revised analysis would show that the costs of the LDAR requirements are not reasonable and would lead us to delete the equipment leak provisions for PET facilities from the Group IV Polymers and Resins NESHAP.

In response to the two petitions, in October 1998, we performed an analysis that revised the cost and emission reduction estimates that supported the equipment leak provisions of the Group IV Polymers and Resins NESHAP. Based on that analysis, we proposed to deny the petitions for reconsideration in a **Federal Register** notice that was published on June 8, 1999 (64 FR 30456). Based on the comments received, we performed a final equipment leak analysis in December 2000 entitled, ''Final Analysis of Equipment Leak Program for PET Facilities Subject to the Group IV Polymers and Resins NESHAP,'' which is available in Docket A–92–45.

II. Summary of Comments and Responses

Several comments on the proposal to deny the petitions concerned costs and the emission factors used to calculate the cost per ton of HAP emissions reductions of the equipment leak program. Specifically, commenters stated that we had underestimated the costs of the portion of the light liquid program based on EPA Method 21 of 40 CFR 60, appendix A, monitoring of equipment leaks. They also stated that the use of synthetic organic chemical manufacturing industry (SOCMI) emission factors is inappropriate for PET facilities, and that the use of those factors resulted in an overestimation of the HAP emissions reductions resulting from the equipment leak provisions as applied to PET production facilities. The commenters stated that we should not combine portions of equipment leak programs based on one-time equipment modifications with portions that require EPA Method 21 monitoring when determining whether the cost of the equipment leak program is reasonable.

In response to comments, in the December 2000 final analysis, we revised the cost of the EPA Method 21 portion of the equipment leak program based on data provided by the commenters. We continue to believe that use of SOCMI emission factors is appropriate for PET facilities. This is because, in general, the SOCMI and PET facilities have comparable process design and process operation, use the same types of equipment, and use similar feedstocks. However, in order to determine the impact of the differences between the SOCMI emission factors and the equipment leak data provided by commenters, we performed a final equipment leak cost analysis using industry-supplied leak data. The results of that final analysis indicate that the incremental cost per ton of additional

HAP emissions reductions for the equipment leak program is reasonable. (See the December 2000 final equipment leak analysis, which is available in Docket A–92–45.)

We did not perform cost analyses which separate portions of the equipment leak programs that require one-time equipment modifications from the portions that are based on EPA Method 21 monitoring. We consider the LDAR program to be a whole program designed to reduce HAP emissions from equipment leaks across the total facility. The leaks from individual equipment components are considered together due to the similarity of the cause of the emissions and the control techniques. We do not believe it is appropriate nor necessary to disaggregate equipment leak programs by individual component types.

One commenter stated that there was a discrepancy between heavy liquid pump requirements for PET facilities and light liquid pumps for polystyrene plants. Specifically, for certain polystyrene pumps, an indication of liquids dripping from pump seal bleed ports is not considered to be a leak because dripping of fluid is a required feature of this type of seal. There are also certain ethylene glycol pumps that require dripping of fluid for proper seal operation. In response to comments, we have modified the definition of a leak for ethylene glycol pumps with this type of seal. Additional details on comments and responses may be found in ''Responses to Comments'' memo dated December 2000 in Docket A–92–45.

III. Results and Conclusion

The following table presents the cost per ton of HAP emissions reductions ratios by subcategory for the December 2000 final analysis supporting this final denial of the petitions for reconsideration, the October 1998 analysis supporting the proposed denial, the April 1996 analysis supporting the promulgated Group IV Polymers and Resins NESHAP, and the March 1995 analysis supporting the proposed Group IV Polymers and Resins NESHAP. These ratios represent the incremental cost per additional ton of HAP emissions reductions of going beyond the floor of no controls for leaks to requiring facilities to implement an LDAR program. In the October 1998 analysis, the cost-per-ton ratios ranged from $1,300 to $2,100 per ton of HAP emissions reductions. The cost-per-ton ratios of the equipment leak program under the December 2000 final analysis range from $1,600 to $3,300 per ton of HAP emissions reductions.

SUMMARY OF COST–PER–TON RATIOS OF EQUIPMENT LEAK PROGRAM FOR GROUP IV RESINS—PET PRODUCTION

[$/ton of HAP Emissions Reductions]

Process subcategory	December 2000 final analysis	October 1998 analysis	April 1996 analysis	March 1995 analysis
DMT-Batch	3,300	2,100	620	960
DMT-Continuous	2,700	1,300	320	730
TPA-Continuous	1,700	1,600	1,500	1,100
TPA-Batch	1,600	1,600	730	2,200

Even after analyzing the cost-per-ton ratios using industry-supplied leak frequency data in lieu of SOCMI emission factors, and industry-supplied cost data, we have determined that the costs of the equipment leak provisions of the promulgated rule are reasonable. Therefore, we are not removing the equipment leak standards from the promulgated NESHAP for Group IV Polymers and Resins, and we are not modifying any provisions within the equipment leak program of 40 CFR part 63, subpart H, except as noted in the following section.

IV. Other Actions

A. Compliance Date Extension

On February 26, 2001, we issued a direct final rule amendment (66 FR 11543) to extend compliance dates contained in the promulgated Group IV Polymers and Resins NESHAP to August 27, 2001. The revisions extended the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources. These compliance extensions were approved pursuant to the CAA section 301(a)(1) in order to complete reconsideration of equipment leak provisions and any necessary revisions to the NESHAP.

After reconsideration of the equipment leak provisions, we are retaining the equipment leak provisions of the promulgated NESHAP. However, we are extending the dates for compliance with the equipment leak provisions for the PET affected sources to August 6, 2002, so that they are able to develop their equipment leak programs.

B. Modification of Leak Definition for Certain Ethylene Glycol Pumps

In reviewing the comments received on the June 1999 proposed denial of petition, we are modifying the definition of a leak for certain ethylene glycol pumps which are designed to weep fluids from the seals. Seals that are designed to weep fluid will not be considered to be leaking. This change was made to be consistent with a similar provision for polystyrene pumps.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by Office of Management and Budget (OMB) on the basis of the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action does not fall within any of the four categories described above. Instead, it finalizes the denial of the petitions for reconsideration, makes a minor revision to the equipment leak provisions of the Group IV Polymers

and Resins rule and provides a compliance extension. The final action does not add any additional control requirements. Therefore, this is not a ''significant regulatory action'' within the meaning of Executive Order 12866 and was not required to be reviewed by OMB.

B. Executive Order 13132, Federalism

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

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because the final action applies to affected sources in PET facilities, not to States or local governments. Nor will State law be preempted, or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's final action does not significantly or uniquely affect the communities of Indian tribal governments because they do not own or operate any of the sources affected by this final rule. Thus, Executive Order 13175 does not apply to this final rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it is based on technology performance, and not on health or safety risks.

E. Executive Order 13211, Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 F.R. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This action does not impose any enforceable duties on State, local, or tribal governments, i.e., they own or operate no sources subject to the Group IV Polymers and Resins NESHAP and, therefore, are not required to purchase control systems to meet the requirements of the NESHAP. Regarding the private sector, today's action will affect only 23 existing facilities nationwide. The EPA projects that annual economic effects will be far less than $100 million. Thus, today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

We have also determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to the NESHAP and, therefore, are not

required to purchase control systems to meet the requirements of the NESHAP.

G. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final rule amendments. The EPA has also determined that these rule amendments will not have a significant impact on a substantial number of small entities because no small entities are subject to the NESHAP.

H. Paperwork Reduction Act

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to OMB under the Paperwork Reduction Act. The OMB approved the information collection requirements and assigned OMB control number 2060–0351. 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA has amended 40 CFR part 9, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

Today's action has no impact on the information collection burden estimates made previously. Therefore, the ICR has not been revised.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Group IV Polymers and Resins NESHAP includes technical standards. Therefore, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods potentially equivalent to the methods required by the Group IV Polymers and Resins NESHAP, all of which are methods previously promulgated by EPA. The NESHAP includes methods that measure: (1) Determination of excess air correction factor (percent oxygen)(EPA Method 3B); (2) sampling site location (EPA Method 1 or 1A); (3) volumetric flow rate (EPA Methods 2, 2A, 2C, or 2D); (4) gas analysis (EPA Method 3); (5) stack gas moisture (EPA Method 4); (6) concentration of organic HAP (EPA Method 18 or 25A); and (7) organic compound equipment leaks (EPA Method 21). These EPA methods are found in appendix A to 40 CPR part 60.

No potentially equivalent methods for the methods in the final rule were found in the NSSN database search, and none were brought to our attention in comments on the proposed action. Therefore, the EPA has decided to use the methods listed above.

J. Submission to Congress and the Comptroller General

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. The EPA will submit a report containing this final 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 final 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). These final rule amendments will be effective on August 6, 2001.

List of Subjects in 40 CFR Part 63

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

Dated: July 31, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIRPOLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart JJJ—National Emission Standards for Hazardous AirPollutant Emissions: Group IV Polymers and Resins

2. Section 63.1311 is amended by revising paragraphs (b) and (d)(6), to read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 upon initial start-up or August 6, 2002, whichever is later.

* * * * *

(d) * * *

(6) Nothhstanding paragraphs (d)(1) through (5) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than August 6, 2002.

* * * * *

3. Section 63.1331 is amended by revising (a)(6) introductory text and adding paragraph (a)(6)(v), to read as follows:

§ 63.1331 Equipment leak provisions.

* * * * *

(a)* *

(6) For pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems; owners or operators of affected sources producing PET shall comply with the requirements of paragraphs (a)(6)(i) and (ii) of this section instead of with the requirements of § 63.139. Owners or operators of PET affected sources shall comply with all other provisions of subpart H of this part for pumps, valves, connectors, and agitators in heavy liquid service;

pressure relief devices in light liquid or heavy liquid service; and instrumentation systems, except as specified in paragraphs (a)(6)(iii) through (v) of this section.

* * * * *

(v) Indications of liquids dripping, as defined in subpart H of this part, from packing glands for pumps in ethylene glycol service where the pump seal is designed to weep fluid shall not be considered to be a leak. Ethylene glycol dripping from pump seals must be captured in a catchpan and returned to the process.

* * * * *

[FR Doc. 01–19560 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–038–EXTa; FRL–7023–9]

Clean Air Act Promulgation of Extension of Attainment Date for the San Diego, California Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is extending the attainment date for the San Diego serious ozone nonattainment area from November 15, 2000, to November 15, 2001. This extension is based in part on monitored air quality readings for the 1-hour national ambient air quality standard (NAAQS) for ozone during 2000. Accordingly, we are updating the table concerning attainment dates for the State of California. In this action, we are approving the State's request through a ''direct final'' rulemaking. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this attainment date extension request.

DATES: This direct final rule is effective October 5, 2001 unless before September 5, 2001 adverse comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register**, and inform the public that the rule will not take effect.

ADDRESSES: Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2),75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 1001 I Street Sacramento, CA 95812

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov*

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the San Diego Area

The San Diego serious ozone nonattainment area, which consists of San Diego County, is currently designated a serious ozone nonattainment area. The statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act (''the Act''), was November 15, 1999. On May 15, 2000, the State of California requested a one-year attainment date extension to November 15, 2000. EPA granted that extension on October 11, 2000 (65 FR 60362). On February 7, 2001, California requested a second one-year extension to November 15, 2001.

CAA Requirements Concerning Designation and Classification

Section 107(d)(4) of the Act required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, we completed this process by designating and classifying all areas of the country for ozone. *See, e.g.,* 56 FR 58694 (Nov. 6, 1991), and 57 FR 56762 (Nov. 30, 1992). San Diego County was originally classified as severe, but was reclassified as serious based upon our determination that the ozone value used in the original classification was incorrect. *See* 60 FR 3771 (Jan. 19, 1995).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. As noted, the San Diego ozone nonattainment area was reclassified as serious. By this classification, its attainment date became November 15, 1999. A discussion of the attainment dates is found in EPA's General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990. See 57 FR 13498 (April 16, 1992).

CAA Requirements Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, we determine attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of serious ozone nonattainment areas, the three-year period is 1997–1999.

A review of the actual ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS) shows that three air quality monitors located in the San Diego ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1997 to 1999 and the three-year period from 1998 to 2000.[1] (See Table 1.) Over the three-year period of 1997 to 1999, there were 9 exceedances at the Alpine monitor. There were 8 exceedances at the Alpine monitor for the period 1998 to 2000, all of which occured in 1998. For both of these three-year periods, this constitutes a violation of the ozone NAAQS for the San Diego area, since the average annual exceedance at the Alpine monitor is more than 1.0. Thus, the area met neither the November 15, 1999 attainment date nor the November 15, 2000 extended attainment date, and the area continues to violate the 1-hour ozone NAAQS because of multiple exceedances recorded in 1998, which must be included in the calculation of average annual exceedances over the most recent 3-year period.

[1] AIRS Data Monitor Values Reports are available electronically at http://www.epa.gov/airsdata/monvals.htm.

TABLE 1.—EXCEEDANCES OF THE 1-HOUR OZONE NAAQS IN SAN DIEGO 1997–2000

[Source: AIRS]

Monitoring station	Exceedances				
	1997	1998	1999	2000	Total 1998–2000
Chula Vista	0	0	0	0	0
El Cajon	0	1	0	0	1
Oceanside	0	0	0	0	0
San Diego (Overland)	0	1	0	0	1
Del Mar	0	0	0	0	0
Escondido	0	0	0	0	0
Alpine	1	8	0	0	8
San Diego (12th St.)	0	0	0	0	0
Camp Pendleton	0	0	0	0	0
Otay Mesa	0	0	0	0	0

CAA Provisions Authorizing a One-Year Extension of the Attainment Date

CAA section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards. However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, we may grant up to 2 one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

We interpret this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) The area has no more than one measured exceedance of the NAAQS during the year at any one monitor that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

EPA Action

We have determined that the requirements for a second one-year extension of the attainment date have been fulfilled as follows:

(1) California has formally submitted the attainment date extension request, in a letter dated February 7, 2001, from Michael P. Kenny, Executive Officer, California Air Resources Board, to Laura Yoshii, Acting Regional Administrator, EPA Region 9.

(2) California is currently implementing the EPA-approved SIP. The State's letter, cited above, discusses implementation of State measures in the SIP, and shows that these measures plus new State measures have achieved an overall surplus of emission reductions beyond those assumed in the SIP. The State also attached a letter dated December 4, 2000, from R.J. Sommerville, Director, San Diego County Air Pollution Control District, which states that the District continues to fully implement the SIP.

(3) California has certified that the area has monitored no exceedances during 2000. This is also reflected in the quality-assured ambient ozone data shown in Table 1 above.

Because the statutory provisions have been satisfied, we approve California's attainment date extension request for the San Diego ozone nonattainment area. As a result, the chart in 40 CFR 81.305 entitled ''California—Ozone'' is being modified to extend the attainment date for the San Diego ozone nonattainment area from November 15, 2000, to November 15, 2001.

We are approving the attainment date extension without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, elsewhere in the proposed rule section of today's **Federal Register** we are publishing a proposal to approve this part 81 action should adverse or critical comments be filed. This action will be effective October 5, 2001 unless before September 5, 2001 adverse or critical comments are received.

If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 5, 2001.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state request for an attainment date extension, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the attainment date extension will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves a State request for an attainment date extension, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

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 rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2001. 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.

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

Dated: July 25, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

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

2. In § 81.305 the ''California-ozone'' table is amended by revising the entry for San Diego area to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
San Diego Area:				
San Diego County	11/15/90	Nonattainment	2/21/95	Serious[2]
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date is extended to November 15, 2001.

* * * * *

[FR Doc. 01–19456 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7025–1]

Wyoming: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On February 25, 1999, EPA Region VIII published an Immediate Final Rule at 64 FR 09278 authorizing changes to Wyoming's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). At that time, we determined that the changes to Wyoming's hazardous waste program satisfied all requirements for final authorization and authorized the changes through an Immediate Final Rule. The Immediate Final Rule was to be effective on April 26, 1999 unless significant written comments opposing the authorization were received during the comment period. At the same time, in the event we received written comments, we also published a Proposed Rule at 64 FR 09295 to authorize these same changes to the Wyoming hazardous waste program.

As a result of comments received on the Immediate Final Rule and the passage of Wyoming Senate File 147 (SF 147), we withdrew the Immediate Final Rule on April 23, 1999 at 64 FR 19925, reopened the Public Comment Period until July 22, 1999 at 64 FR 19968, and went forward with the Proposed Rule. In addition, we held Public Hearings on June 29 and 30, 1999. By today's action, we are issuing a Final Rule authorizing the changes to the Wyoming hazardous waste program as listed in the Immediate Final Rule at 64 FR 09278 and responding below to all of the comments received.

DATES: This authorization will be effective on August 6, 2001.

ADDRESSES: You can view and copy Wyoming's application at the following addresses: EPA Region VIII, from 8:00 AM to 4:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139; or Wyoming Department of Environmental Quality (WDEQ), from 8:00 AM to 5:00 PM, 122 W. 25th Street, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466, Phone (303) 312–6139.

SUPPLEMENTARY INFORMATION: The reader should also refer to the Proposed Rule at 64 FR 09295 and the Immediate Final Rule at 64 FR 09278, both published on February 25, 1999.

We received written comments from twenty-eight parties during the comment period; six recommended we grant authorization; ten requested that we withhold approval of Wyoming's authorization revision until SF 147 could be revised; and four requested that we withdraw the State's RCRA primacy.

The majority of commenters expressed concerns over a potential loss of environmental protections due to the passage of SF 147. We agreed with the concerns regarding the ability of

Wyoming's Department of Environmental Quality (WDEQ) to manage an adequate and equivalent RCRA authorized program in light of SF 147 and decided to withhold approval of Wyoming's program revisions until SF 147 could be revised.

As noted above, we withdrew the Immediate Final Rule on April 23, 1999. On March 10, 2000, Wyoming passed Senate File 15 (SF 15) which repealed and substituted SF 147 with a significantly modified voluntary remediation program. More recently, Wyoming passed Senate File 130 (SF 130) which amended and clarified SF 15. Many of the concerns raised by commenters on the Proposed Rule and Immediate Final Rule have been addressed through these legislative changes.

Conclusion

As a result of the changes to Wyoming's law since the passage of SF 147, EPA Region VIII has determined that approval of the revisions to Wyoming's authorized RCRA program should proceed. Therefore, we are granting final approval of Wyoming's RCRA program revisions as listed in the Immediate Final Rule found at 64 FR 09278 on February 25, 1999.

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Taking'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Incorporation-by-reference, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 12, 2001.

Patricia D. Hull,

Acting Regional Administrator, Region 8.

[FR Doc. 01–19564 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7023–5]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Kem-Pest Laboratories Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 7 is publishing a direct final notice of deletion of the Kem-Pest Laboratories Superfund Site, located in Cape Girardeau County, Missouri, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act(CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the state of Missouri, through the Missouri Department of Natural Resources (MDNR), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective October 5, 2001, unless EPA receives adverse comments by September 5, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Victor A. Lyke, Remedial Project Manager at U.S. EPA, Region 7, Superfund Division, 901 N. 5th Street, Kansas City, Kansas, 66101. Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA, Region 7 SuperfundRecords Center, 901 N. 5th Street, Kansas City, Kansas, 66101 and Cape Girardeau Public Library, 711 N. Clark Street, Cape Girardeau, Missouri, 63701

FOR FURTHER INFORMATION CONTACT: If additional information is needed, please contact Victor A. Lyke at (913) 551–7256 or email at *Lyke.Victor@epa.gov.*

The EPA, Region 7 toll-free phone number is 1–800–223–0425.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA, Region 7 is publishing this direct final notice of deletion of the Kem-Pest Laboratories Superfund Site from the NPL. The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 20, 2001, unless EPA receives adverse comments by August 20, 2001. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure,CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the state of Missouri on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The state of Missouri concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The Kem-Pest Laboratories Superfund Site is located in Cape Girardeau County, Missouri, approximately three miles northeast of the city of Cape Girardeau and east of Missouri State Highway 177 in the southwest part of section 22, Township 31 north, Range 14 East. The Mississippi River is located approximately 1,000 feet south of the Site.

The 6.5 acre Site is located in a rural setting, and once housed a 40 x 100 foot concrete cinder block formulation building on the northeast portion of the Site. The building was located 900 feet north of the Mississippi River and was demolished in 1996. A two celled lagoon was located approximately 40 feet southwest of the building.

Site History

The Kem-Pest Laboratories plant was constructed in 1964. From 1965 to 1977, the company formulated various pesticide products including liquid pesticides, granular insecticides and herbicides, and pesticide dust. Wastes generated from the formulation processes contained several pesticides including aldrin, dieldrin, endrin, and heptachlor. The plant wastes were disposed of in the on-site lagoon. There have been no production or disposal activities at the Site since 1977. The lagoon was backfilled with clay by the owner in 1981.

A preliminary assessment of the Site was conducted by the EPA in September 1981. In April 1984, EPA installed five on-site groundwater monitoring wells and collected groundwater, soil, and sediment samples. Pesticides, volatile organic compounds (VOCs), and semi-volatile organic compounds were detected in the soil, sediment, and groundwater samples. The Kem-Pest Site was proposed for the National Priorities List (NPL) in January 1987 (52 FR 2492). The NPL designation became final in October 1989 (54 FR 41000). The NPL identifies sites that warrant further evaluation to determine the type of responses that may be required to protect human health and the environment.

Remedial Investigations (RI)

In February 1989, EPA initiated a Remedial Investigation (RI), which included collection of soil and sediment

samples, installation of six monitoring wells down-gradient of the Site and a background well up-gradient of the Site, and collection of groundwater samples from on-site and off-site monitoring wells and two nearby private wells. Based on the soil, sediment, and groundwater samples collected, remediation alternatives were developed and evaluated and can be found in the Remedial Investigation/Feasibility Study (Operable Unit 1), dated August 1989. Further remedial investigation results can be found in the Remedial Investigation Report (Operable Unit 2), dated November 1990. These reports provide a summary of analytical results that were used to characterize the risk that this Site posed to human health and the environment.

Characterization of Risk

The RI field activities included sampling for potential exposure to pesticide contamination in the formulation building. Using the data collected during the RI, the EPA prepared a Baseline Risk Assessment to characterize the risk that the Site posed to human health and the environment. The only pathway considered to be complete under current or future land use conditions was future use of the building. An industry occupying the Site in the future might use the formulation building, and workers might be exposed to chemicals in the building through direct contact with contaminated surfaces and through inhalation. Wipe samples were collected as part of the RI and the human health assessment was conducted for the following chemicals at the surface of the formulation building: aldrin, chlordane, DDT, dieldrin, and heptachlor. These chemicals were found present on wipe samples at levels to 140 times for each individual chemical. These chemicals were considered to be the primary source of contamination for the formulation building.

The RI report also concluded that removal of the primary source of contamination to groundwater at the on-site lagoon (via soil excavation), including the removal of the lagoon, would eliminate the risk posed by ingestion by residents. No Ecological Assessment was prepared since no known critical habitats, sensitive environments, or endangered species were affected by contamination in the groundwater.

Feasibility Study (FS)

The Feasibility Study Report, dated August 1989, evaluated the remedial alternatives and provided the bases for EPA's preferred alternative. In November 1990, Addendum I and II to the Phase I RI report, The Formulation Building Operable Unit Feasibility Study report, and the Proposed Plan were made available to the public in the administrative record file located at the Cape Girardeau Public Library. The start of the public comment period was November 27, 1990.

Record of Decision Findings

The September 1989 (OU1) and December 1990 (OU2) Records of Decision (RODs) document the remedial alternatives selected by EPA to address the potential exposure to soil, sediment, and groundwater contamination at the Site. The selected remedies addressed the threat posed by the pesticides, volatile organic compounds (VOCs), and semi-volatile organic compounds at the Site and required the following actions:

• *Lagoon*

1. Excavation of 4,050 cubic yards* of contaminated soil and sediment; and

2. Disposal at an offsite land disposal facility in compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act(RCRA) and other applicable laws or regulations.

• *Groundwater:*

1. No remedial action. Monitoring will be conducted to verify that no unacceptable exposure to risks posed by conditions at the Site occur in the future.

2. Wells to be monitored include existing monitoring wells, and additional wells to be installed during remedial design, and private drinking water wells located off of the Site.

• *Formulation Building***

1. Decontamination by surface layer removal and off-site incineration of decontamination and dismantling debris.

2. Institutional controls that limit future use of the build to commercial or industrial activities.

*An explanation of significant differences (ESD) was written to set the actual cubic yards of land disposed to 6,479.7.

**The December 1990 ROD was amended on February 2, 1993, to allow for the complete demolition of the formulation building with off-site disposal of the demolition debris material; and the establishment of institutional controls that limit future use of the property to commercial or industrial activities. However, because of the completion of the cleanup, no institutional controls to limit land use were necessary.

Response Actions

Pursuant to an Administrative Order on Consent entered into by EPA and the property owners (Charles and Ruth Knote) in November 1988, the owners conducted limited sampling in December 1988. However, in February 1989, EPA initiated a RI, which included collection of soil and sediment samples, installation of six monitoring wells down-gradient of the Site and the background well up-gradient of the Site, and collection of groundwater samples from on-site and off-site monitoring wells and two nearby private wells.

In February 1993, the EPA amended the ROD for OU 2 based on information collected during the design phase, and decided to demolish and dispose of the formulation building. The EPA immediately initiated construction activities to remove the formulation building, but these actions were halted as a result of litigation between the property owner and the United States. The litigation was settled in 1995, and the construction activities for OU2 were completed in 1996. Further information related to the Remedial Design/Remedial Action activities can be found in the Remedial Action Report for Operable Unit 1, dated September 1993 and the Remedial Action Report for Operable Unit 2, dated September 1997.

Cleanup Standards

In March 1992, EPA initiated remedial clean-up action of the soils and sediment operable unit. Remedial action was complete in May 1992. The selected remedy for OU1 included the excavation and off-site disposal of 6,479.7 cubic yards of contaminated soils and sediment and their transportation to Peoria Disposal Company, Peoria, Illinois, a RCRA approved commercial hazardous waste landfill.

The soil and sediment with contaminant concentrations above protective soil concentrations were excavated using conventional earthmoving equipment. Soil and sediment lifts were initially taken in one and two foot increments. Soil sampling was then conducted to confirm whether the horizontal and vertical extent of excavation was sufficient to remove contamination above cleanup levels. This process was repeated until clean up levels were achieved. Clean soil was then backfilled into the excavated areas, compacted and graded. Vegetation and gravel was then placed onsite to minimize erosion. The RA Report approved by EPA on September 30, 1993, concluded that no further action was required for OU1 dealing with the soils and sediment. The cleanup standards that governed the remedial action for OU2 included the hazardous debris rule (57 FR 37194) for

decontamination of the former pesticide formulation building, and risk-based cleanup goals for arsenic and selected pesticides in soil, established by EPA. The hazardous debris rule requires porous surfaces, like the concrete block walls and the concrete floor of the building to be decontaminated by removing at least 0.6 centimeters (cm) (or approximately ¼'') of material from the surface and inspecting the decontaminated surface to ensure they are visibly clean and that no more than 5% of each square inch of surface area remains visibly contaminated. Removal of all building structures was required to a maximum of 3 feet below the existing grade. The hazardous debris rule decontamination for the Site was expanded to include all building structures, and the building basement. Following decontamination, the former pesticide formulation building and basement were demolished. Decontaminated debris, which met the hazardous debris rule criteria, was segregated and transported to a solid waste landfill. Debris which did not meet the hazardous debris rule decontamination criteria was sent to a RCRA permitted hazardous waste incinerator. The demolition of the building, including its basement, was completed in August 1, 1996. Backfilling in the building footprint was completed on August 29, 1996, after analytical results showed that cleanup goals were met at the former building location. The December 1990 OU2 ROD directed that five years of groundwater monitoring be conducted at the Site to assure continued protectiveness of the remedy. Five years of monitoring of this Site have been completed and no significant concerns have been discovered with regard to the groundwater. Further information related to the Remedial Action activities can be found in Remedial Action Report for Operable Unit 2, dated September 1997. There are no land use restrictions for the Site. Neither is it on Missouri's Registry of Confirmed, Abandoned, or Uncontrolled Hazardous Waste Sites in Missouri.

Inspection and Maintenance

OU1

The pre-final inspection included a full system walk-through witnessed by representatives from EPA, the U.S. Army Corps of Engineers (USACE) and MDNR on June 16, 1992 and minor deficiencies were noted. These were corrected. Final acceptance of completion of the work was certified by the USACE, and the remedy was deemed operational and functional on September 4, 1992. After that date, EPA determined that no further action was required.

OU2

On September 17, 1996, EPA conducted along with MDNR, the final inspection at the location of the formulation building to ensure that deficiencies noted during the substantial completion inspection were corrected. EPA concluded that the deficiencies had been corrected. On December 2–3, 1996, MDNR visited the Site to inspect the vegetative cover. MDNR noted deficiencies in the amount of vegetative cover. The Site owner corrected these deficiencies by reseeding in early March 1997. EPA and MDNR again visited the Site on April 16–17, 1997 to inspect the vegetative cover; no deficiencies were noted. In addition, groundwater sampling results from the groundwater monitoring indicate no significant concerns in regard to the groundwater. As a result, EPA, at the request of MDNR, abandoned the monitoring wells at the Site on June 13, 2001.

Five-Year Review

Section 121(c) of CERCLA, as amended, and Section 300.430(f)(4)(ii) of the National Oil and Hazardous Substances Pollution Contingency Plan require that periodic reviews (at least once every five years) be conducted for sites where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use or unrestricted exposure following the completion of all remedial actions for the site. This type of five-year review is referred to as a statutory review. Since the monitoring wells have been abandoned, and the remains of the building and contaminated soil have been disposed of, there will be no need for a five-year review.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. A Community Relations Plan was prepared for the Site in January 24, 1989. An information repository was established for the Site at the Cape Girardeau Public Library. The Addendum I and II to the Phase I RI report, TheFormulation Building Operable Unit Feasibility Study report, and the Proposed Plan were made available for public comment November 27, 1995 to December 27, 1995. Fact sheets providing site updates were distributed to individuals on the mailing list as established by the Community Relations Plan. Documents which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the state of Missouri, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than Inspection and Maintenance of the vegetative cover, is necessary. Therefore, EPA is deleting the Site from the NPL. Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 20, 2001, unless EPA receives adverse comments by August 20, 2001. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: July 24, 2001.

William Rice,

Region Acting Regional Administrator, Region 7.

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

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site name, Kem-Pest Laboratories, Cape Girardeau, Missouri.

[FR Doc. 01–19318 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD23

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Based on recent cost information, we (FEMA) are adjusting the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–3445, (email) *Edward.Connor@fema.gov.*

SUPPLEMENTARY INFORMATION: On May 10, 2001, we published at 66 FR 23874 a rule proposing to increase the ''expense allowance'' under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance under the Write Your Own (WYO) program. (The ''expense allowance'' is a portion of the premiums charged for flood insurance policies that participating insurers sell under the WYO program.) The expense allowance is based on data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's Aggregates and Averages for five property coverages.

Based on our analysis of recent expense information from the companies, we believe that we should increase the current expense allowance under the Arrangement.

During the comment period, we received three sets of comments on the proposed rule. One respondent agreed with the rule as proposed. The other two respondents agreed with the proposed increase in the expense allowance. One of those however was disappointed that the proposed rule did not address marketing incentives, which are referred to in the Arrangement but not included in the Arrangement itself. The other recommended a change in the marketing incentives for larger WYO companies.

As has been our practice, we consulted during the past year with WYO company representatives on the marketing incentives. We are planning to liberalize those incentives for the coming year. Since the marketing incentives are outside the Arrangement proper and therefore outside the scope of this rulemaking, we will not make any adjustment to the rule as proposed.

One commenter also recommended that we consider increasing the unallocated loss adjustment expense allowance from its current 3.3%. That commenter also recommended that the expense allowance be linked directly to the individual WYO company's flood insurance expense as identified in the insurance expense exhibit of the annual statement. (The commenter recommended both these changes for the 2002–3 Arrangement Year.) We plan to review the entire system for reimbursing WYO companies, and we will look at both of those recommendations as part of that review. We are prepared to propose any appropriate changes during the next rulemaking cycle.

In summary, the rule increasing the expense allowance, as proposed, will be adopted as a final rule.

During August 2001, we will send a copy of the offer for the 2001–2002 Arrangement year, together with related materials and submission instructions, to all private insurance companies participating under the current 2000–2001 Arrangement. Any private insurance company not currently participating in the WYO program but wishing to consider FEMA's offer for 2001–2001 may request a copy by writing: Federal Emergency Management Agency, Deputy Administrator, Federal Insurance and Mitigation Administration, WYO Program, Washington, DC 20472.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for ''major federal actions significantly affecting the quality of the human environment.'' If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this final rule is to adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this final rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the final rule is neither an economically significant nor a significant regulatory action under the Executive Order. The rule adjusts the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector

insurers that sell and service flood insurance. The adjustment increases by approximately $14 million the expense allowance paid to the WYO private sector insurers. It does not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It creates no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this final rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could ''have a significant economic impact on a substantial number of small entities.'' The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities.''

This final rule revises the NFIP regulations to adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance. Therefore, I certify that a regulatory flexibility analysis is not required for this rule because it will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule adjusts the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

2. Revise the *Effective Date* and Article III. B of Appendix A to part 62 to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date: October 1, 2001.

* * * * *

ARTICLE III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM REFUNDS

* * * * *

B. The Company may withhold as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating, and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this article. This amount will equal the sum of the average of industry expense ratios for ''Other Acq.'', ''Gen. Exp.'', and ''Taxes'' calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, we (the Federal Insurance Administration) will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's *Aggregates and Averages* for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion). In addition, this amount will be increased by one percentage point to reimburse expenses beyond regular property/casualty expenses.

The Company may retain fifteen percent (15%) of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The amount of expense allowance retained by the Company may increase a maximum of two percentage points, depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G. We will pay the company the amount of any increase after the end of the Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, may use the services of a national rating organization, licensed under state law, to help us undertake and carry out such studies and investigations on a community or individual risk basis, and to determine equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. We will reimburse the Company for the charges or fees for such services under the provisions of the WYO Accounting Procedures Manual.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 27, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–19406 Filed 8–3–01; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.; 010509116–1197–02; I.D. 042301B]

RIN 0648–AO87

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Restrictions on Frequency of Limited Entry Permit Transfers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule that revises restrictions on the frequency and timing of limited entry permit transfers and clarifies NMFS regulatory requirements for transferring limited entry permits. This rule also updates and clarifies limited entry program regulations so that they are more readable for the public. This action is needed to and is intended to revise limited entry permit regulations to better address the needs of the small businesses participating in the Pacific Coast groundfish limited entry fishery.

DATES: Effective August 1, 2001.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220–1384. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to the Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Kevin Ford (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*, *kevin.ford@noaa.gov* or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: *svein.fougner@noaa.gov*.

SUPPLEMENTARY INFORMATION: Electronic Access: This Federal Register document is also accessible via the internet at the website of the Office of the Federal Register: *http://www.access.gpo.gov/sudocs/aces/aces140.html*

This final rule revises the Pacific Coast groundfish fishery limited entry program regulations at 50 CFR 660 to modify the restriction on frequency and timing of limited entry permit transfers and also updates and re-organizes the regulations in a manner that is consistent with current NMFS permitting activities and practices. Re-organizing limited entry program regulations will not change the effect or intent of the regulations. This rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR prepared by NMFS for this action.

This final rule modifies the limited entry program regulations to remove outdated provisions, rearrange and clarify currently applicable regulations into a more readable and user-friendly format, and incorporate November 2000 Council recommendations on the frequency and timing of permit transfers. At that time, the Council recommended revising the restriction on the frequency of limited entry permit transfers from once every 12 months to once per calendar year. Clarifications of existing requirements include: revising the definition of ''lessee'' to specify that lessees do not have the right to transfer permits; revising the prohibition against operating a limited entry vessel without a limited entry permit so that the prohibition is clear without needing reference to other regulations; rearranging the limited entry program regulations into a more logical format; removing permit regulations that deal with permit applications that are no longer accepted; and clarifying documentation needs for the different permit action requests that permit owners make to the NMFS Fisheries Permits Office.

The proposed rule to implement changes to the allowed frequency of limited entry permit transfers and to update the limited entry program regulations was published on May 30, 2001 (66 FR 29276). NMFS requested comments on the proposed rule through June 19, 2001. During the comment period on the proposed rule, NMFS received one letter of comment. The commenter expressed concern about the Federal fisheries management process and the involvement of fishers in decisions made about regulations affecting their fisheries, citing a wish that fish remain available for future generations. This rule does not address the Federal fisheries management process, which is governed by the Magnuson-Stevens Act. Overall, this final rule is a minor action that clarifies regulations and increases business flexibility for limited entry permit holders. This final rule will not provide new or increased fishing opportunities and thus is not expected to have any effect on the environment.

Changes from the Proposed Rule

In the proposed rule for this action (May 30, 2001, 66 FR 29276), 50 CFR 660.335 (d)(3), ''Effective date,'' ended with the sentence: ''No transfer is effective until the limited entry permit has been reissued as registered with the new vessel and the permit is in possession of the new permit holder.'' The phrase ''and the permit is in possession of the new permit holder'' was removed in this final rule, as it is redundant with 50 CFR 660.306, ''Prohibitions,'' paragraph (n), which states that it is unlawful for any person to ''fail to carry on board a vessel that vessel's limited entry permit if required.''

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impacts of this final rule on small entities and the basis for this certification has not changed. Accordingly, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause, namely that it would be contrary to the public interest, to waive the 30–day delay in effectiveness for this rule pursuant to 5 U.S.C. 553 (d)(3). This final rule concerns transfers of limited entry permits and affects permitting activities in the limited entry fleet. It is linked to another more complex regulation under consideration by NMFS. This is a proposed rule that was published on June 8, 2001 (66 FR 30869), that would implement Amendment 14 to the FMP by allowing permit stacking in the limited entry fixed gear sablefish fishery.

NMFS anticipates that the limited entry, fixed gear sablefish fishery will

begin on August 15, 2001. The start date and mode of management for this fishery depend upon whether NOAA approves Amendment 14 to the FMP and implements it by a final rule. If Amendment 14 is not approved, this fishery will be a brief derby-style fishery with a single sablefish cumulative limit per vessel. If Amendment 14 is approved, the fishery will be 2–3 months in duration, and each vessel will be allowed to carry up to three permits and harvest the sablefish limits associated with those permits. Limited entry permit holders with sablefish-endorsed permits are waiting for the NOAA approval decision, which is scheduled to be made by August 8, 2001, to decide whether to transfer their permits for this season.

A 30–day delay in effectiveness of this final rule could unnecessarily restrict permit transfer activities and cause financial harm to sablefish fishery participants. In some parts of the West Coast, difficult autumn ocean conditions arise in September. Thus, a delay in effectiveness of this final rule could also prevent permit holders from participating in the sablefish season during the more favorable August weather. Accordingly, the AA finds good cause, to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553 (d)(3).

Since this final rule will give limited entry permit holders the flexibility to use their permits to their best advantage for participation in an August fishery, regardless of the NOAA decision on Amendment 14, it relieves a restriction under 5 U.S.C. 553 (d)(1), and it is not subject to a delay in the effective date.

This final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The requirements for limited entry permit applications, permit transfer applications, and appeals have been approved under OMB control number 0648-0203. Public reporting burden for each of these collections of information is estimated to average 20 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of these data collections, including suggestions for reducing the burden to NMFS at the **ADDRESSES** above, and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC. 20503 (Attention: NOAA Desk Officer).

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

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 1, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definition for ''Permit lessee'' is revised to read as follows:

§ 660.302 Definitions.

* * * * *

Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion of those rights to the permit owner. A permit lessee does not have the right to transfer a permit or change the ownership of the permit.

* * * * *

3. In § 660.306, paragraph (n) is revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(n) Fail to carry on board a vessel the limited entry permit registered for use with that vessel, if a limited entry permit is registered for use with that vessel.

* * * * *

4. Sections 660.333 through 660.334 are revised and a new § 660.335 is added to read as follows:

§ 660.333 Limited entry fishery-eligibility and registration.

(a) *General*. In order for a vessel to participate in the limited entry fishery, the vessel owner must hold (by ownership or lease) a limited entry permit and, through SFD, must register that permit for use with his/her vessel. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). A sablefish endorsement is also required for a vessel to participate in the regular and/or mop-up seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. A limited entry permit confers a privilege of participating in the Pacific Coast limited entry groundfish fishery in accordance with Federal regulations in 50 CFR part 660.

(b) *Eligibility*. Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102 (a) may be issued or may hold a limited entry permit.

(c) *Registration*. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. If the permit will be used with a vessel other than the one registered on the permit, the permit owner must register that permit for use with the new vessel through the SFD. The reissued permit must be placed on board the new vessel in order for the vessel to participate in the limited entry fishery.

(1) Registration of a permit to be used with a new vessel will take effect no earlier than the first day of the next major limited entry cumulative limit period following the date SFD receives the transfer form and the original permit.

(2) The major limited entry cumulative limit periods will be announced in the **Federal Register** each year with the annual specifications and management measures, and with routine management measures when the cumulative limit periods are changed.

(d) *Limited entry permits indivisible*. Limited entry permits may not be divided for use by more than one vessel.

(e) *Initial decisions*. SFD will make initial decisions regarding permit endorsements, renewal, replacement, and change in vessel registration. SFD will notify the permit holder in writing with an explanation of any decision to deny a permit endorsement, renewal, replacement, or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, transfer, replacement, or registration of a limited entry permit if the permit is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858 (a) and implementing regulations at 15 CFR part 904, subpart D, apply.

§ 660.334 Limited entry permits–endorsements.

(a) *''A'' endorsement.* A limited entry permit with an ''A'' endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See § 660.334 (d) for provisions on sablefish endorsement requirements. An ''A'' endorsement is transferable with the limited entry permit to another person, or to a different vessel under the same ownership under § 660.335. An ''A'' endorsement expires on failure to renew the limited entry permit to which it is affixed.

(b) *Gear Endorsements.* There are three types gear endorsements: trawl, longline and pot (trap). When limited entry permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry permit has one or more gear endorsements. Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry permit is authorized to fish with the gear(s) endorsed on the permit. During the limited entry fishery, permit holders may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is restricted to those vessels with sablefish endorsements, permit holders may not fish for sablefish with open access gear.

(c) *Vessel size endorsements*—(1) *General.* Each limited entry permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(ii) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size that results from the combination of the permits as described in paragraph (c)(2)(iii) of this section.

(2) *Limitations of size endorsements*—(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under § 660.335 (b) or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under § 660.335 (b) or a change in the size endorsement under paragraph (c)(1)(i) of this section.

(iii) The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(d) *Sablefish endorsement and tier assignment*—(1) *General.* Participation in the limited entry fixed gear sablefish fishery during the ''regular'' or ''mop-up'' season described in § 660.323 (a)(2)(iii) and (v) north of 36° N. lat., requires that an owner of a vessel hold a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. During a period when the limited entry sablefish fishery is restricted to those limited entry vessels with sablefish endorsements, a vessel with a longline or pot limited entry permit, but without a sablefish endorsement, cannot be used to harvest sablefish in the open access fishery, even with open access gear. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(i) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(ii) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(2) *Issuance process for sablefish endorsements and tier assignments.*

(i) No new applications for sablefish endorsements will be accepted after November 30, 1998.

(ii) The SFD will notify each owner of a limited entry permit with a sablefish endorsement, by letter of qualification status, of the tier assignment for which his or her permit qualifies, as indicated by PacFIN records. The SFD will also send to the permit owner a tier assignment certificate.

(iii) If a permit owner believes there is sufficient evidence to show that his or her permit qualifies for a different tier than that listed in the letter of qualification status, that permit owner must, within 30 days of the issuance of the SFD's letter of qualification status, submit information to the SFD to demonstrate that the permit qualifies for a different tier. Section 660.333 (d) sets out the relevant evidentiary standards and burden of proof.

(iv) After review of the evidence submitted under paragraph (d)(2) of this section, and any additional information the SFD finds to be relevant, the SFD will issue a letter of determination notifying a permit owner of whether the evidence submitted is sufficient to alter the initial tier assignment. If the SFD determines the permit qualifies for a different tier, the permit owner will be issued a revised tier assignment certificate once the initial certificate is returned to the SFD for processing.

(v) If a permit owner chooses to file an appeal of the determination under paragraph (d)(3) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination (at paragraph (d)(3) of this section). The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340 (e).

(vi) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(e) *Endorsement restrictions.* ''A'' endorsements, gear endorsements, sablefish endorsements, and sablefish tier assignments may not be transferred separately from the limited entry permit.

§ 660.335 Limited Entry Permits–renewal, combination, change of permit ownership or permit holdership, and transfer.

(a) *Renewal of limited entry permits and gear endorsements*—(1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(3) Limited entry permit renewal requests received in SFD between November 30 and December 31 will be effective on the date that the renewal is approved. A limited entry permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by March 31 of the following year and the SFD determines that failure to renew was proximately caused by illness, injury, or death of the permit owner.

(b) *Combining limited entry permits.* Two or more limited entry permits with ''A'' gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement as described in paragraph § 660.334 (c)(2)(iii). With respect to permits endorsed for nontrawl limited entry gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest cumulative landings limit of the permits being combined.

(c) *Changes in permit ownership and permit holder*—(1) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. If the listing of the permit holder changes from one person to a different person, but the vessel registration remains the same on a permit, the permit owner shall submit to SFD an application requesting a change in a permit holder. Such applications shall be made to SFD in advance of the date the permit holder wishes to participate in the limited entry fishery. Permit holders cannot expect to have their applications approved immediately upon submission.

(2) *Effective date.* The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless the there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are at § 660.335 (d).

(d) *Changes in vessel registration–transfer of limited entry permits and gear endorsements*—(1) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at § 660.335 (e). Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel.

(2) *Application.* A complete application must be submitted to SFD in order for SFD to review and approve a change in vessel registration. At a minimum, a permit owner seeking to transfer a limited entry permit shall submit to SFD a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to participate. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. SFD will not approve a change in vessel registration (transfer) until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

(3) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. Transfers of permits designated as participating in the ''B'' platoon will become effective no sooner than the first day of the next ''B'' platoon major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(e) *Restriction on frequency of transfers.* Limited entry permits may not be registered for use with a different vessel (transfer) more than once per calendar year, except in cases of death of a permit holder or if the permitted vessel is totally lost as defined in 660.302. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

(1) A permit owner may designate the vessel registration for a permit as ''unidentified'', meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as ''unidentified.''

(2) When a permit owner requests that the permit's vessel registration be designated as ''unidentified,'' the transaction is not considered a ''transfer'' for purposes of this section. Any subsequent request by a permit owner to change from the ''unidentified'' status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration (transfer) and subject to the restriction on frequency and timing of changes in vessel registration (transfer).

(f) Application and supplemental documentation. Permit holders may request a transfer (change in vessel registration) and/or change in permit ownership or permit holder by submitting a complete application form. In addition, a permit owner applying for renewal, replacement, transfer, or change of ownership or change of permit holder of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a tier assignment under § 660.334 (d) has the burden to submit evidence to prove that certain qualification requirements are met. The following evidentiary standards apply:

(1) For a request to change a vessel registration and/or change in permit ownership or permit holder, the permit owner must provide SFD with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

(2) For a request to change the vessel registration to a permit, the permit holder must submit to SFD a current marine survey conducted by a certified marine surveyor in accordance with USCG regulations to authenticate the length overall of the vessel being newly registered with the permit. Marine surveys older than 3 years at the time of the request for change in vessel registration will not be considered

''current'' marine surveys for purposes of this requirement.

(3) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, the applicant must provide to SFD a corporate resolution that authorizes the conveyance of the permit to a new owner and which authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, other business entity.

(4) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), the individual(s) requesting conveyance of the permit to a new owner must provide SFD with a death certificate of the permit owner(s) and appropriate legal documentation that either: specifically transfers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership.

(5) For a request to change a permit's ownership that is necessitated by divorce, the individual requesting the change in permit ownership must submit an executed divorce decree that awards the permit to a designated individual(s).

(6) Such other relevant, credible documentation as the applicant may submit, or the SFD or Regional Administrator may request or acquire, may also be considered.

(g) *Application forms available*. Application forms for the change in vessel registration (transfer) and change of permit ownership or permit holder of limited entry permits are available from the SFD (see part 600 for address of the Regional Administrator). Contents of the application, and required supporting documentation, are specified in the application form.

(h) *Records maintenance*. The SFD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

§ 660.336 [Removed and reserved]

5. Section 660.336 is removed and reserved.

* * * * *

6. Section 660.338 is revised to read as follows:

§ 660.338 Limited entry permits–small fleet.

(a) Small limited entry fisheries fleets that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued in accordance with the standards and procedures set out in the PCGFMP and will carry the rights explained therein.

(b) A permit issued under this section may be registered only to another vessel that will continue to operate in the same certified small fleet, provided that the total number of vessels in the fleet does not increase. A vessel may not use a small fleet limited entry permit for participation in the limited entry fishery outside of authorized activities of the small fleet for which that permit and vessel have been designated.

* * * * *

7. Section 660.340 is revised to read as follows:

§ 660.340 Limited entry permit appeals.

(a) Decisions on appeals of initial decisions regarding issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, will be made by the Regional Administrator.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the SFD denying issuance, renewal, change in vessel registration, change in permit owner or permit holder, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Administrator.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Administrator seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgment that the confidentiality provisions of the Magnuson-Stevens Act at 16 U.S.C. 1853 (d) and part 600 of this chapter are waived with respect to any information supplied by Regional Administrator to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

[FR Doc. 01–19599 Filed 8–1–01; 3:06 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 151
Monday, August 6, 2001

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV01–911–2 PR]

Limes Grown in Florida and Imported Limes; Suspension of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; suspension.

SUMMARY: This rule would suspend regulations for one year for limes grown in Florida and for limes imported into the United States that are shipped to the fresh market. This rule would suspend grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements currently prescribed under the Florida lime marketing order (order). The order is administered locally by the Florida Lime Administrative Committee (Committee). This suspension would give the industry time to evaluate citrus canker eradication efforts and the market effects of suspending regulations for one year. This change would reduce costs and help the industry recover from the effects of citrus canker. The suspension of the grade, size, quality, maturity, and inspection requirements specified in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by September 5, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 126 and Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including limes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would 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 the Secretary 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 the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule invites comments on a suspension of regulations currently prescribed under the Florida lime marketing order. This rule would suspend grade, size, quality, pack, inspection, assessment collection, and other requirements for one year. This suspension would give the industry time to evaluate citrus canker eradication efforts and assess the market effects of no regulation on the industry after the one-year suspension. This change would also reduce costs and help the industry recover from the effects of citrus canker.

Section 911.48 of the order authorizes the issuance of regulations for grade, size, quality, and pack for limes grown in the production area. Section 911.49 authorizes the modification, suspension, or termination of regulations issued under § 911.48. Section 911.51 provides that whenever limes are regulated pursuant to § 911.48, such limes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Under the order, fresh market shipments of Florida limes are required

to be inspected and are subject to grade, size, quality, pack, and container requirements. Section 911.344 *Grade and Size Requirements* [7 CFR part 911.344] states that no handler shall handle any variety of limes grown in the production area unless such limes of the group known as seeded or true limes meet the requirements specified for U.S. No. 2 grade, except as to color. Further, if such limes do not meet these requirements, they may be handled within the production area if they meet the minimum juice content requirement of it least 42 percent by volume and if handled in containers other than those specified in § 911.329. Such limes of the group known as seedless, large-fruited, or Persian limes must meet the requirements of §§ 911.311 and 911.329 and grade at least a U.S. Combination, Mix Color. They also must be at least two inches in diameter from January 1 through May 31, and at least 1⅞ inches in diameter from June 1 through December 31. Further, they must contain not less than 42 percent juice content by volume. Section 911.344 also includes some container specifications and inspection requirements.

The order's pack and container requirements are specified in §§ 911.311 and 911.329. These sections state, in part, that limes must be packed in containers of 5.5, 8, 10, 20, and 38 pounds designated net weight. Each container of limes in each lot must be marked or stamped on the outside end in letters at least ¼ inch in height to show the United States grade and either the average juice content of the limes or the phrase ''average juice content forty-two percent (42%) or more.'' The containers must also be marked with a Federal-State Inspection Service lot stamp number showing that the limes have been inspected and with a stamp indicating size. Related provisions appear in the regulations at § 911.110 *Exemption certificates;* § 911.120 Handler registration; § 911.130 *Limes not subject to regulation*; and § 911.131 *Limes for processing.*

At its April 18, 2001, meeting, in a vote of six in favor and one opposed the Committee recommended suspending the grade, size, quality, pack, inspection, assessment collection, and other requirements for one year. The Committee met again on May 16, 2001, to review the recommendation made at the earlier meeting and to clarify its original motion. The Committee requested that this rule be in place for one year beginning with the effective date of this rule.

The objective of the handling and inspection requirements is to ensure that only limes of acceptable quality enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the costs associated with the order may exceed the benefits derived at this time, especially in view of the reduction in production due to citrus canker.

The Committee is concerned, however, that the elimination of current requirements could possibly result in lower quality limes being shipped to fresh markets and that markets will be hurt by poor quality. For this reason, the Committee recommended that the suspension of requirements be effective for one-year only. This would enable the Committee to study the impacts of canker and the suspension and consider appropriate actions for ensuing seasons.

This rule would enable handlers to ship limes without regard to the minimum grade, size, quality, pack, and inspection requirements for one year. This would allow handlers to decrease costs by eliminating the costs associated with inspection and assessments. This rule does not restrict handlers from seeking inspection on a voluntary basis.

This rule would suspend §§ 911.110, 911.120, 911.130, 911.131, 911.311, 911.329, and 911.344 of the rules and regulations in effect under the order. Section 911.110 provides for hardship exemptions from inspection. Section 911.120 provides for the registration of handlers, § 911.130 specifies minimum quantity and gift exemptions, and defines commercial processing. Section 911.131 provides requirements for limes for processing.

This rule would also suspend § 911.234 requiring that an assessment rate of $0.16 per 55 pound bushel equivalent of limes be collected from Florida lime handlers. Authorization to assess lime handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and assessment requirements, a limited Committee budget would be needed for program administration. For the period of the suspension, the Committee would meet and recommend a reduced budget. The Committee would have about $26,000 in operating reserves to cover approved Committee expenses.

In 1995, citrus canker was detected near the Miami International Airport. Citrus canker spread throughout South Florida and by March 2000, almost 1,500 acres of lime groves had tested positive for citrus canker. Prior to the outbreak of citrus canker, there were approximately 3,200 acres of commercial lime groves in Dade County. Estimates now place the Florida lime industry at somewhere between 600 and 1,000 acres of production. During the 1999–2000 season fresh lime production was 774,111 bushels. This past season, production fell to 344,032 bushels. Production in 2000–2001 is estimated to be 300,000 bushels.

Citrus canker is a highly infectious disease that attacks citrus trees. Canker attacks the tree and the fruit and may produce a variety of effects, including defoliation, severely blemished fruit, reduced fruit quality, and premature fruit drop. The only known method of eradicating citrus canker is to bulldoze and burn infected and exposed trees. Trees surrounding infected trees must also be bulldozed and burned. At the beginning of the eradication program, trees within a 125 feet radius of an infected tree were destroyed. However, after research was conducted, it was determined that all trees within a 1,900 feet radius had to be destroyed. The removal of these additional trees has quickened the reduction of lime acreage in South Florida.

Many lime growers have lost all of their production to canker. By regulation, until citrus canker is eradicated, lime growers are not permitted to replant. The production area is also under a quarantine that makes it difficult to sell harvested fruit. Lost income from reduced volume and the cost of maintaining groves with reduced monetary returns have hurt the industry. Because of this and the substantially reduced crop, the Committee believes that regulation should be suspended.

By suspending regulation, the industry would have an opportunity to evaluate how the citrus canker eradication efforts are progressing. The industry would also have an opportunity to assess the market impact of having no regulation. Also, under a suspension, inspection fees and program assessment costs would be eliminated. This would be a savings for both growers and handlers. The savings would help offset some of effects of citrus canker.

The Committee member who opposed the recommendation believes that there are enough limes remaining to warrant regulation. Without regulation, the member believes that poor quality lime shipments would negatively impact better quality shipments. He also stated that he believes imported limes will flood the market and destroy the market for domestically produced limes. As mentioned earlier, the Committee has similar concerns, but believes that a

one-year suspension of regulations is necessary to help reduce costs for those producers and packers who still have limes to market. The suspension would provide time to assess canker eradication efforts, evaluate the effects on the market of having no regulations for one year, and offer the industry some needed cost relief from assessments and inspection fees. For these reasons, the Committee voted to recommend that grade, size, quality, maturity, pack, inspection, assessment collection, and other requirements be suspended for one year.

Suspension of all of the specified requirements is expected to reduce the reporting burden on small or large Florida lime handlers by about 22 hours, and should further reduce industry expenses. During the suspension period, handlers would not have to file the following forms with the Committee: Application for Registered Handler (16.5 burden hours; Application for Registered Processor (10 minutes; Application for Lime Grade Label (5.5 burden hours).

Section 8e of the Act provides that when certain domestically produced commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would suspend regulations for domestically produced limes, a corresponding change to the import regulations must also be provided.

Minimum grade, size, maturity, and quality requirements for limes imported into the United States are currently in effect under § 944.209 (7 CFR 944.209). This proposal would suspend § 944.209 requiring that limes imported into the United States be inspected for grade, size, maturity, and quality. As this rule would suspend import requirements for one year, it could also result in reduced costs for importers.

Mexico is the largest exporter of limes to the United States. In calendar year 2000, Mexico exported approximately 9,630,909 bushels of limes to the United States, while all other import sources shipped a combined total of approximately 98,182 bushels during the same time period. Other sources of lime imports to the United States include Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, and Venezuela. Mexico's highest volume occurs in the months of June through September.

Initial Regulatory Flexibility Analysis

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

There are approximately 52 producers of limes in production area and approximately 10 handlers subject to regulation under the marketing order. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The average f.o.b. price for fresh limes during the 2000–01 season was around $14.75 per bushel and total shipments were 344,032 bushels for the season. Using this price and total volume for the season, all lime handlers could be considered small businesses under the SBA definition, excluding receipts from other sources. The majority of Florida lime producers and handlers may be classified as small entities.

This proposal would suspend grade, size, quality, pack, inspection, assessment collection, and other requirements as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344. Section 944.209 of the import regulations, specifying the requirements for limes imported into the United States, would also be suspended in its entirety. The suspensions would be in effect for one year.

Citrus canker has reduced Florida lime production from 3,200 acres to between 600 and 1,000 acres. The only known method to eradicate citrus canker is to bulldoze and burn infected trees and exposed trees. This suspension would give the industry time to evaluate citrus canker eradication efforts and assess the effects on the market of having no regulations for one year. This change would also reduce costs and help the industry recover from the effects of citrus canker.

At the April and May meetings, the Committee discussed the impact of this change on handlers and producers in terms of cost. This rule would enable handlers to ship limes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements. It would decrease handler costs associated with inspection. This action would also eliminate the cost of assessments. Currently, handlers are required to pay an inspection fee of $0.14 per bushel and an assessment rate of $0.16 per bushel handled. Eliminating these costs would result in a savings for growers and handlers. Importers would also benefit from the reduction in inspection costs. These savings would help offset the loss of income from canker, as well as assist in the costs of replanting, when replanting is again authorized. The benefits of this rule are expected to be available to lime handlers, growers, and importers, regardless of their size of operation.

The Committee discussed alternatives to this change, including not suspending regulations at all, as well as terminating the order. Terminating the order was deemed too drastic an action at this time. However, most of the Committee members believe that suspension is necessary because of the substantially reduced crop and to reduce inspection and assessment costs. Citrus canker has had a negative economic impact on the lime industry and cost savings would be beneficial. Suspending regulations also would provide the Committee time to evaluate the effects of canker and to consider what actions should be taken in the future. The Committee acknowledged that quality problems might occur in the absence of regulation, but believed that suspension was the best course of action at this time given the industry situation. Therefore, the alternatives of termination and continuing without change were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Suspension of all of the specified requirements is expected to reduce the reporting burden on small or large Florida lime handlers by 22 hours, and should further reduce industry expenses. During the suspension period, handlers would not have to file the following forms with the Committee: Application for Registered Handler (16.5 burden hours; Application for Registered Processor (10 minutes); Application for Lime Grade Label (5.5 burden hours). As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sectors.

Pursuant to section 8e of the Act, this action would also suspend the lime import regulation (7 CFR 944.209). That regulation currently specifies grade, size, quality, maturity, inspection, and other requirements.

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

The Committee's meetings were widely publicized throughout the lime industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 18, 2001, and the May 16, 2001, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping limes from the 2001–2002 crop. This rule needs to be in effect as soon as possible to provide relief to the Florida lime industry. Also, the industry has been discussing this issue for some time, and the Committee has kept the industry well informed. It has also been widely discussed at various industry and Committee meetings. Interested persons have had time to determine and express their positions. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 911 and 944 are proposed to be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR parts 911 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Part 911, §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 are suspended in their entirety effective [*Insert date one day after final rule is published in the* **Federal Register**], through [*Insert date 365 days after final rule is published in the* **Federal Register**].

PART 944—FRUITS; IMPORT REGULATIONS

3. In Part 944, § 944.209 is suspended in its entirety effective [*Insert date one day after final rule is published in the* **Federal Register**], through [*Insert date 365 days after final rule is published in the* **Federal Register**].

Dated: August 1, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–19594 Filed 8–3–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–87–AD]

RIN 2120–AA64

Airworthiness Directives; GARMIN International GNS 430 Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain GARMIN International (GARMIN) GNS 430 units that are installed on aircraft. The proposed AD would require you to modify the unit to incorporate circuitry changes to the GNS 430 unit's deviation and flag outputs. The proposed AD is the result of reports of inaccurate course deviations caused by external electrical noise to the GNS 430 unit's course deviation indicator (CDI). The actions specified by the proposed AD are intended to prevent such external noise from causing inaccurate course deviation displays in the GNS 430 unit's CDI or horizontal situation indicator (HSI). Such displays could result in the pilot making flight decisions that put the aircraft in unsafe flight conditions.

ADDRESSES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 21,2001. Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–87–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

You may obtain service information that applies to the proposed AD from GARMIN International, 1200 East 151st Street, Olathe, Kansas 66062. You may also examine this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA,Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail: roger.souter@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the RulesDocket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that

concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 99–CE–87–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA has received information that external electrical noise to the course deviation indicator (CDI) of GARMIN GNS 430 units could result in the CDI or horizontal situation indicator (HSI) displaying inaccurate course deviations. This could prompt the pilot to make flight decisions that put the aircraft in unsafe flight conditions.

Certain GNS 430 installations have received electrical noise between 1 and 3 volts alternating current (AC) peak-peak (induced into the GNS 430 CDI input) from other items installed on the aircraft. This high level of noise causes an undesirable oscillation of the CDI outputs, which results in inaccurate course deviation displays in the GNS 430 unit's CDI/HSI.

The condition is installation dependent. The GNS 430 units continue to meet all requirements in the technical standard order (TSO). The condition occurs in aircraft with installations that impose large noise spikes upon the CDI D-bar control wiring. Such installations are autopilots, fan motors, or similar accessories.

*What are the consequences if the condition is not corrected?*As described above, such external noise could cause inaccurate course deviation displays in the GNS 430 unit'sCDI/HSI. This could result in the pilot making flight decisions that put the aircraft in unsafe flight conditions.

Relevant Service Information

*Is there service information that applies to this subject?*GARMIN has issued Service Bulletin No.: 9905, Revision A, dated September 17, 1999.

What are the provisions of this service bulletin? The service bulletin includes information on how to modify the GNS 430 unit to incorporate circuitry changes to the deviation and flag outputs. This includes:

—Main Board: removing and replacing six capacitors, removing two diodes, removing and replacing two resistors, and adding two resistors and two jumpers; and

—Nav Board: removing and replacing seven capacitors and adding four capacitors.

This service bulletin also specifies the part number GNS 430 units that could exhibit the above condition.

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

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on type design aircraft that incorporate the GARMIN GNS 430 units;

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

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

What would the proposed AD require? This proposed AD would require you to modify the unit to incorporate circuitry changes to the GNS 430 unit's deviation and flag outputs. The proposed actions would be accomplished in accordance with GARMIN Service Bulletin No.: 9905, Revision A, datedSeptember 17, 1999.

Cost Impact

How many aircraft would the proposed AD impact? We estimate that 2,010 affected GARMIN GNS 430 units could be installed on aircraft in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected aircraft? GARMIN will cover all workhours and parts costs associated with this modification under warranty. The proposed AD would not impose any cost impact upon the owners/operators of any aircraft incorporating one of the affected GNS 430 units.

Compliance Time of the Proposed AD

What is the compliance time of the proposed AD? The compliance time of this proposed AD is within the next 6 months after the effective date of the proposed AD.

Why is the proposed compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance time for this AD is presented in calendar time instead of hours TIS because the condition exists regardless of aircraft operation. The external noise outputs could occur and cause the inaccurate CDI/HSI displays regardless of the number of times and hours the aircraft was operated or the age of the GNS 430 unit. For these reasons, FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to ensure that the unsafe condition is addressed within a reasonable time period on all aircraft with an affected GNS 430 unit installed.

Regulatory Impact

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

Would this proposed AD involve a significant rule or regulatory action? 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Garmin International: Docket No. 99–CE–87–AD

(a) *What products are affected by this AD?* This AD applies to the GNS 430 units that are specified in paragraph (a)(1) of this AD and are installed on aircraft. These GNS 430 units are installed in, but not limited to, aircraft that are certificated in any category and presented in paragraph (a)(2) of this AD:

(1) GNS 430 Units, part number 011–00280–00: serial numbers 96300001, 96300002, 96300017, 96300028, 96300034, 96300040, 96300068, 96300104, 96300108, 96300122, 96300125, 96300130, 96300142, 96300149, 96300161, 96300165, 96300218, 96300222, 96300232, 96300269, 96300272, 96300308, 96300333, 96300340, 96300348, 96300354, 96300369, 96300372, 96300382, 96300394, 96300411, 96300413, 96300429, 96300437, 96300451, 96300484, 96300485, 96300489, 96300504, 96300506, 96300513, 96300522, 96300549, 96300563, 96300585, 96300587, 96300618, 96300621, 96300624, 96300628, 96300641, 96300653, 96300664, 96300713, 96300734, 96300756, 96300766, 96300781, 96300785, 96300786, 96300808, 96300831, 96300837, 96300842, 96300846, 96300866, 96300870, 96300872, 96300899, 96300916, 96300923, 96300925, 96300929, 96300941, 96300961, 96300984, 96300987, 96301021, 96301108, 96301130, 96301280, and 96301296 through 96303200.

(2) Aircraft with the GNS 430 Unit Installation (other aircraft could have field approval installations):

TC holder	Airplane models
Cessna Aircraft Company	172, 182, 206, 208, 210, 401, 402, 404, 406, 411, 414, 414A, 421A, 421B, 421C, 425, 441, 500, 550, S550, 552, 560, 560XL, 501,525, and 551.
Mooney Aircraft Corporation	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, and M22.
Raytheon Aircraft Company	Beech Models E33, F33, G33, E33A, F33A, E33C, F33C, 35, 35R, A35, B35, B35TC, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35TC, V35A, V35A–TC, V35B, V35B–TC, 36, A36, A36TC, 50, B50, C50, D50, D50A, D50B, D50C, D50E, E50, F50, G50, H50, J50, 60, A60, B60, 65–90, 65–A90, B90, C90, C90A, C90B, E90, F90, 100, A100, B100, 95–55, 95–A55, 95–B55, 95–C55, D–55, E55, 58, 58P, and 58TC.
Socata	TBM 700.
The New Piper Aircaft, Inc.	J3C–40, J3C–50, J3C–50S(Army L–4, L–4B, L–4H, and L–4J),J3C–65 (Navy NE–1 and NE–2), J3C–65S, J3F–50, J3F–50S, J3F–60, J3F–60S, J3F–65 (Army L–4D), J3F–65S, J3L, J3L–S, J3L–65 (Army L–4C), J3L–65S, J4, J4A, J4A–S, J4E (Army L–4E), J5A (Army L–4F), J5A–80, J5B(Army L–4G), J5C, AE–1, HE–1, PA–11, PA–11S, PA–12, PA–12S, PA–14,PA–15, PA–16, PA–16S, PA–17, PA–18,PA–18A, PA–18A (Restricted), PA–18S, PA–18–''105'' (Special), PA–18S–''105'' (Special), PA–18–''125'' (ArmyL–21A), PA–18AS–''125'', PA–18S–''125'', PA–18–''135'' (Army L–21B), PA–18A–''135'', PA–18A–''135'' (Restricted), PA–18AS–''135'', PA–18S–''135'', PA–18–''150'', PA–18A–''150'', PA–18A–''150'' (Restricted), PA–18AS–''150'', PA–18S–''150'', PA–19 (Army L–18C), PA–19S, PA–20, P–20S, PA–20–''115'', PA–20S–''115'', PA–20–''135'',PA–20S–''135'', PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–25, PA–25–235, PA–25–260,PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–235, PA–28S–160, PA–28R–180, PA–28S–180, PA–28–181, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA28–236, PA–32R–301 (SP), PA–32R–301 (HP), PA–32R–301T, PA–32–301, PA–32–301T, PA–36–285, PA–36–300, PA–36–375, PA–38–112, PA–46–310P, and PA–46–350P.

(b) *Who must comply with this AD?* Anyone who wishes to operate any aircraft with one of the affected GNS 430 units installed must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent external noise from causing inaccurate course deviation displays in the GNS 430 unit's course deviation indicator (CDI) or horizontal situation indicator (HSI). Such displays could result in the pilot making flight decisions that put the aircraft in unsafe flight conditions.

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

Action	Compliance time	Procedures
(1) Modify the affected GNS 430 unit modified to incorporate circuitry changes to the deviation and flag outputs.	Within the next 6 months after the effective date of this AD.	In accordance with the MODIFICATION INSTRUCTIONS section of GARMIN Service Bulletin No.: 9905, Revision A, dated September 17, 1999.
(2) Do not install an affected GNS 430 unit unless it has been modified as required by paragraph (d)(1) of this AD.	As of the effective date of this AD	In accordance with the MODIFICATION INSTRUCTIONS section of GARMIN Service Bulletin No.: 9905, Revision A, dated September 17, 1999.

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

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

(2) The Manager, Wichita Aircraft Certification Office, approves your alternative. Send your request through an

FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407, e-mail: roger.souter@faa.gov.

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

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from GARMIN International, 1200 East 151st Street, Olathe, Kansas 66062. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 23, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19094 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 35, and 37

[Docket No. RM01–8–000]

Revised Public Utility Filing Requirements

July 26, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) recognizes that the filing of individual service agreements and paper copies of quarterly market-based sales of electric energy is no longer the most effective means of meeting the requirements of the Federal Power Act (FPA). Instead, this data must be collected and made publicly available in a manner which is both easily accessible and useful to the public. To this end, the Commission proposes that each public utility under the FPA (public utility) would no longer file: short-term or long-term service agreements for market-based sales of electric energy; service agreements for those generally applicable services, such as point-to-point transmission service, for which the public utility has a standard form of agreement under its tariff; and Quarterly Transaction Reports summarizing its short-term sales and purchases of power at market-based rates. In lieu of the above listed filings, each public utility would file electronically with the Commission and post on its website an Index of Customers that contains a summary of the contractual terms and conditions in its service agreements for all jurisdictional services (market-based power sales, cost-based power sales, and transmission service); and transaction information for its short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. Under the proposals in this NOPR, to the extent a public utility wishes to avoid filing service agreements for generally applicable services such as cost-based power sales or interconnection agreements, it would revise its tariff to include standard forms of service agreements for those services. The NOPR also proposes to delete 18 CFR 2.8, concerning the simplification of public utility rate schedule filings, as no longer necessary.

These actions will provide the Commission with adequate information to fulfill the FPA section 205 requirement that rates for service are on file and available for public inspection, ensure that such rates are available in a standardized, user friendly format, and meet the Commission's electronic filing option obligation. These actions also will allow the public to better participate in and obtain the full benefits of wholesale electric power markets while minimizing the reporting burden on public utilities. By freeing the Commission and its staff from the administrative burden of processing the numerous, routine public utility service agreements currently filed with the Commission (when these agreements conform to standard forms of service agreements), the Commission will be able to devote greater resources to the complex and important issues that arise in competitive markets.

While the actions proposed in this NOPR would improve the quality of information reported to the Commission by prescribing that public utilities report information in a consistent, accessible format, the NOPR is not intended as a comprehensive review of the Commission's market monitoring efforts. We intend to address those concerns in a separate proceeding.

DATES: Comments are due on or before October 5, 2001.

ADDRESSES: File written comments on the proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Comments should reference Docket No. RM01–8–000. Comments may be filed electronically or by paper (an original and 16 copies, with an accompanying computer diskette in the prescribed format requested).

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0525

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0321

Barbara D. Bourque (Information Technology Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–2338

SUPPLEMENTARY INFORMATION:

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

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I. Introduction

Despite dramatic changes that have occurred in the electric power industry since 1995, and a resulting increase in the number of rate filings made to the Commission, the Commission has not revised its long-standing filing requirements for public utilities to keep pace with these industry changes. Public utilities generally continue to satisfy the requirement to file with the Commission all contracts that affect their rates, as required by section 205 of the Federal Power Act, 16 U.S.C. 824d (FPA), by filing individual, bilateral, or multilateral agreements with the Commission prior to the commencement of service. Although many of these filings are routine, it has been necessary for the Commission to process each of these filings on an individual basis, due to the variation that exists from agreement to agreement.

In this notice of proposed rulemaking (NOPR), the Commission proposes revisions to its filing requirements under 18 CFR part 35 to keep pace with the significant changes that are occurring in the electric industry. The NOPR's aim is to ensure that adequate information about public utility service agreements and rates being charged are on file and publicly available while allowing public utilities to better respond to a rapidly changing marketplace in a timely manner and provide customers in a dynamic marketplace with needed services. The proposals in this NOPR would free the Commission and its staff from the administrative burden of processing the numerous, routine public utility service agreements currently filed with the Commission (when these agreements conform to standard forms of service agreements), thus allowing the Commission and its staff to devote greater resources to the complex and important issues that arise in competitive markets.

The filing of individual service agreements and paper copies of quarterly market-based sales of electric energy is no longer the most effective means of meeting the Commission's statutory responsibilities under section 205 of the FPA. Moreover, the present filing system can be improved to better respond to the current and evolving electric marketplace. To meet these goals, data about public utility service agreements and power sales must be collected and made publicly available in a manner that ensures that the data are pertinent, useful to market participants, and easily accessible by the public. To this end, we propose that each public utility, as defined in section 201(e) of the FPA (public utility), would:

- No longer file short-term or long-term service agreements for market-based power sales;
- No longer file service agreements for those generally applicable services, such as point-to-point transmission service, for which the public utility has a standard form of service agreement under its tariff;
- No longer file Quarterly Transaction Reports summarizing its short-term sales and purchases of power at market-based rates; [1]
- File electronically with the Commission and post on a website [2] an Index of Customers that contains a summary of the contractual terms and conditions in its service agreements along with transaction information for its open access transmission services, short-term and long-term market-based power sales, and cost-based power sales during the most recent calendar quarter.[3]

To the extent a public utility wishes to no longer file service agreements for generally applicable services such as cost-based power sales or interconnection agreements, it should revise its tariff to include standard forms of service agreements for those services. The NOPR also proposes to delete as no longer necessary 18 CFR 2.8 concerning the simplification of public utility rate schedule filings.

Although the actions proposed in this NOPR would improve the quality of information public utilities report to the Commission and the public by clarifying the information that needs to be provided and making that information available electronically in a uniform, accessible format, we caution that the NOPR is not intended as a comprehensive review of the Commission's market monitoring efforts. While we plan to engage in a comprehensive assessment of the Commission's market monitoring efforts in the near future, such an assessment is beyond the scope of the present proceeding.

II. Background

1. Recent Changes in Electric Markets

In recent years, wholesale electricity markets have become much more dynamic. The Commission has moved to foster competition by requiring open access transmission, by requiring comparability between the treatment transmission providers extend to customers and their own use of their transmission systems, by requiring traditional, vertically integrated public utilities (*i.e.,* public utilities that own both generation and transmission) to functionally separate their wholesale power marketing functions from their transmission system operating functions, and by requiring each public utility's wholesale merchant function to acquire transmission service on a comparable basis with other customers.[4] The Commission has strongly encouraged the structural separation of the generation and transmission functions through the creation of regional transmission organizations, or RTOs.[5] Other market changes have included the growth and establishment of power marketers and merchant generators that the Commission has

[1] In Citizens Energy Corporation, 35 FERC ¶ 61,198 at 61,453 (1986) (Citizens), we held that the sale for resale activities of wholesale power marketers makes them public utilities under the FPA.

[2] In the case of a public utility with an OASIS website, the Index of Customers should be posted in the portion of its OASIS site that can be accessed by the public without registration or fee.

[3] As discussed later in this NOPR, the software for making Index of Customers filings and a data requirement manual (instruction manual) that will define the content and data elements to be included in Index of Customers filings will be separately developed and issued later in this rulemaking process.

[4] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, *order on reh'g,* Order No. 888–A, 62 FR 12274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998); Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (April 24, 1996), *order on reh'g,* Order No. 889–A, 62 FR 12484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (March 4, 1997), *order on reh'g,* Order No. 889–B, 81 FERC ¶ 61,253 (1997), *order on reh'g,* Order No. 889–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Study Group, et al.* v. *Federal Energy Regulatory Commission,* No. 97–1715 (D.C. Cir. June 30, 2000).

[5] Regional Transmission Organizations, Order No. 2000, *final rule,* 65 FR 809 (January 6, 2000), FERC Stats. & Regs. 31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 FR 12088 (March 8, 2000), FERC Stats. & Regs. 31,092 (2000).

authorized to make wholesale power sales at market-based rates, provided they demonstrate that they lack market power. Virtually all traditional public utilities and their affiliates have also been authorized to sell power at market-based rates, provided that they lack market power or have taken adequate steps to mitigate that market power. In short, the Commission's actions have promoted the development of more competitive commodity markets for electric power by restructuring the functional ties between the sale of energy commodities and the provision of transmission and distribution. This separation of functions was accompanied by the unbundling of services that previously were offered on a consolidated basis.

As we stated in our report, State of the Markets 2000; Measuring Performance In Energy Market Regulation (Markets 2000 Report),[6] the Commission's shift away from the cost of service regulatory structure for power sales has resulted in many more choices for traditional wholesale requirements customers. Under the cost-of-service regulatory structure, a vertically integrated public utility was required to provide service to municipal utilities and other captive customers located within the public utility's exclusive service franchise territory. These wholesale requirements customers received service under terms and conditions that did not contemplate that they be afforded access to their supplier's transmission grid so that they could purchase power from alternative suppliers. This all changed when the electric power industry underwent functional unbundling as a result of the Commission's open access initiatives. Formerly captive wholesale customers now have additional supply options through open access to the transmission grid, based on the principle of comparable transmission access. If an independent generator or another franchise public utility has generating capability available, or a power marketer has contractual power available, wholesale customers can now negotiate power supply contracts that bypass the local public utility even though the local public utility's transmission grid and low voltage facilities are needed to deliver the power to the customer.[7]

2. The Commission's Current Filing Requirements for Public Utilities

With respect to the rates, terms and conditions of sales for resale of electric energy in interstate commerce, the Commission's regulations at 18 CFR § 35.1 require public utilities to file:

> all contracts that in any manner affect or relate to such rates, charges, classifications, services, rules, regulations or practices, as required by section 205(c) of the Federal Power Act.

Public utilities generally satisfy this requirement for cost-based power sales, transmission and other services by filing individual, bilateral or multilateral agreements with the Commission prior to the commencement of service,[8] or, in the case in which a public utility has an approved tariff agreement and associated standard forms of agreement on file with the Commission, it may file the individual service agreement within thirty days after service to that customer commences.[9]

For short-term power sales transactions (of one year or less) that are made pursuant to Commission approved market-based rate tariffs, we have routinely required non-marketer public utilities [10] to submit an umbrella service agreement for each customer and quarterly reports summarizing numerous transactions under those agreements (*i.e.,* the Quarterly Transaction Reports) in lieu of requiring the filing of individual service agreements for each transaction.[11]

Although affiliated and unaffiliated power marketers fall within the definition of ''public utility'' by virtue of their wholesale sales activities,[12] the Commission currently has one set of requirements applicable to the filing of service agreements concerning sales at market-based rates by non-marketer public utilities, and another set of rules applicable to filings required by power marketers.[13] Rather than filing any service agreements (short or long-term), power marketers file only Quarterly Transaction Reports that cover both their short-term and long-term sales at market-based rates.

There is no similar reporting requirement for power sales transactions under cost-based power sales tariffs, even though many of those tariffs have ceiling rates and transactions take place at rates at or below those ceiling rates. Service agreements associated with tariffs other than those for market-based sales (*e.g.* cost-based power sales, transmission and ancillary services) are currently treated as part of the tariff, and public utilities must file properly designated contracts in hard copy with the Commission pursuant to § 35.12 (if filed for the first time), § 35.13 (if subject to a rate change proposal), or § 35.15 (if proposing a rate cancellation). The same filing requirements are applicable to the filing of new service agreements and amendments thereto, agreements establishing business rules, or underlying contracts offered to justify initial rates or changes in rate levels. The public utility offering a generally applicable service under one of its tariffs currently is required to file with the Commission a service agreement for each new customer.

Table 1 below summarizes the Commission's current filing requirements:

[6] This report is available for review or download on the Commission's Internet webpage at *www.ferc.gov.*

[7] Markets 2000 Report at 10.

[8] *See* Central Hudson Gas & Electric Corporation, *et al.,* 60 FERC ¶ 61,106, *reh'g denied,* 61 FERC ¶ 61,089 (1992).

[9] *See* Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, *clarified,* 65 FERC ¶ 61,081 (1993) (*Prior Notice Order*).

[10] For purposes of this NOPR, a ''non-marketer public utility'' means a public utility that owns, operates, or controls generation or transmission facilities. This includes traditional public utilities that own both generation and transmission, as well as non-traditional public utilities that own or control only generation facilities (*e.g.* merchant generators) or only transmission facilities. The term excludes power marketers who engage in sales for resale of electric energy but do not own any physical generation or transmission facilities.

[11] For long-term transactions (*i.e.,* those lasting more than one year) that are made pursuant to previously approved market-based rate tariffs, however, public utilities must file the individual executed service agreements they enter under such tariffs within 30 days after commencement of service. *See Prior Notice Order,* 65 FERC at 61,984. Short-term transactions are treated differently because they frequently are not the subject of separate written agreements and may be negotiated orally and documented only by log entries. *See* Southern Company Services, Inc., *et al.,* 87 FERC ¶ 61,214 at 61,847 (1999) (*Southern, et al.*).

[12] *See Citizens,* 35 FERC at 61,452.

[13] For purposes of this NOPR, ''power marketers'' means public utilities who do not own generation or transmission facilities, *i.e.,* independent power marketers and affiliated power marketers.

TABLE 1.—SUMMARY OF CURRENT FILING REQUIREMENTS UNDER OPEN ACCESS AND COST BASED TARIFFS, AND UNDER MARKET-BASED RATE AUTHORITY

Type of tariff or rate schedule	Filing party	Long-term service agreements	Short-term service agreements	Quarterly transaction reports
Open Access Transmission Tariff	Non-marketer Public Utility	X	X	
Cost-Based Power Sales Tariff	Non-marketer Public Utility	X	X	
Market-Based Power Sales Tariff	Non-marketer Public Utility	X	X	X
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer	0 [14]		X

Legend: ''x'' means agreement or report is required to be filed, ''o'' means requirement to file is in abeyance.

Section 2.8 of the Commission's regulations encourages, but does not require, any public utility filing a rate change pursuant to § 35.13 to refile its service agreements using a simplified model. In practice, however, few public utilities have chosen to do so. As the requirements of § 2.8 have, to some extent, become outmoded, as a result of the Commission's revisions in Order No. 614 [15] to our regulations at § 35.9 (regarding the designation of tariffs and rate schedules), and as the proposals in this NOPR will result in non-standard service agreements being phased out as they expire and being replaced by the use of standard forms of service agreements and the filing of the Index of Customers, we propose to delete § 2.8 of our regulations.

3. The Commission's Experience With Revised Filing Requirements for Interstate Natural Gas Pipelines

In evaluating appropriate future filing requirements for public utilities, the Commission has taken into account not only changes in the electric industry in recent years, but also our experience with different filing requirements in the natural gas industry. While the two industries differ, they have similar statutory filing requirements as well as similar informational needs given the competitive nature of the markets in each industry.

Prior to the issuance of Order No. 436,[16] the Commission's requirements for filings by interstate natural gas pipelines and public utilities were essentially the same. Each contract relating to rates and services had to be filed in complete hard copy tariff format, even if the contract followed the contract form on file with the Commission as part of a generally applicable Rate Schedule. In Order No. 516,[17] however, the Commission eliminated the requirement for interstate natural gas pipelines to file actual service agreements [18] in instances when the contract conformed to the standard form of agreement in the interstate natural gas pipeline's tariff, because we found that, through tariff filings or other periodic filings, the pipelines already submitted to the Commission and the public all of the information required by section 4 of the NGA. Thus, service agreements that did not conform with the standard forms of service agreements had to be filed with the Commission under § 154.1(d), while service agreements that did conform with the standard forms of service agreements that are part of an interstate natural gas pipeline's tariff under § 154.110 did not need to be filed. The Commission deemed such filings unnecessary in light of the fact that the agreements conformed with Commission-approved standard agreements and the after-the-fact filings under Part 284. Order No. 516 provided that the after-the-fact reports under Part 284 must contain an index of firm customers identifying the services contracted, the applicable rate under each agreement (by reference to a rate summary sheet), contract dates and terms, and contract quantities.

In Order No. 581, the Commission expanded the Index of Customers to include all firm services, not just firm open access services. In Order No. 581, the Commission emphasized the need to acquire key contract information in an electronic format. The order also gave pipelines the option of placing key contract information on their websites, combined with an electronic filing of the same information with the Commission, in lieu of individually filing contracts (in traditional hard copy) with the Commission.[19] As a measure of how well the proposal was received by the industry, all the major pipelines have opted to file electronically.[20]

More recently, in Order No. 637,[21] the Commission modified the specific service agreement reporting requirements for interstate natural gas pipelines. Information about interruptible contracts and actual discounted rates must now be made public on the same basis as it is for contracts for firm service, and Order No. 637 has expanded the requirement to post information to include points of receipt and delivery and other information.[22]

[14] *Southern, et al.,* 87 FERC at 61,849, rescinded on a prospective basis previously-granted waivers of the requirement for power marketers to file long-term service agreements, effective thirty days after the issuance of a final order in that proceeding. Thus, at this time, this filing requirement is not in effect.

[15] Designation of Electric Rate Schedule Sheets, Order No. 614, final rule, 65 FR 18221(April 7, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,096 (2000).

[16] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (October 18, 1985), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,665 (1985). Order No. 436 was modified and revised in a series of orders not at issue here. See Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500, 52 FR 30334 (August 14, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,761 at 30,775–76 & n.2 (1987).

[17] Final Regulations Clarifying the Filing Obligations for Part 284 Transportation and Sale of Natural Gas, Order No. 516, 54 FR 47758 (November 17, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,864 (1989).

[18] Order No. 516 only modified § 154.1 of the Commission's regulations. While contracts that conformed with the standard forms of service agreements did not have to be filed, Order No. 516 maintained the requirement that pipelines had to file with the Commission contracts for open access service and special services contracts that did not conform with the standard forms of service agreements.

[19] Revision to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), FERC Stats. & Regs., Regulation Preambles 1991–1996 ¶ 31,026 at 31,505–512 (1995). The electronic information is available to the public on the Commission's website at *www.ferc.gov/documents/forms/forms.htm#GAS.*

[20] We note, however, that some small pipelines have obtained waivers of the requirement to file this information.

[21] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (February 25, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,091, *order on reh'g,* Order No. 637–A, 65 FR 35705 (June 5, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,099, *reh'g denied,* Order No. 637–B, 92 FERC ¶ 1,062 (2000).

[22] Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,319–20; and the Commission's regulations at 18 CFR 284.13(b).

For the gas industry, the transition from service agreement filings to index of customers filings has both drastically reduced the industry's filing burden (approximately 6,000 service agreement filings per year were eliminated) while providing industry participants with greater access to transaction data. The electric industry is now also at the point where information currently provided through service agreements can be made more useful to the public through periodic Index of Customers filings.

4. Changing Electric Markets Have Resulted in an Increase in Electric Rate Filings and Demonstrate the Need for More Efficient Filing Regulations

Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to the Commission and the public of any changes to its jurisdictional rates and tariffs, file such changes with the Commission, and make them available for public inspection, in such manner as directed by the Commission.[23]

Prior to the Commission's open access initiatives in Order Nos. 888 and 889,[24] public utilities made numerous rate filings covering individual power supply and/or transmission contracts tailored to meet the needs of individual customers. Although the filings were numerous, the number of regulated public utilities making these filings tended to be relatively stable, and the Commission managed to analyze and process these filings and address the substantive issues presented therein.

However, since the issuance of Order Nos. 888 and 889, the number of regulated entities and the services they provide have increased significantly. Electric power markets have increasingly become more competitive and dynamic and the Commission has been confronted by a marked increase in the number and types of transactions being conducted in response to customer needs. As a result, an increasing number of public utility power supply and transmission service arrangements in the form of universal tariffs of general applicability (umbrella agreements) were filed with the Commission,[25] with standardized forms of service agreements for customers to execute as they sign up for tariff services. Largely as a result of the review of service agreement filings associated with tariffs previously approved by the Commission, service agreement filings now constitute approximately 2,500 docketed work load filings a year, a 2½-fold increase over past peak levels of all FPA section 205 filings.

Under the Commission's current filing requirements in 18 CFR Part 35, individual service agreement filings associated with approved tariffs require a significant amount of time, effort, and expense on the part of public utilities to prepare and serve on their customers and the Commission. These individual filings also require a significant amount of Commission staff time and effort associated with docketing, noticing, loading the information onto RIMS, and other processing tasks. Further, the information contained in such filings that is most relevant to customers and the Commission could be provided in an alternative, streamlined form, thus continuing to satisfy the requirements of FPA section 205(c), but in a more efficient manner. Accordingly, we propose to replace the filing of individual service agreements and Quarterly Transaction Reports with the filing of an electronic Index of Customers. This format will greatly increase the accessibility and usefulness of the relevant data, which will confer greater benefits to the public.

We expect that the filing of the Index of Customers in place of the filing of individual service agreements related to approved tariffs and the filing of Quarterly Transaction Reports will result in a net decrease in the filing burden on public utilities while allowing the Commission to better use its limited resources, and at the same time provide the public and the Commission with better information pursuant to FPA section 205(c).

III. Discussion

A. Overview

Through these proposed regulations, the Commission intends to improve public access to pertinent information on public utility rates and services, streamline and simplify the manner in which public utilities must comply with the filing requirements of the FPA, reduce the regulatory and administrative burden associated with processing public utilities' service agreement filings, and keep pace with changing market conditions. The NOPR proposes to accomplish these goals by no longer requiring public utilities with market-based rate authority to file either long-term or short-term service agreements, consistent with what has generally been the case for power marketers.

Instead, all public utilities, both marketers and non-marketers, that charge market-based rates will meet the FPA section 205(c) requirements through the filing of an Index of Customers. In so doing, we will require that transaction data not only be filed electronically with the Commission, but also posted and archived on each public utility's web site. This will greatly improve public access to the data, which will no longer be scattered over numerous service agreement filings, but instead will be centrally stored in a single database for each seller. We find it appropriate to transition from the market-based service agreements to an Index of Customers in part because market-based authority for power sales extends to both rates and to terms and conditions. Therefore, there is no need for the filing of a standard form of service agreement under market-based sales tariffs or rate schedules. Moreover, to the extent that transactional data required by the Index of Customers subsumes the relevant information contained in the umbrella short-term agreements, long-term agreements, and the currently filed quarterly reports, there is no need for filing both the service agreements and the Index of Customers. In short, we find that there is no need to continue to differentiate between long and short-term power sales agreements so long as the relevant data are collected through the Index of Customers to meet the section 205(c) requirements.

While we find no need to require standard forms of service agreements to be filed for market-based rates, we encourage public utilities to develop standard forms of service agreements for inclusion in tariffs other than those for market-based sales (*e.g.* tariffs for cost-based power sales and network transmission and ancillary services), similar to what is already in place for point-to-point open access transmission service. These standard forms of service agreements are necessary for a public utility to no longer file conforming service agreements since the terms and conditions of cost-based services are not negotiated and, therefore, must be on file to meet the requirements of FPA section 205(c).

[23] *See* Southern Company Energy Marketing, L.P., *et al.,* 84 FERC ¶ 61,199, *order on reh'g,* 86 FERC ¶ 61,131 (1999), *affd. sub nom.,* The Power Company of America, L.P. v. FERC, 245 F.3d 839 (D.C. Cir. 2001) (*PCA*). In *PCA,* the court found, 245 F.3d at 846, that the Commission may alter its view of what information is required to be on file under section 205(c) of the FPA and § 35.15 of the Commission's regulations.

[24] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,586.

[25] *See Prior Notice Order,* 64 FERC at 61,982–84.

In total, the use of standard forms of service agreements, in conjunction with the Index of Customers filings and the filing of service agreements that do not conform with the standard forms of service agreements in the public utility's non-market-based rate tariffs, will provide the public and the Commission with sufficient information with respect to non-market-based rates and, therefore, will meet the section 205(c) requirements.

We note that we are including cost-based sales in the Index of Customers' reporting requirements regarding transactional data to better meet the section 205(c) requirements. The majority of the cost-based tariffs contain ceiling rates and, due to ever increasing competition, the actual rate charged for a particular sale is less than the tariff rate. Including the reporting of cost-based power sales under the Index of Customers will ensure that the public utility has on file the actual price charged for the transaction, as required by FPA section 205(c). As noted above, once the public utility files a standard form of service agreement, it would no longer have to file conforming individual service agreements under that tariff.

B. Why the Proposals Advanced in This NOPR Are Needed

1. Changes in the Market

Notwithstanding the dramatic changes that have occurred in electric power markets, the Commission has not changed the manner in which it receives and makes available information through public utility service agreements, rate filings, and the Quarterly Transaction Reports imposed as a condition in market-based rate cases. The profound changes that have occurred in wholesale electric markets have prompted the Commission to consider whether the information currently being filed by public utilities continues to meet the evolving needs of the public, the electric power industry, and the Commission. We conclude that it does not and that we need to improve the format in which we currently receive information because some entities are filing the data in different formats, and in different levels of detail, and some entities (non-marketer public utilities) are filing service agreements, while others (power marketers) are not. Moreover, these data are not available in an electronic format, making it difficult for the public to obtain and analyze. Accordingly, in this NOPR, we propose to revise our filing requirements to make the information standard, complete, and easy to access.

2. Improving the Current System

This NOPR proposes to replace the current information reporting and processing system with a new electronic approach that gives accurate, pertinent, and accessible data to the public and the Commission. Our experience with the regulation of interstate natural gas pipelines leads us to expect that these proposed revisions are feasible and that they will reduce the public utilities' reporting burden and the Commission's administrative burden in processing filings, while at the same time providing better and more accessible information to the public and the Commission.

3. Changing Administrative Requirements

The proposed regulations are part of a change the Commission is undertaking with regard to its requirements for filing tariff sheets. In Order No. 614, the Commission stated that it was initiating a process ''necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets.'' [26] Order No. 614 required public utilities to take responsibility for the designation of their tariffs, rate schedules and service agreements, and pagination of their tariff sheets along the lines of the natural gas pipeline program. Order No. 614 also stated that the Commission intended move to a common standard for the filing of all electric, gas, and oil rate schedule sheets.

The Commission has since issued a *Notice of Inquiry* to consider establishing an electronic format for all tariffs filed with the Commission.[27] A number of the changes proposed in this NOPR are part of that process. The proposed regulations will standardize the requirements for filing service agreements by interstate natural gas pipelines and public utilities. Further, by eliminating the need to file certain types of service agreements, the proposed regulations will reduce the number of tariff sheets public utilities will be required to file. This minimizes the materials that must be converted from hard copy to the new electronic tariff filing requirements, if and when they are adopted by the Commission.

In order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use information technology to reduce the amount of paperwork required in its proceedings.[28] The proposed regulations meet that goal by replacing the paper format with an electronic format. The Commission believes that this will be the most efficient, cost effective, and accurate means to obtain the data required for the use of the public and the Commission, while minimizing the reporting burden on public utilities.

Both the legislative and executive branches of the Federal government have set as goals the substitution of electronic means of communication and information storage for paper means. For example, the Government Paperwork Elimination Act directs agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practical.[29] Similarly, the Office of Management and Budget (OMB) Circular A–130 requires agencies to use electronic information collection techniques by October 2003, where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service.[30] This requirement applies to all filings, including service agreement filings. The proposals in this NOPR are intended to satisfy this requirement for the Commission's electric program by replacing the paper filing of service agreements and the filing of Quarterly Transaction Reports with electronic filings.

C. Proposed Revisions to 18 CFR Part 35

The proposals in this NOPR would be applicable to every public utility that provides transmission, ancillary services, wholesale power sales, or other jurisdictional services in accordance with Part 35 of the Commission's regulations. The NOPR proposes to revise the Commission's current filing requirements under 18 CFR Part 35 to encourage each public utility to develop, for inclusion in its non-market-based power sales tariffs, a standard form of service agreement for each generally applicable service it offers under its tariffs. In addition, every calendar quarter, each public utility that provides transmission, ancillary services, wholesale power sales, or other jurisdictional services under Part 35 must file an updated Index of Customers. This would include a current list of customers, contracts and

[26] Order No. 614, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,096 at 31,501.

[27] *Notice of Inquiry and Informational Conference*, Electronic Tariff Filings, Docket No. RM01–5–000, 94 FERC ¶ 61,270 (2001).

[28] *See* Electronic Filing of Documents, Order No. 619, 65 FR 57088 (September 21, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,107 (2000).

[29] Pub. L. 105–277, Sections 1702–1704.

[30] Circular A–130, Para. 8.a.1(k).

contract terms, and a report of transactional data summarizing power sale transactions that occurred during the past calendar quarter. In addition,

—Once a service agreement that conforms to the standard form of service agreement is on file and approved by the Commission, the public utility will no longer file conforming individual customer agreements with the Commission.

—In circumstances where there is customer disagreement (*e.g.* the customer has exercised its right pursuant to section 15.3 of the *pro forma* tariff to have the transmission provider file an unexecuted service agreement with the Commission) the service agreement must be filed.

—Any service agreement that contains services, rates, or charges that are not spelled out in the applicable standard form of agreement will be considered a non-conforming service agreement and still must be timely filed with the Commission (*e.g.,* most interconnection agreements and distribution charges).[31] Public utilities will continue to be required to assign rate designations to their filed service agreements pursuant to § 35.9 of the Commission's regulations for nonconforming service agreements.

—Non-marketer public utilities and power marketers will both submit quarterly Index of Customers reports describing their currently effective service agreements and actual power sales transactions (both cost-based and market-based) that occurred during the previous quarter. This would replace the Quarterly Transaction Reports they currently file regarding their market-based rate transactions.

Table 2 below summarizes the filing requirements that are proposed by the Commission in this NOPR:

TABLE 2.—SUMMARY OF PUBLIC UTILITY FILING REQUIREMENTS PROPOSED IN THIS NOPR

Type of tariff or rate schedule	Filing party	Conforming service agreements	Nonconforming service agreements	Index of customers
Open Access Transmission Tariff	Non-marketer Public Utility		X	C
Cost-Based Power Sales Tariff	Non-marketer Public Utility		X	C, T
Other Generally Applicable Services	Non-marketer Public Utility		X	C
Market-Based Power Sales Tariff	Non-marketer Public Utility			C, T
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer			C, T

Legend: ''X'' means file complete service agreement, ''C'' means file contract data, ''T'' means file transaction data.

We now discuss our proposed revisions on a section by section basis. In § 35.10, we propose that each public utility must file an updated Index of Customers with the Commission each calendar quarter and post that same information on its website. A public utility with an OASIS website would post the information in that portion of its OASIS website that is accessible to the public without registration or fee. A public utility not required to have an OASIS website would post its Index of Customers on a website that, likewise, would be accessible to the public without registration or fee.

In this NOPR, the Commission proposes to create two new sections: § 35.10a covering forms of service agreements and § 35.10b covering Index of Customers filings. The form of service agreements are also cross-referenced in § 35.1(g). Thus, we propose to revise the title of Part 35 to reflect its expanded subject matter and propose revising the caption to § 35.1 to clarify that this section addresses both rate schedules[32] and tariffs.[33]

In § 35.10a, we propose guidelines for the inclusion of a standard form of service agreement in a public utility's tariff. We propose that the standard agreement format for each service must describe the service to be rendered and must provide spaces for the insertion of the customer's name, effective date, expiration date, and term. Depending on the type of agreement, spaces for the insertion of other information may also be included, as appropriate. For example, spaces may be provided for the insertion of receipt and delivery points, contract quantity, and other specifics of each transaction. The standard agreement formats, other than those already prescribed by Order No. 888, may be developed by each public utility in a separately filed section 205 filing and will be reviewed by the Commission for consistency with the underlying rate schedule(s) or service(s).

In § 35.10b, we propose that each public utility shall file, in an electronic format, an updated Index of Customers with the Commission on a quarterly basis. Later in this rulemaking process, we plan to conduct further proceedings to develop the instruction manual to be used to make Index of Customers filings, which will define the data elements to be included in Index of Customers filings.[34]

The Commission proposes to develop an electronic format for the Index of Customers filings that will facilitate filing and allow staff and the public one-stop access to the data. The

[31] The Commission will address interconnection agreements in the near future.

[32] Section 35.2 defines Rate Schedule as ''a statement of (1) electric service as defined in paragraph (a) of this section, (2) rates and charges for or in connection with that service, and (3) all classifications, practices, rules, regulations or contracts which in any manner affect or relate to the aforementioned service, rates, and charges. This statement shall be in writing and may take the physical form of a contractual document, purchase or sale agreement, lease of facilities, tariff or other writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof.'' Rate schedules and service agreements are both contractual documents. However, as used in the Commission's regulations, ''rate schedule services,'' essentially, are services whose terms are individually negotiated between the public utility and the customer(s) and are not generally or universally available to other customers.

[33] Section 35.2 of the Commission's regulations defines ''tariff'' as ''a compilation, in book form, of rate schedules of a particular public utility, effective under the Federal Power Act, and a copy of each form of service agreement. In connection herewith, attention is invited to Part 154 of this chapter, *i.e.,* the Commission's regulations under the Natural Gas Act, as a guide to the form and composition of a tariff.'' Examples of a ''tariff'' are public utilities' OATTs, which have ''services'' (the equivalent of rate schedules as used in Part 154) with forms of service agreements and umbrella agreements. Public utilities taking full advantage of this NOPR would develop forms of service agreement to be inserted in public utility tariffs for all generally applicable services offered by the public utility (other than market-based power sales) similar to what is already in place for point-to-point service in the *pro forma* tariff.

[34] We may enlist the assistance of technical industry working groups in this effort.

Commission intends to develop (and distribute to public utilities for their use at no cost) software to be downloaded at the users' sites that will allow public utilities to enter data manually (for small data sets and to edit corrections) and/or to download spreadsheet data, or other properly formatted system output, directly into the application. The software will perform edit checks at the utility site to ensure a complete filing and a successful upload at the Commission. (The software will be similar in concept to that currently being used by public utilities filing FERC Form 423.)

In § 35.10b(a), we propose that the Index of Customers filings must be filed to conform with the data elements specified in the data requirements manual, which will be comparable to the one already in use for interstate natural gas pipelines.[35]

In § 35.10b(b), we propose that each public utility with an OASIS website post the Index of Customers in the portion of its OASIS website that is accessible to the public without registration or fee. We propose that each public utility that does not have an OASIS website shall post its Index of Customers on a website that also is accessible to the public without registration or fee. In the alternative, we are also considering allowing the use of a joint website so that data about numerous public utilities could be found at one common site.[36]

In § 35.10b(c), we propose that each filed Index of Customers shall display the website address where that public utility's past and current Index of Customers are posted and, in § 35.10b(d), we propose that Index of Customers postings shall remain posted for three years.

In § 35.1(g), we propose that all contracts that deviate in a material respect from a standard form of service agreement that is part of the public utility's tariff must be filed. We believe that, because the Commission will review the reasonableness of the terms and conditions of the standard agreements, the requirement for public utilities to file individual service agreements with the Commission can be eliminated so long as those agreements are consistent with the standard form of service agreement. We do not believe that this proposal, if adopted, would in any way compromise the Commission's ability to review substantive issues. We believe that replacing the filing of individual service agreements with the filing of the Index of Customers, combined with the use of standardized agreements, will ease the regulatory burden on filing public utilities and the administrative burden on the Commission of processing these filings. We do not view this proposal as adversely affecting the public interest or the Commission's regulatory oversight of public utilities. Rather, the Index of Customers suggested by this NOPR will increase access to the information that is currently filed by making it available in an electronic and downloadable format. This will enable interested parties to quickly and easily download and analyze relevant data such as prices and quantities of power sales either from the Commission's or the seller's web site. Additionally, public utilities would still be required to maintain copies of their executed service agreements and make them available for public inspection in appropriate proceedings and available to the Commission or any other entity upon request, consistent with Part 35 of the regulations.

Upon implementation of the proposed Index of Customers requirements, public utilities will no longer file market-based power sales service agreements. Additionally, as unfiled service agreements expire in accordance with their own terms, public utilities will not have to file tariff sheets canceling them (because they will not be included in the public utilities' tariffs). Rather, they simply will remove these contracts from their Index of Customers. If parties to an unfiled service agreement believe there is an FPA-related dispute concerning such an agreement, their ability to have the Commission resolve the dispute will not be compromised by not having a hard copy of the agreement on file as part of the public utility's tariff. Utilities with nonconforming, filed service agreements must continue to file tariff sheets to cancel them at the time of expiration (because these agreements will be included in the public utilities' tariffs).

Consistent with our proposal in § 35.10(b)(c), we propose to revise § 37.6 to add paragraph (h) that would require OASIS sites to include Index of Customers postings that would be available to the public without registration or fee. The information would be required to be available for online review, copying or download. Index of Customers filings would remain posted at the same location for three years after they are filed.

We also propose to delete our regulation at 18 CFR 2.8 because that regulation is now superceded by the regulations promulgated by Order No. 614.

D. Information To Be Included in Index of Customers Reports

The proposed Index of Customers will be required for all jurisdictional services and will contain three types of information: (1) Identification requirements for the electronic filing; (2) contractual information; and (3) transaction specific information. For market-based and cost-based power sales, all three types of information will have to be filed. However, for transmission service and other services under an open access tariff, only the identification requirements and the contractual information will have to be filed. This is the case since all rate discounts must be posted on transmission providers' OASIS sites and offered to all customers. The following Index of Customers data requirements will enable the Commission to have the same information on file that is currently received for market-based power sales service through the filing of long-term service agreements and quarterly transaction reports.

1. Identification Requirements for the Electronic Filing

The electronic file will be required to contain a data set that identifies the entity submitting the file, file-related information, and date information. At a minimum, the Commission would expect the file identification requirements to include the following data sets:

—*Respondent:* Public utilities often use agents to handle their regulatory affairs. Thus, the respondent filing the report would be identified, as well as the public utility on whose behalf it is filed (*e.g.:* Southern Company Services Inc. files on behalf of five affiliated public utilities).
—*Contact:* The file should contain information on the company official to be contacted concerning questions related to the filing.
—*Report Information:* The file should contain data that identifies the date it was prepared, the reporting quarter, and the revision of the report in the event the report is corrected and refiled.
—*Website Address:* The website address where the public utility posts its past and current Index of Customers filings.

2. Contractual Information

The Index of Customers will become the Commission's primary means to ensure that the FPA's section 205(c) requirement that rates available for public inspection is met. The Index of

[35] The interstate natural gas pipeline manual can be viewed and downloaded at: *http://www.ferc.gov/documents/forms/electronic_filing_requirements/index_new.pdf.*

[36] Commenters are invited to comment on whether such a joint site would be desirable and feasible.

Customers will provide all the pertinent contractual information contained in service agreements currently filed with the Commission. Similarly, all contractual information currently made available for public inspection will continue to be made available, albeit in a different format. Once a service agreement has become effective, that contract must remain listed on the Index of Customers for each subsequent calendar quarter until the contract terminates under its own terms or as the result of a Commission order. The Commission will require the following information for each executed service agreement:

—*Seller's Name:* The seller's name should be the public utility providing the jurisdictional service. This is the same as the definition in the S&CP Document.[37]

—*Seller's DUNS Number:* Companies often have a name similar to another company's name; the DUNS number avoids any confusion between companies with similar names. This is the same as the definition in the S&CP Document.

—*Affiliate Flag:* Indicate whether the buyer and seller are ''affiliates'' as defined in 18 CFR § 37.3 (f). To be answered with yes or no answer. This is the same as the definition in the S&CP Document.[38]

—*Buyer's Name:* The buyer's name should be the customer purchasing the jurisdictional service. This is the same as the definition in the S&CP Document.

—*Buyer's DUNS Number:* As with sellers, buyers often have similar names. This is the same as the definition in the S&CP Document.

—*Product Designation:* This identifies the product(s) covered by the service agreement. The Commission would expect a separate record for each service provided under a contract. This is the same as the definition in the S&CP Document. We note that the S&CP Document allows more than transmission services to be included in the definition set. For example, the S&CP Document provides codes for the six ancillary services prescribed in Order No. 888: 1. SC—scheduling, system control and dispatch; 2. RV—reactive supply and voltage control; 3. RF—regulation and frequency response; 4. EI—energy imbalance; 5. SP—spinning reserve; and 6. SU—supplemental reserve. All applicable services are reported, including power sales.

—*Type of Rate:* The Commission permits various types of rates (*e.g.,* cost based rates, discounted rates, and market-based rates). This data field would identify the type of rate charged under the executed contract (*i.e.,* the maximum cost based rate, a rate discounted from the maximum cost based rate, or a market-based rate).

—*Service Agreement Designation:* Under the current Commission filing requirements, public utilities are required to file most service agreements with the Commission and supply a designation. Market-based service agreements and individual executed service agreements that conform to a public utility's standard form of agreement will no longer be filed with the Commission. If a customer requests that the utility proceed with an unexecuted but otherwise conforming service agreement so that service can begin while any remaining disputes are resolved, the unexecuted agreement must be filed with the Commission. In addition, all individual contracts need some identifier that distinguishes them from other contracts. While the Commission does not propose a separate mandatory designation system for the Index of Customers, the public utility must maintain its service agreements with a tracking system that will enable the Commission and the public to reference whatever system a public utility adopts and uses for the purpose of filing this report. Also, some standard contracts, such as those in the OATTs, provide the ability to contract for multiple services in a single contract. The Commission would expect a separate record for each service provided under a contract. However, how multiple services under a single contract should be reported to the Commission (including the related contract and transaction information) is an item that should be discussed by any Technical Working Groups that are created to work on these matters.

—*Contract Effective Date:* All service agreements (market-based, conforming, and non-conforming) under which service has commenced during a particular quarter must be reported to the Commission within 30 days of the end of that quarter. The agreement would not have to be filed if it conforms with a public utility's applicable approved standard form of agreement. The date service commences would be the equivalent of the first date to occur under the ''service start date and time'' data field for the contract in the S&CP Document.

—*Contract Termination Date:* This is the date the contract will terminate under its own terms. This date should be the primary term of the contract. If the contract has roll-over or evergreen provisions, that information should be recorded in a separate field.

—*Rate:* Rates for services under both market-based and cost-based tariffs must be reported.

—*Contract Quantity:* The maximum contract quantity of service, to the extent a maximum quantity is specified in the contract.

—*Rate Unit:* The units (MWH, MW, etc.) applicable to the rate, contract quantity and transactional data.

—*Point of Receipt:* This is the same as the definition in the S&CP Document.

—*Point of Delivery:* This is the same as the definition in the S&CP Document.

The contractual information that is proposed to be provided in the Index of Customers is identical to what public utilities are currently required to file pursuant to Part 35 of the Regulations. In this regard, we note that this NOPR does not propose to revise the filing requirements in § 35.12, regarding information to be included in initial rate schedule filings. Nor does the NOPR propose to revise the Commission's current rules concerning the information to be included in service agreements, rate schedules, and accompanying transmittal letters. Simply put, it provides that the data currently filed in service agreements are to be filed through the Index of Customers.

3. Transaction-Specific Information

Currently all entities selling power at market-based rates are required to file Quarterly Transaction Reports each calendar quarter that describe their purchase and sales transactions for generation and transmission.

In *Citizens Power & Light Corporation,* 48 FERC ¶ 61,120 (1989) (*Citizens Power*), the Commission stated that Citizens—a power marketer—should provide the following information:

> the buyer's and seller's name, a brief description of the service, including the degree of firmness; the delivery points for each service; the price of each service; the quantities to be served or purchased; the contract duration * * *

Subsequently, Enron Power Marketing, Inc. (Enron) requested that: (1) The Commission waive the requirement that a power marketer file informational reports detailing purchase and sale transactions undertaken in the prior quarter; and (2) it be permitted to report the data on an aggregated basis (*i.e.,* without identifying the other parties or the terms of the individual transactions) or on a confidential basis. The Commission denied Enron's request and stated:

> Enron misreads the Commission's purpose in requiring quarterly reporting of marketer's transactions * * *. The Commission has indicated that information filings are necessary so that the marketer's rates will be on file as required by section 205(c) of the FPA, * * *[39]

We also denied Enron's request for confidential treatment,[40] citing our order in *National Electric Association Limited Partnership,* 50 FERC ¶ 61,378 (1990) and section 205(c) of the FPA, which requires all public utilities, including power marketers, to file with the Commission for public inspection all rates, charges, classifications and practices as well as any contracts that

[37] *I.e,* the OASIS Standards & Communications Protocol Document, Version 1.4.

[38] *See* ''Affiliate Flag'' S&CP Document's Data Element Dictionary, Order No. 638, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,093 at 31,469. Throughout this NOPR, we use the term ''affiliate'' as defined in 18 CFR 37.3(f).

[39] Enron Power Marketing, Inc., 65 FERC ¶ 61,305 at 62,406 (1993).

[40] *Id.*

affect or relate to such charges, classification and practices.

In *Heartland Energy Services, Inc.,* 68 FERC ¶ 61,223 (1994), the Commission held Heartland (an affiliated power marketer of Wisconsin Power and Light Company) to the reporting standards in *Enron.*[41]

The Commission established the filing requirements for short and long-term transaction agreements for non-marketer public utilities in *Southern Company Services, Inc.,* 75 FERC ¶ 61,130 (1996) (*Southern*). There, Southern—a traditional vertically integrated public utility—proposed to file umbrella service agreements for short-term transactions (in lieu of filing each individual service agreement) and semi-annual summaries that would list the purchaser, the transaction period, the rate, the amount of the electricity sold and the total charge to the purchaser. The Commission modified Southern's proposal to require that the summaries be filed on a quarterly basis. The Commission stated that the transaction summaries should be filed separately within 30 days after service commences. Further, the Commission extended this filing option (filing umbrella service agreements and transaction summaries in lieu of filing a service agreement for each transaction) to all public utilities making sales at market-based rates. However, *Southern* established different reporting requirements for non-marketer public utilities and power marketers.

Under *Southern,* non-marketer public utilities are required to file individual service agreements for long-term sales at market-based rates, while power marketers are only required to file transaction summaries of long-term sales. Both methods allowed the seller to meet the section 205(c) requirements. Not requiring power marketers to file service agreements reflected the fact that, at the time, the Commission sought to encourage the emergence of power marketers and did not want to stifle that process with the application of our traditional rate filing requirements. Now that power marketers are well established, however, it is appropriate to level the playing field for other public utilities. Since the section 205(c) requirements can be met through the Index of Customers, it is appropriate to remove the service agreement filing burden from all public utilities. As a result, this NOPR proposes that all entities with market-based rate authority can meet the section 205(c) requirements for both long-term and short-term power sales through the proposed Index of Customers rather than filing service agreements.

Our proposal remains consistent with our prior precedent and meets the FPA requirement that all rates and charges be on file for public inspection by obtaining the necessary information (consistent with our precedent in *Citizens, Enron,* and *Heartland*) in a manner that reduces the reporting burden on public utilities. In addition, we also propose to gather information equivalent to that reported by public utilities with market-based rates for transactions under cost-based rate power sales tariffs. As noted before, the reason for this is that the majority of the cost-based rates are in fact ceiling rates, but the rates charged under those tariffs are often discounted below the maximum rate. Accordingly, under the current regulations, we do not have available for public inspection the actual price charged for the power, as required by FPA section 205(c).[42]

Regrettably, in some instances the information previously reported by public utilities in their Quarterly Transaction Reports for market-based rates has been presented in varying formats with varying levels of specificity. For example, some reports contain unit prices, others average price data, and still others have only total prices. One of the goals of this NOPR is to rectify this problem.

We propose that public utilities' Index of Customers contain the following transaction data for all power sales made pursuant to a market-based or cost-based tariff:[43]

Sales Transaction. All public utilities will be required to report all sales transactions that occurred pursuant to either a cost-based or market-based rate tariff, including book outs and net outs.

Buyer's Name/Seller's Name. For sales transactions, the buyer's name should be the customer purchasing the jurisdictional service and the seller's name should be the public utility that provided the jurisdictional service. This information is currently being provided in the Quarterly Transaction Reports.

Buyer's/Seller's DUNS Number. Same as explanation in Contractual Information section.

Affiliate Flag. (Yes/No) Currently, information as to whether the buyer or seller is an affiliate is provided in the transmittal letters that accompany the public utility's service agreement filings. This information will now be provided in the quarterly reports.

Product(s) Offered. Citizens and Southern both require the public utility to describe the services offered. The descriptions that are currently being given in the quarterly reports vary substantially. For consistency, the Commission will now require public utilities to state whether the product offered provides:

(1) Capacity, energy, ancillary services and/or reassignment of transmission rights (or some combination of this);
(2) an hourly, daily, weekly monthly or long-term service;
(3) peak or off-peak service; and
(4) firm or nonfirm (see Citizens).

This information will allow us to differentiate among products.

Transaction Execution Date. Public utilities must provide the date that the transaction was agreed to. This will link prices to the time the agreement was executed as opposed to when it was delivered.

Duration. Both *Citizens* and *Southern* require the public utility to state the length of the transaction. Here, as in other aspects of the quarterly reports, the types of data that are being provided vary from very specific to general. Therefore, in order to ensure consistency, public utilities must state, for each transaction, the time and date the transaction began and the time and date it ended or will end.

Price. The FPA requires all public utilities to file all rates and charges with the Commission for public inspection. In *Citizens* and *Southern,* the Commission stated that public utilities selling power at market-based rates should state the price of each transaction in the quarterly reports. In *Northeast Utilities Companies,* 87 FERC ¶61,063 (1999), the Commission determined that public utilities that owned, controlled or operated transmission facilities used for transmission of electric services must separately state in the quarterly reports the prices for generation, transmission and ancillary services. Even with these directives, prices have been reported in the quarterly reports in a number of ways—price/MWH or MW, average prices, maximum prices and minimum prices. These variations have made it very difficult for the Commission to carry out it responsibilities under the FPA. Accordingly, we propose that the following information be provided:

[41] *See also* LG&E Power Marketing, Inc., 68 FERC ¶ 61,247 (1994) and Detroit Edison Company, *et al.,* 80 FERC ¶ 61,348 (1997).

[42] For interstate natural gas pipelines, § 284.13 requires the posting of discounts on electronic bulletin boards for 90 days. Under Order No. 637, discounts are also reported in the gas programs' Index of Customers, similar to what we propose in this NOPR.

[43] By separately describing proposed transaction data and contractual data requirements, it appears that some data may be reported twice. However, when the actual format for Index of Customers is finalized, such occurrences should be eliminated.

(1) The price per MW (for capacity sales) or per MWH (for energy sales) for each sale for resale, including transactions that were netted;

(2) in instances where the price includes transmission and/or ancillary services, entities that own transmission must separately state the prices for these services on a dollar/MW or MWh basis;[44]

(3) for exchanges, the utility should state the basis for the exchange.

The above information should be reported for all transactions that were provided pursuant to either a cost-based or market-based rate tariff.

Type of Rate. Public utilities should state whether the prices for the services described above are cost-based or market-based.

Quantity Sold or Purchased. Transactions involving capacity must be stated in megawatts (MW) and those involving energy must be stated in megawatt hours (MWH). This is consistent with the units of measure used in the Contractual Information fields.

Points of Receipt and Delivery. *Citizens* requires public utilities to provide this information. The data that have been provided in this section of the quarterly report also vary. For consistency, we will require all public utilities to identify the control area and points of delivery and receipt as defined in the OASIS.

We note that the NOPR will not require the filing of any transactional information for transmission and ancillary services in addition to what is already collected for point-to-point services. Rates for these agreements are either the maximum tariff rates or, to the extent the rates are discounted, they must be posted on the transmission provider's OASIS with the discount made generally available to other customers.

E. Implementation Procedures

If the proposals in this NOPR are adopted, public utilities would have to take the following steps to achieve compliance: (1) Establish a website location for their Index of Customers filings (public utilities with an OASIS site would use their OASIS sites); and (2) file their Index of Customers with the Commission and post them on their websites.

We plan to complete work on developing software and an instruction manual for completing Index of Customers filings by the time we issue a final rule in this proceeding. Thus, we plan to direct the filing of the initial Index of Customer filings in conformance with the instruction manual in the final rule and using the software developed for this purpose by the Commission. In addition, the requirement to file Quarterly Transaction Reports will continue until we issue a final rule. Thereafter, these filings will be superseded by the Index of Customer filings. We also propose that websites be available for Index of Customers postings by that same date. Commenters may suggest an alternative startup date for these requirements, along with any reasons why the alternative is preferable, in their comments.

Non-marketer public utilities may submit any necessary standard forms of agreement and revised tariffs for tariffs other than market-based sales at any time in a separately filed section 205 proceeding. We note that public utilities will remain obligated to file individual service agreements for these services unless those agreements conform with standard forms of agreement in their tariffs. The Commission does not propose to establish *pro forma* tariff language or a standard format for any new standard agreements, as was done in Order No. 888. Rather, public utilities should file their own proposals for Commission approval.

From time to time, public utilities may propose new generally applicable services. At such time, the public utility is encouraged to include in its proposal a standard form of agreement for the service. Further, this NOPR encourages public utilities to convert existing rate schedules into tariffs by filing a standard form of agreement. Upon acceptance of the standard form of agreement for new or converted services, public utilities would not be required to file service agreements for these services with the Commission.

At the time public utilities make their initial Index of Customers filings under the Final Rule, they will also be required to identify the service agreements in their tariffs currently on file with the Commission that conform with the standard forms of service agreements. When the public utility files its first Index of Customers, the Commission will remove, as redundant, those service agreements from the relevant, Commission-maintained tariff. Removal of these agreements from the Commission-maintained version of the public utility's tariff is simply an administrative function. It does not terminate, cancel or in any way change the terms, conditions, rates or effectiveness of these agreements. Service agreements that remain in a public utility's tariff will continue to be subject to the filing, format, and designation requirements of Part 35.

The Commission intends to develop an instruction manual outlining pertinent data requirements for Index of Customers filings and software to be used in making these filings. We plan to conduct further proceedings and enlist industry support to develop the manual and enlist input to ensure that the software operates successfully. Once the instruction manual and software are completed, we intend to require that public utilities use the software and the manual to prepare their Index of Customer filings.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA)[45] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule would be applicable to all public utilities. While we do not foresee that, if promulgated, the proposed rule would have a significant economic impact on a substantial number of small entities, as most entities subject to the rule would not be small entities within the meaning of the RFA, we will consider granting waivers in appropriate circumstances. In fact, by eliminating the requirement to file most service agreements, this NOPR should reduce the economic impact on most entities.

We hereby certify, under section 605(b) of RFA, that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

V. Environmental Impact Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[46] However, in 18 CFR § 380.4(a)(5), we categorically excluded information gathering such as that contemplated in this NOPR from the requirement to prepare an environmental impact statement. Thus, we find that this NOPR does not propose any action that might have a significant effect on the human environment and find that no environmental impact statement concerning this proposal is required.

[44] Entities that do not own transmission must state whether their price includes transmission and ancillary services by each public utility providing these services.

[45] 5 U.S.C. 601–612.

[46] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

VI. Statement of Information Collection and Public Reporting Burden

In this NOPR, we propose that public utilities would:

- No longer file short-term or long-term service agreements for market-based power sales;
- No longer file service agreements for those generally applicable services, such as point-to-point transmission service, for which the public utility has a standard form of service agreement under its tariff;
- No longer file Quarterly Transaction Reports summarizing its short-term sales and purchases of power at market-based rates; and
- File electronically with the Commission and post on a website an Index of Customers that contains a summary of the contractual terms and conditions in its service agreements along with transaction information for its open access transmission services, short-term and long-term market-based power sales, and cost-based power sales during the most recent calendar quarter.

The NOPR also proposes to delete as no longer necessary 18 CFR 2.8 concerning the simplification of public utility rate schedule filings. Based on these proposals, we offer the following information collection statement and burden estimate:

Information Collection Statement:

Title: Electric Service Agreement Filing Requirement.

Action: Proposed Collection.

OMB Control No: 1902–0096.

Respondents: public utilities.

Frequency of Responses: Quarterly.

Necessity of the information: The Notice of Proposed Rulemaking solicits public comments on proposed revisions to the procedures by which public utility service agreement information is filed with the Commission and presented to the public.

Burden Statement: Public reporting burden for this collection is estimated as:

BURDEN ESTIMATE OF THE PROPOSED RULE

Line No.		Companies	Quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours	Net difference
				Current				
1	Utilities	210	840	6	2000	3	11040	
2	Marketers	648	2592	6	500	3	17052	
3							28092	
4	Average Annual Personnel Cost.					$117,041		
5	Total Annual Personnel Cost						$1,580,729	
6								
7								
8								
9								
				Proposed				
10								
11								
12	Utilities	210	840	3	0		2520	−8520
13	Marketers	648	2592	3	0		7776	−9276
14							10296	−17796
15	Average Annual Personnel Cost.					$117,041		
16	Total Annual Personnel Cost						$579,353	($1,001,376)

The estimated annual total savings to respondents is approximately $1,000,000 on a recurring basis. The Commission also estimates that there will be approximately $300,000 in one-time start up costs related to the establishment of websites by those entities that do not have one already, and for modifying existing websites for the posting and archiving of the Index of Customers. The collection of information contained in this NOPR has been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415.

Internal Review

The Commission has conducted an internal review of the public reporting burden associated with this collection of information and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information proposed by this NOPR and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[47]

OMB regulations[48] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this NOPR will be submitted to OMB for review. Persons wishing to comment on the collections of information proposed by this NOPR should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, DC 20503, phone 202–395–7318, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address:

[47] See 44 U.S.C. 3506(c).

[48] 5 CFR 1320.11.

Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, NE., Washington, DC 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

VII. Public Comment Procedure

This NOPR gives notice of our intention to revise the filing requirements for public utility service agreements and to require the filing of quarterly reports (i.e., the Index of Customers) summarizing contracts entered and transactions completed during the prior three month period. Prior to taking final action on this proposed rulemaking, we are inviting comments from interested persons on the proposals discussed in this preamble. In addition, the Commission specifically invites comments on the usefulness of the data to be reported. Comments may also address any related matters or alternative proposals that commenters may wish to discuss. Comments are due on or before October 5, 2001.

We encourage commenters to file their comments electronically, in accordance with the Commission's procedures for electronic filing.[49] Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on ''e-Filing'' and ''Help,'' then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202–208–0258 or by E-Mail to *efiling@ferc.fed.us.* Comments should not be submitted to the E-Mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by E-Mail to *rimsmaster@ferc.fed.us.* Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address *brooks.carter@ferc.fed.us.*

Comments may also be filed by paper copy, in which case an original and sixteen copies must be delivered to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 by 5 p.m. on the due date for comments and should refer to Docket No. RM01–8–000. If comments are filed by paper copy, commenters are encouraged to also submit a copy of the comments on computer diskette in one of the formats specified above. If comments are filed by paper copy with attached diskette, any discrepancies will be resolved by reference to the paper copy.

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home Page, *www.ferc.gov,* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page, *www.ferc.gov,* and using the CIPS link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–0874 or by e-mail to *cips.master@ferc.fed.us.*

This document is also available through the Commission's Records and Information System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to *rimsmaster@ferc.fed.us.*

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, American Electronic Imaging Company, Inc., located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power, Electric utilities, Reporting and recordkeeping requirements, Securities.

18 CFR Part 37

Conflicts of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 2, 35, and 37 in Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority. 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 7101–7352.

§ 2.8 [Removed]

2. Section 2.8 is removed and reserved.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

3. The authority citation for part 35 continues to read as follows:

Authority. 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. The heading for part 35 is revised to read as set forth above.

5. In § 35.1, the heading is revised and paragraph (g) is added to read as follows:

§ 35.1 Application; obligation to file rate schedules and tariffs.

* * * * *

(g) For the purposes of paragraph (a) of this section, any contract that conforms to the form of service agreement that is part of the public utility's approved tariff pursuant to § 35.10a of this chapter and any market-based rate contract shall not be filed with the Commission. It must, however, be retained and be made available for public inspection and copying at the public utility's business office during regular business hours and provided to the Commission or members of the

[49] In Electronic Filing of Documents, 94 FERC ¶ 61,239 (2000), the Commission gave notice that it would accept comments on proposed rulemakings via the Internet in lieu of paper copies. The notice gave instructions for how such documents are to be filed.

public upon request. Any non-market based rate contract or individual executed service agreement that deviates in any material aspect from the applicable form of service agreement contained in the public utility's tariff and all unexecuted agreements under which service will commence at the request of the customer, are subject to the filing requirements of this part.

6. Add § 35.10a to read as follows:

§ 35.10a Forms of service agreements.

(a) To the extent a public utility adopts a standard form of service agreement for tariffs other than those for market-based power sales, the public utility shall amend its tariff to include an unexecuted standard service agreement approved by the Commission for each category of generally applicable service offered by the public utility under its tariffs. The standard format for each generally applicable service must reference the service to be rendered and the applicable service within the tariff. The standard format must provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity, and other specifics of each transaction, as appropriate.

(b) Forms of service agreement submitted under this section shall be in the same format prescribed in § 35.10(b) for the filing of rate schedules.

7. Add § 35.10b to read as follows:

§ 35.10b Index of customers.

(a) Each public utility shall file an updated Index of Customers with the Commission covering all services it provides pursuant to this Part, for each of the four calendar quarters of each year, in accordance with the following schedule: for the period from January 1 through March 31, file by April 30; for the period from April 1 through June 30, file by July 31; for the period July 1 through September 30, file by October 31; and for the period October 1 through December 31, file by January 31. The Index of Customers must be prepared in conformance with the Commission's ''*Instruction Manual For Electronic Filing of Index of Customers by Public Utilities,*'' which is available for inspection during regular business hours at the Commission's Public Reference Room and Files Maintenance Branch, Room 2A, Federal Energy Regulatory Commission, 888 First Street, N., Washington, DC 20426. The Instruction Manual shall also be made available for inspection on the Commission Issuance Posting System through FERC's Home Page on the Internet (*www.ferc.gov*).

(b) Each public utility that maintains an OASIS site must post its Index of Customers on the portion of its OASIS website that is accessible by the public without registration or payment of any fee. A public utility that is not required to maintain an OASIS website must likewise post its Index of Customers at a website that is accessible by the public without registration or payment of any fee and must identify the address for that website in each such filing with the Commission. The Index of Customers must be posted in a manner that easily allows public review, uploading, and downloading of the data contained therein.

(c) Each filed Index of Customers shall display the public utility's website address on the Internet where the public utility's past and current Index of Customers are posted. The past and current Index of Customers shall all be posted at the same world wide web location.

(d) Each Index of Customers filing shall continue to be posted on the public utility's website for a period of three years. Index of Customers filings must be available to the public for review, copying, and download at no cost.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

8. The authority citation for part 37 continues to read as follows:

Authority. 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

9. Section 37.6 is amended by adding paragraph (h) to read as follows:

§ 37.6 Information to be posted on the OASIS.

* * * * *

(h) A public utility must post its past and current Index of Customers, as provided in § 35.10b, on its OASIS website in a portion of its website that can be accessed by members of the public, without registration or payment of fee. The Index of Customers must be available to the public for review, copying, and download at no cost.

[FR Doc. 01–19397 Filed 8–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AK91

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects Without Remanding

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to amend the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board) to permit the Board to obtain evidence, clarify the evidence, cure a procedural defect, or perform any other action essential for a proper appellate decision in any appeal properly before it without having to remand the appeal to the agency of original jurisdiction. We also propose to allow the Board to consider additional evidence without having to refer the evidence to the agency of original jurisdiction for initial consideration and without having to obtain the appellant's waiver. By reducing the number of appeals remanded, VA intends to shorten appeal processing time and to reduce the backlog of claims awaiting decision.

DATES: Comments must be received on or before September 5, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Fax comments to: (202) 273–9289. E-mail comments to: OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to ''RIN 2900–AK91.'' All comments received will be available for public inspection in the Office Regulations Management, Room 1158, between 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Acting Vice Chairman, Board of Veterans' Appeals ((202) 565–5978), or Michael J. Timinski, Attorney, Office of General Counsel ((202) 273–6327, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is the component of the Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits. An agency of original jurisdiction (AOJ), typically one of VA's 58 regional offices, makes

the initial decision on a claim and subsequent decisions if VA receives additional evidence. A claimant who is dissatisfied with an AOJ's decision may appeal to the Board. After a claimant perfects an appeal to the Board, the AOJ certifies the appeal to the Board and transfers the record to the Board, so that the Board can decide the appeal.

While considering an appeal, a Board member or panel sometimes discovers that more evidence is needed, that the current evidence must be clarified, or that a procedural defect must be cured for the appeal to be properly decided. Current regulations generally require the Board to remand such a case to the AOJ to perform the needed action. Specifically, current 38 CFR 19.9(a) requires the Board member or panel to remand the case to the AOJ ''[i]f further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision.'' However, § 19.9(a) does not require a remand to clarify procedural matters before the Board, such as the appellant's choice of representative before the Board, the issues on appeal, and requests for hearings before the Board. In addition, the Board is currently permitted to obtain expert medical opinions in appropriate cases. *See* 38 U.S.C. 7109 (independent medical opinions); 38 CFR 20.901(a) (opinions from the Veterans Health Administration); 38 CFR 20.901(b) (opinions from the Armed Forces Institute of Pathology).

When the Board remands a case for further development, the AOJ must undertake the action specified by the Board. 38 CFR 19.38. After completing that development, the AOJ must make another decision on the claim. *Id.* Unless the AOJ grants all the benefits sought or the appeal is withdrawn, the AOJ must issue a supplemental statement of the case, allow 60 days for response, and return the case to the Board for further appellate processing. 38 CFR 19.38, 20.302(c).

There is another situation for which current regulations require a remand from the Board to the AOJ. In a number of cases, the appellant submits additional evidence while an appeal is pending before the Board. Under current regulations, the Board must allow the AOJ to consider the evidence first. Specifically, 38 CFR 20.1304(c) provides that, ''[a]ny pertinent evidence * * * accepted by the Board * * * must be referred to the [AOJ] for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant'' or the Board can grant the benefits sought on appeal to which the evidence relates. If the AOJ issues a supplemental statement of the case, it must also provide 60 days for response and return the case to the Board unless the appeal is withdrawn or resolved. 38 CFR 19.38, 20.302(c). According to statistics maintained by VA's Compensation and Pension Service, as of March 31, 2001, the average case remains in remand status for 454 days, about 1¼ years.

VA proposes to change these procedures in two ways. First, we propose to amend 38 CFR 19.9 to permit the Board itself to obtain further evidence, clarify the evidence, correct any procedural defect, or perform any other action that is essential for a proper appellate decision, without having to remand the case to the AOJ. We intend the provision to encompass a broad range of actions, including, for example, consideration of an appeal under a change in law or a change in interpretation of law that has occurred while the claim or appeal has been pending and application of laws, interpretations, and precedents already existing but not applied by the AOJ. Under these amendments, the Board would be permitted to consider the claim without having to remand it to the AOJ for consideration of the matter in the first instance. The Board would still be permitted to remand a case needing further development, but would not be required to remand. As discussed further below, we propose procedures to assure that the appellant will be notified of what evidence is obtained or what law is being considered and have an opportunity to submit argument or additional evidence in rebuttal. *See generally Sutton* v. *Brown,* 9 Vet. App. 553, 564 (1996) (if Board intends to rely on new evidence, appellant has right to submit argument, comment, or additional evidence).

Second, we propose to amend 38 CFR 20.1304 to allow the Board to consider evidence that it obtains or that is submitted to it, without having to refer the evidence to the AOJ for initial consideration in the absence of the appellant's waiver. Although we propose no change in the current deadline for submitting evidence to the Board, we do propose an exception to the requirement in current § 20.1304(b) that good cause be shown for the Board to accept evidence after the deadline. Good cause would not be needed to submit evidence in response to notice provided by the Board that it has obtained additional evidence or that it intends to consider law not already considered by the AOJ.

We propose these changes to reduce the number of cases remanded by the Board to AOJs. A reduction in the number of cases remanded could have two effects beneficial to claimants.

First, it could shorten the time it takes VA to resolve an appeal. The Board would not have to transfer a case to an AOJ for initial consideration of evidence, to wait for AOJ processing to be completed, and to wait for the case to be transferred back to the Board. No longer would the Board have to delay appellate consideration while determining whether an appellant wants to waive initial consideration by the AOJ. Furthermore, in cases needing additional development, the time currently spent in transferring the case to the AOJ and back to the Board, as well as time spent by employees refamiliarizing themselves with the case following transfer, would be saved if the Board itself performed the actions needed to develop the case.

Second, a reduction in the number of cases remanded to AOJs could eventually shorten claim processing time by helping VA to reduce its current backlog of claims. Currently, approximately 500,000 claims are awaiting decision in VA's regional offices. The recent enactment of the Veterans Claims Assistance Act of 2000, Public Law 106–475, 114 Stat. 2096, has exacerbated the backlog. Besides requiring readjudication of claims not final on the date of enactment, the act provides for the readjudication of certain claims that had already been finally decided. Public Law 106–475, sec. 7, 114 Stat. at 2099. Moreover, due to the potential applicability of the act, the United States Court of Appeals for Veterans Claims has been remanding cases at an unprecedented rate. That court remanded 1,412 cases in fiscal year 1999. In contrast, it has already remanded some 1,223 cases during the first half of fiscal year 2001. The Board, in turn, has remanded many more cases to regional offices: 4,848 cases during the first half of fiscal year 2000, compared to 10,796 cases during the first half of fiscal year 2001.

Having the Board develop cases itself rather than remand them will help relieve the immense workload pending at regional offices, giving them a chance to reduce the backlog. On average, the Board remands about 15,000 cases per year to the regional offices. Thus, this proposed rule could potentially prevent the backlog from increasing by 15,000 cases each year. Once the backlog is reduced to a manageable size, case processing time will begin to fall.

Under the proposed changes, some appellants will have at least one fewer chance for a decision by the AOJ. Because the Board would not have to

remand for development or AOJ consideration of additional evidence, in some cases these changes would eliminate an additional decision made by the AOJ. However, we believe this change would not be disadvantageous for claimants. The Board is fully capable of recognizing when the evidence establishes entitlement to a benefit and granting the benefit itself. Furthermore, ultimately all claimants will benefit from the shortened appeal processing time and reduced claim backlog.

We are also proposing three additional changes to current regulations to accommodate these new procedures. First, we propose to amend 38 CFR 19.31, which currently requires that a supplemental statement of the case be furnished to an appellant if additional pertinent evidence is received after a statement of the case or the most recent supplemental statement of the case has been issued. Under the proposal, a new supplemental statement of the case will be required only if such evidence is received by the AOJ before it has certified the appeal and transferred the appellate record to the Board. A supplemental statement of the case will not be required if the Board obtains additional pertinent evidence on its own or if additional evidence is received by the AOJ after the appeal has been certified and transferred to the Board. We also propose to amend § 19.31 to clarify that a supplemental statement of the case is not to be used to announce the AOJ's decision on an issue not previously addressed in a statement of the case or to respond to a notice of disagreement on a newly appealed issue that was not addressed in the statement of the case. We propose this change to help eliminate confusion on the part of appellants as to whether they must respond to a supplemental statement of the case.

Second, we want to ensure that an appellant will receive adequate notice of new evidence obtained by the Board and adequate notice of law that the Board intends to consider but that has not already been considered by the AOJ. We also want an appellant to be able to respond to the additional evidence or law. To that end, we also propose to amend 38 CFR 20.903 to require the Board, if it either obtains pertinent evidence on its own or if it intends to consider law not already considered by the AOJ, to notify the appellant (and the appellant's representative) of the evidence or law and allow a 60-day period for response. This procedure would be similar to that in current § 20.903, which applies when the Board obtains a legal or medical opinion in a case.

Finally, we propose to amend 38 CFR 20.1304 to provide an exception to the current requirement in § 20.1304(b) that good cause be shown for the Board to accept additional evidence more than 90 days after notice that the appeal has been certified and the record transferred to the Board. A motion demonstrating good cause would not be necessary to submit additional evidence in response to notice from the Board that it has obtained pertinent evidence pursuant to § 19.9(b) or § 19.37(b) or that it intends to rely on law not already considered by the AOJ. This reflects fundamental fairness and is consistent with court precedent. *See Sutton* v. *Brown,* above.

Proposed Effective Date

We propose to have these amendments apply to appeals for which the notice of disagreement was filed on or after the effective date of these amendments and to appeals pending, whether at the Board of Veterans' Appeals, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit, on the effective date of these amendments.

Comment Period

Section 6(a)(1) of Executive Order 12866 indicates that, in most cases, a comment period for proposed regulations should be ''not less than 60 days.'' Nevertheless, for this rulemaking we have provided a comment period of 30 days, for the following reasons. This rulemaking primarily concerns rules of agency procedure or practice, which are not subject to the Administrative Procedure Act's general requirement of publication for notice and comment. Furthermore, prompt issuance of the proposed amendments is essential to one of VA's most important initiatives, improvement of the timeliness and efficiency of claims processing. The backlog of benefit claims awaiting adjudication has reached a critical stage and has been exacerbated by recent remands to ensure compliance with the Veterans Claims Assistance Act of 2000. Immediate action is needed to address this problem and ensure that needy veterans timely receive the benefits to which they are entitled. It is important for the final rule to be published expeditiously in order to begin to realize the benefits of the changes proposed.

Paperwork Reduction Act

All collections under the Paperwork Reduction Act (44 U.S.C. 3501–3520) referenced in this document have existing Office of Management and Budget approval. No changes are made in this document to those collections of information other than to the component in VA that collects this information. Under this proposal, the Board would collect some information that currently is collected by VA regional offices.

Executive Order 12866

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

Regulatory Flexibility Act

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

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: May 10, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR parts 19 and 20 as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.9 is revised to read as follows:

§ 19.9 Further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Board Member or panel of Members may:

(1) Remand the case to the agency of original jurisdiction, specifying the action to be undertaken; or

(2) Direct Board personnel to undertake the action essential for a proper appellate decision.

(b) *Examples.* A remand to the agency of original jurisdiction is not necessary:

(1) To clarify a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal,

and requests for a hearing before the Board; or

(2) For the Board to consider an appeal in light of law, including but not limited to statute, regulation, or court decision, not already considered by the agency of original jurisdiction.

(c) *Scope.* This section does not apply to:

(1) The Board's request for an opinion under Rule 901 (§ 20.901 of this chapter);

(2) The Board's supplementation of the record with a recognized medical treatise; and

(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (§§ 20.609 and 20.610 of this chapter).

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a)).

3. Section 19.31 is revised to read as follows:

§ 19.31 Supplemental statement of the case.

(a) *Purpose and limitations.* A ''Supplemental Statement of the Case,'' so identified, is a document prepared by the agency of original jurisdiction to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. In no case will a Supplemental Statement of the Case be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in the Statement of the Case, or to respond to a notice of disagreement on newly appealed issues that were not addressed in the Statement of the Case. The agency of original jurisdiction will respond to notices of disagreement on newly appealed issues not addressed in the Statement of the Case using the procedures in §§ 19.29 and 19.30 of this part (relating to statements of the case).

(b) *When furnished.* The agency of original jurisdiction will furnish the appellant and his or her representative, if any, a Supplemental Statement of the Case if:

(1) The agency of original jurisdiction receives additional pertinent evidence after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued and before the appeal is certified to the Board of Veterans' Appeals and the appellate record is transferred to the Board;

(2) A material defect in the Statement of the Case or a prior Supplemental statement of the Case is discovered; or

(3) For any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate.

(c) *Pursuant to remand from the Board.* The agency of original jurisdiction will issue a Supplemental Statement of the Case if, pursuant to a remand by the Board, it develops the evidence or cures a procedural defect, unless:

(1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or

(2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.

(Authority: 38 U.S.C. 7105(d)).

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

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

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart J—Action by the Board

5. Section 20.903 is revised to read as follows:

§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) *If the Board obtains a legal or medical opinion.* If the Board requests an opinion pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the appellant if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(b) *If the Board obtains other evidence.* If, pursuant to § 19.9(b) or § 19.37(b) of this part, the Board obtains pertinent evidence that was not submitted by the appellant or the appellant's representative, the Board will notify the appellant and his or her representative, if any, of the evidence obtained. A period of 60 days from the date of mailing of the notice will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum that accompanies the notice for purposes of determining whether a response was timely filed.

(c) *If the Board considers law not already considered by the agency of original jurisdiction.* If the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. The notice from the Board will contain a copy of, or reference to, the law to be considered. A period of 60 days from the date of mailing of the notice will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter that accompanies the notice for purposes of determining whether a response was timely filed.

(Authority: 38 U.S.C. 7104(a), 7109(c)).

Subpart N—Miscellaneous

6. Section 20.1304 is amended by:

a. Revising the fifth sentence in paragraph (a);

b. Revising paragraph (b);

c. Removing paragraph (c); and

d. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) * * * Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section if a simultaneously contested claim is involved.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence.* (1) *General rule.* Subject to the exception in paragraph (b)(2) of this section, following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to

the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Depending upon the ruling on the motion, action will be taken as follows:

(i) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(ii) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section if a simultaneously contested claim is involved.

(2) *If the Board obtains evidence or considers law not considered by the agency of original jurisdiction.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to the notice described in paragraph (b) or (c) of Rule 903 (paragraph (b) or (c) of § 20.903 of this part).

* * * * *

(Authority: 38 U.S.C. 7104, 7105, 7105A).

[FR Doc. 01–19476 Filed 8–3–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4105b; FRL–7021–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Twenty-Five Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions establish and require reasonably available control technology (RACT) for twenty-five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving these SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received by September 5, 2001.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or via e-mail at harris.betty@epa.gov. While information may be requested via e-mail, any comments must be submitted, in writing, as indicated above.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 19, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–19317 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI76–01–7285b; FRL–7023–3]

Approval and Promulgation of Maintenance Plan Revisions; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a March 22, 2001, request from Michigan for a State Implementation Plan (SIP) revision of the Muskegon County, Michigan ozone maintenance plan. The maintenance plan revision allocates a portion of the safety margin to the transportation conformity Mobile Vehicle Emissions Budget (MVEB) for the year 2010. EPA is approving the allocation of 2.14 tons per day of Volatile Organic Compounds (VOC) and 3.27 tons/day of Oxides of Nitrogen (NO_X) to the area's 2010 MVEB. This allocation will still maintain the total emissions for the area below the attainment level required by the transportation conformity regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision, as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule we

plan to take no further action in relation to this proposed rule. If we receive written adverse comments which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Written comments must be received on or before September 5, 2001.

ADDRESSES: Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may inspect copies of the documents relevant to this action during normal business hours at the following location:

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

Please contact Michael G. Leslie at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: July 23, 2001.

David Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–19459 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD057/71/98/115–3074; FRL–7025–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Rate of Progress Plans and Contingency Measures for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions establish the three percent per year emission reduction rate-of-progress (ROP) requirement for the period from 1996 through 2005 for the Baltimore severe ozone nonattainment area (the Baltimore area). In conjunction with the ROP plans for Baltimore, EPA is also proposing to approve the plans' contingency measures for failure to meet ROP. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before September 5, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092, or by e-mail at *gaffney.kristeen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act (the Act) requires that for certain ozone nonattainment areas, states are to submit plans demonstrating a reduction in volatile organic compound (VOC) emissions of at least three percent per year, grouped in consecutive three year periods, through the area's designated attainment date. This is known as the rate-of-progress requirement of the Act. The first ROP requirement covers the period 1990–1996 and is commonly known as the 15 Percent Plan. Subsequent ROP milestone years are grouped in three year intervals beginning after 1996 (*i.e.,* ROP milestone years for Baltimore are 1999, 2002, 2005). Section 182(c)(2)(C) of the Act allows states to substitute nitrogen oxides (NO_X) emission reductions for VOC emission reductions in post 1996 ROP plans. To qualify for SIP credit in ROP plans, emission reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure real, permanent and enforceable emission reductions.

Under the Act, the post 1996 ROP plans were due by November 15, 1994. However, on March 2, 1995, EPA issued a policy memorandum establishing an alternative approach for meeting the attainment demonstration and post 1996 ROP requirements of the Act. This policy memorandum established a phased approach for the submittal of the attainment demonstration. In the first phase (the Phase I plan), states were to submit a plan with specific control measures demonstrating at least the first 9 percent ROP reduction for 1999; interim assumptions or modeling about ozone transport; and enforceable commitments to:

(1) Participate in a consultative process to address regional transport;

(2) Adopt additional control measures as necessary to attain the ozone national ambient air quality standard; and

(3) Identify any reductions that are needed from upwind areas for the area to meet the ozone standard.

In the second phase of this approach (the Phase II plan), states were to submit modeling and plans to show attainment through local and regional controls. For severe ozone nonattainment areas such as Baltimore, the Phase II plan was also to identify the measures needed to demonstrate ROP through the 2005 attainment year. States were to phase-in adoption of rules and implement measures to meet ROP beginning in the period immediately following 1999 and provide for timely implementation of progress requirements.

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. States are required to develop contingency measures in the event an area fails to meet ROP in a given milestone year.

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing

violations, or delay timely attainment of the national ambient air quality standard. Maryland is required to identify motor MVEBs for both NO_X and VOCs in the Baltimore ROP plans for all milestone years.

On March 2, 1999, the D.C. Circuit Court ruled that MVEBs contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. Please note that an adequacy finding for MVEBs contained in a submitted control strategy SIP is separate from EPA's completeness determination of the SIP submission, and separate from EPA's action to approve or disapprove the SIP. Therefore, even if the MVEBs in a submitted control strategy SIP have been found adequate for conformity purposes, the SIP itself could later be disapproved. The process for determining the adequacy of submitted SIP budgets is provided in a guidance memorandum dated May 14, 1999 and titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' You may obtain a copy of this guidance from EPA's conformity website: *http://www.epa.gov/oms/traq* (once there, click on the ''Conformity'' button). The criteria by which EPA determines whether a SIP's MVEBs are adequate for conformity purposes are found at 40 CFR 93.118 (e) (4). Final approval or disapproval of MVEBs occurs in conjunction with final approval or disapproval of the control strategy SIP which identifies and establishes those budgets.

The attainment date for the Baltimore severe ozone nonattainment area is 2005. This rulemaking addresses the SIP revisions submitted by the Maryland Department of the Environment (MDE) to satisfy the post 1996 ROP requirements of the Act for the Baltimore ozone nonattainment area. In this rulemaking, EPA is proposing to approve Maryland's plans demonstrating ROP in the Baltimore nonattainment area through the 2005 attainment year. Also as part of this rulemaking, EPA is proposing to approve the contingency measures that were submitted with the Baltimore ROP plans.

II. Maryland's SIP Revisions

Although Maryland's SIP revision submittals for the Baltimore Phase I and Phase II plans, discussed below, also included Phase I and Phase II plan revisions for the Maryland portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (Philadelphia area) and revisions for the Maryland portion of the Metropolitan Washington, DC ozone nonattainment area (the Washington, DC area); this proposed rulemaking pertains only to the post 1996 ROP plans for the Baltimore area. Also as part of this rulemaking, EPA is proposing to approve the plans' contingency measures for the Baltimore area that were submitted in conjunction with the ROP plans. The attainment demonstration plan portion of Phase II plan for Baltimore is the subject of a separate rulemaking. Likewise, the Phase I and Phase II plans SIP revisions submitted by MDE pertaining to the Philadelphia and Washington, DC areas either are or have been the subject of separate rulemakings.

Under the phased approach, MDE submitted the Phase I plan for the Baltimore area on December 24, 1997 and the Phase II plan on April 24, 1998, with a supplemental submittal on August 18, 1998. MDE subsequently revised portions of both its Phase I and Phase II plan submittals for the Baltimore area and submitted those revisions to EPA as SIP revisions on December 21, 1999 and December 28, 2000. Descriptions of the submitted SIP revisions related to the ROP plans for the Baltimore area are provided below.

On December 24, 1997, Maryland submitted a SIP revision for the Phase I plan for the Baltimore area. Maryland's December 24, 1997 Phase I plan submittal contained:

(1) The first nine percent ROP demonstration for the 1999 milestone year;

(2) Corrections to the 1990 base year emissions inventories;

(3) Revisions to the 15 Percent plan for Baltimore; and

(4) Enforceable commitments to address the first phase of the attainment plan.

On April 24, 1998, MDE submitted a SIP revision for the Phase II plan for the Baltimore nonattainment area. EPA asked MDE to submit additional technical information for the Phase II plan. MDE submitted the Phase II supplement on August 18, 1998. The Phase II plan contained the 2005 attainment demonstration and the ROP demonstrations for milestone years 2002 and 2005. The Phase II plan also contained additional information and revised mobile emissions modeling for the December 24, 1997 Phase I ROP submittal. Specifically for the Baltimore nonattainment area, the Phase II plan SIP revision requested that the chapter on conformity, including MVEBs, and Appendix E, including the target levels, emission estimates, projection year estimates and reduction credit estimates for 1999 contained in the original Phase I plan be replaced by the information contained in the Phase II plan submittal.

On December 3, 1999, MDE submitted a draft SIP revision to EPA for parallel processing. On December 21, 1999, MDE submitted the formal SIP revision. This SIP revision modified the Phase II plan for the Baltimore nonattainment area. Specifically, this SIP revision revised the MVEBs for the Baltimore nonattainment area for the ROP milestone years 2002 and 2005. EPA determined these MVEBs adequate for use in conformity determinations on February 15, 2000. That determination became effective on March 8, 2000 (see 65 FR 8701 published February 22, 2000).

On December 28, 2000, MDE submitted a SIP revision again modifying the Phase II plan for the Baltimore nonattainment area. This plan revision modified the attainment demonstration plan's MVEBs (for 2005) to reflect the emission reduction benefits of the Federal Tier 2/Sulfur-in-Fuel regulation. This revision was required because the attainment demonstration plan for the Baltimore area, for which EPA proposed approval on December 16, 1999 (64 FR 70397), includes emission reduction benefits from the Federal Tier 2/Sulfur-in-Fuel regulation. EPA determined these MVEBs adequate for use in conformity determinations on June 19, 2001. That determination became effective on June 20, 2001 (see 66 FR 35421 published July 5, 2001).

The ROP plans that are the subject of this proposed rulemaking do not include emission reduction benefits from the Federal Tier 2/Sulfur-in-Fuel regulation as those reductions are not necessary to demonstrate ROP. Consequently, the MVEBs identified and established in these ROP plans do not reflect the emission reduction benefits of the Federal Tier 2/Sulfur-in-Fuel regulation. It must be noted, therefore, that for the year 2005, the more restrictive MVEBS established and identified in revised attainment demonstration plan submitted by MDE on December 28, 2000 (and found adequate by EPA on June 19, 2001), are the applicable MVEBs to be used in transportation conformity demonstrations for the Baltimore area.

However, Maryland's December 28, 2000 submittal did revise the Baltimore ROP demonstrations for the milestone years 2002 and 2005. During the review of the revisions to the ROP plans contained in the December 28, 2000 SIP submittal, EPA requested additional technical support documentation from MDE. The MDE submitted this additional technical support to EPA on

July 2, 2001. This information has been added to the docket for this proposed rulemaking and includes:

(1) Rule effectiveness adjustments to several stationary source control measures;

(2) Adjustments to the VOC and NO_X target levels for 1999, 2002 and 2005 to account for the application of rule effectiveness on certain stationary source control measures; and

(3) Revisions to the emission reduction benefits from Maryland's auto body refinishing rule, NO_X RACT rule, NO_X Budget rule (based upon the Ozone Transport Commission's model rule to require additional NO_X reductions, beyond RACT, from certain major sources beginning in May of 1999) and its NO_X SIP Call rule. The revised emission reduction benefits reflect the final state-adopted regulations for these control programs.

III. EPA Evaluation of Maryland's Submittals

A. Rate-of-Progress Plans

(1) Calculation of Needed Reductions—The first step in demonstrating ROP is to determine the target level of allowable emissions for each ROP milestone year. The target level of emissions represents the maximum amount of emissions that can be emitted in a nonattainment area in the given ROP milestone year, which in this case is 1999, 2002 or 2005. The Act allows states to substitute NO_X emission reductions for VOC emission reductions in post 1996 ROP plans. The required ROP is demonstrated when the sum of all creditable VOC and NO_X emission reductions equal at least 3 percent per year grouped in three year periods (*i.e.,* 1996–1999), or for a total of 9 percent. If a state wishes to substitute NO_X for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9 percent emission reduction in VOC and NO_X emissions must be developed for that milestone year.

The attainment demonstration modeling for the Baltimore area establishes that NO_X reductions are necessary to bring the area into attainment. EPA proposed to approve the attainment demonstration for the Baltimore area in the **Federal Register** on December 16, 1999. Because NO_X reductions are necessary for attainment, Maryland is also using NO_X reductions to demonstrate ROP in the Baltimore area. MDE developed NO_X target levels to account for the NO_X substitution. The process for calculating the target levels is as follows:

(a) Develop the base year emissions inventories for NO_X and VOCs.

(b) Develop the 1990 ROP base year inventory (for VOCs only by subtracting biogenic emissions and sources located outside the nonattainment area from the base year inventory).

(c) Calculate the 1990 adjusted base year inventories (this part excludes from the baseline the emissions that would be eliminated by the Federal Motor Vehicle Control Program (FMVCP) and Reid Vapor Pressure (RVP) regulations promulgated prior to enactment).[1]

(d) Calculate the 3 percent per year reduction required to demonstrate ROP for each consecutive three year milestone interval (multiply the adjusted base year inventory by 0.09). The ROP milestone years are 1999, 2002 and 2005.

(e) Calculate the fleet turnover correction term for the three year period. The fleet turnover correction is the difference between the FMVCP/RVP emission reductions calculated in step #3 and the previous milestone year's FMVCP/RVP emission reductions.

(f) Calculate the target level of emissions for the milestone year, by subtracting #4 and #5 from the previously established target level for the area. For the 1999 milestone year, the VOC target level for 1996 was established in the 15 Percent plan. For NO_X, there is no 1996 target level, so the 1999 target level is calculated from the NO_X base year inventory.

Tables 1 and 2 below summarize the target level calculations for both NO_X and VOCs for the 1999, 2002 and 2005 ROP milestone years. The target level calculations show, using a combination of VOC and NO_X emission reductions, at least a 9 percent total reduction for all milestone years. Maryland has correctly calculated the 1999, 2002 and 2005 target levels for the Baltimore area following EPA's guidance and the approach outlined above.

TABLE 1.—BALTIMORE AREA VOC TARGET LEVELS IN TONS PER DAY

	1999	2002	2005
1990 Base Year Inventory	523.3	523.3	523.3
(Minus biogenic emissions)	(−180.0)	(−180.0)	(−180.0)
1990 Rate of Progress Base Year Inventory	343.3	343.3	343.3
(Minus non-creditable FMVCP/RVP)	(−44.5)	(−48.0)	(−49.2)
1990 Adjusted Base Year Inventory	298.8	295.3	294.1
ROP Percentage Reduction	*.15	*2.5	*3.5
ROP Emission Reductions	.45	7.38	10.29
Fleet Turnover Correction	0.0	3.5	1.2
Target Level from Previous Milestone Year	253.3	252.85	241.97
(Minus Emission Reduction Requirement)	(−.45)	(−7.38)	(−10.29)
(Minus Fleet Turnover Correction)	(−0.0)	(−3.5)	(−1.2)
Target Level	252.85	241.97	230.48

TABLE 2.—BALTIMORE AREA NO_X TARGET LEVELS IN TONS PER DAY

	1999	2002	2005
1990 Base Year Inventory	467.9	467.9	467.9
(Minus non-creditable FMVCP/RVP)	(−32.3)	(−35.0)	(−35.4)
1990 Adjusted Base Year Inventory	435.6	432.9	432.5
ROP Percentage Reduction	*8.85	*6.5	*5.5

[1] Section 182(b)(2)(B) of the Act defines the baseline year of emissions as ''the total amount of actual VOC and NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment of the Clean Air Act amendments. This section prohibits from the baseline the emissions that would be eliminated by the FMVCP regulations promulgated by January 1, 1990, and the RVP regulations promulgated by the time of enactment.

TABLE 2.—BALTIMORE AREA NO_X TARGET LEVELS IN TONS PER DAY—Continued

	1999	2002	2005
ROP Emission Reductions	38.55	28.14	23.79
Fleet Turnover Correction	32.3	2.7	0.4
Target Level from Previous Milestone Year	467.9	397.05	366.21
(Minus Emission Reduction Requirement)	(−38.55)	(−28.14)	(−23.79)
(Minus Fleet Turnover Correction)	(−32.3)	(−2.7)	(−0.4)
Target Level	397.05	366.21	342.02

(2) Growth Projections (1990–2005)—Rate-of-progress must be demonstrated net of all new emissions growth in the area. Therefore, states must include adequate emission reductions in their ROP plans to offset the emissions growth projected to occur after 1990. States account for growth by projecting their 1990 base year emission inventories to estimate emissions growth between 1990 and the attainment year. The projected inventories must reflect expected growth in activity, as well as regulatory actions which will affect emission levels. EPA guidance says that emission projections for point sources can be based upon information obtained directly from facilities and/or permit applications. Area and mobile source emission projections may be developed from information from local planning agencies. In the absence of source-specific data, credible growth factors must be developed from accurate forecasts of economic variables and the activities associated with the variables. The economic variables that may be used as indicators of activity growth are: Product output, value added, earnings, and employment. Population can also serve as a surrogate indicator. Mobile source emissions projections can be estimated using EPA's MOBILE5 emissions model.

The methodologies used by Maryland to project emissions growth and EPA's evaluation are discussed in the technical support document (TSD) prepared in support of this rulemaking action. Maryland used appropriate methodologies to project emissions growth in all source categories. The projection year inventories for NO_X and VOCs through the 2005 attainment year are shown in Tables 3 and 4 below. EPA has determined that these growth estimates are approvable.

TABLE 3.—BALTIMORE PROJECTED (UNCONTROLLED) VOC EMISSIONS IN TONS PER DAY

Source category	1990 VOC baseline	1999 VOC projected	2002 VOC projected	2005 VOC projected
Point	42.0	48.1	51.4	54.2
Mobile	134.2	108.7	105.3	106.1
Nonroad	44.7	50.9	53.37	55.76
Area	122.4	128.7	130.5	132.2
Total	343.3	336.4	340.57	348.26

TABLE 4.—BALTIMORE PROJECTED (UNCONTROLLED) NO_X EMISSIONS IN TONS PER DAY

Source Category	1990 NO_X baseline	1999 NO_X projected	2002 NO_X projected	2005 NO_X projected
Point	223.2	240.6	247.5	251.9
Mobile	159.5	157.1	169.6	173.8
Nonroad	71.5	82.0	86.65	91.84
Area	13.7	14.8	15.1	15.4
Total	467.9	494.50	518.85	532.94

(3) Evaluation of Emission Control Measures—The purpose of the ROP plan is to demonstrate how the state has reduced emissions 3 percent per year, grouped in three year intervals, through the area's attainment year. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and are real, permanent, quantifiable, federally enforceable and they occurred by the applicable ROP milestone year. An evaluation of each of the control measures implemented by Maryland in the Baltimore nonattainment area can be found in the TSD prepared for this rulemaking. Table 5 below provides a summary of the control measures used by Maryland to achieve ROP in the Baltimore nonattainment area. All control measures in the ROP demonstration have been adopted and implemented by the State of Maryland or are Federal measures being implemented nationally. All state control measures have been fully approved by EPA into the Maryland SIP and are permanent and enforceable. The mobile source control programs include the total amount of reductions associated with enhanced vehicle inspection and maintenance, Tier 1 motor vehicle emission standards, reformulated gasoline, the National Low Emissions Vehicle program, and highway heavy duty diesel engine standards. EPA's MOBILE5b emissions model was used to generate mobile source emission reductions.

TABLE 5.—SUMMARY OF ROP EMISSION CONTROL MEASURES FOR BALTIMORE IN TONS PER DAY

Control measure	1999 VOC reduction	1999 NO_X reduction	2002 VOC reduction	2002 NO_X reduction	2005 VOC reduction	2005 NO_X reduction
Open Burning	2.91	0.61	2.91	0.61	2.91	0.61
AIM Coatings	5.49	.....	5.52	.....	5.55	.....
Consumer Products	2.72	.....	2.78	.....	2.83	.....
Autobody Refinishing	7.48	.....	7.79	.....	8.07	.....
Surface Cleaning/Degreasing	5.79	.....	5.78	.....	5.76	.....
Landfills	0.1	.....	0.24	.....	0.27	.....
VOC RACT—Expandable Polystyrene	0.09	.....	0.09	.....	.10	.....
VOC RACT—Yeast Facilities	0.75	.....	0.81	.....	0.87	.....
VOC RACT—Commercial Bakeries	0.68	.....	0.71	.....	0.72	.....
VOC RACT—Screen Printing	0.18	.....	0.19	.....	0.2	.....
Flexographic and Rotogravure Printers	0.86	.....	0.88	.....	0.9	.....
Lithographic Printers	2.46	.....	2.61	.....	2.66	.....
Federal Air Toxics	0.5	.....	0.5	.....	0.5	.....
State Air Toxics	0.88	.....	0.88	.....	0.96	.....
Enhanced Rule Compliance	4.7	.....	4.9	.....	5.1	.....
Nonroad Heavy Duty Diesel	.....	4.7	.....	10.96	.....	16.13
Nonroad Small Gas Engines	6.1	(−0.3)	9.69	(−0.37)	17.51	(−0.45)
Marine Engine Standards	.....	.....	0.86	(−0.01)	1.79	(−0.07)
Locomotive Engine Standards	.....	.....	.....	2.42	.....	4.2
NO_X RACT	.....	4.83	.....	4.93	.....	5.01
OTC NO_X Budget Program and the NO_X SIP Call	.....	87.2	.....	109.74	.....	128.2
Gasoline Vapor Recovery	8.1	.....	9.0	.....	10.0	.....
Mobile Source Control Programs	33.8	32.8	51.2	56.7	57.4	69.5
Total	83.6	129.9	107.3	184.98	124.1	223.1

(4) Summary of ROP Evaluation—Maryland's ROP demonstration for the Baltimore nonattainment area is summarized in tons per day in Table 6 below. The table shows that the projected control strategy inventories are less than or equal to the target level established for each milestone year. Therefore, the ROP plans demonstrate that emissions have been reduced by a minimum of 9 percent, net of growth, for each milestone year.

TABLE 6.—BALTIMORE NONATTAINMENT AREA ROP DEMONSTRATION IN TONS PER DAY

	1999 VOC	1999 NO_X	2002 VOC	2002 NO_X	2005 VOC	2005 NO_X
Projected Uncontrolled Emissions (includes growth) (refer to tables 3 and 4)	336.4	494.5	340.6	518.9	348.3	532.9
Reductions From Creditable Emission Control Measures (refer to table 5)	83.6	129.9	107.3	184.98	124.1	223.1
Emissions Level Obtained (uncontrolled emissions minus emission reductions)	252.8	364.6	233.3	333.9	224.2	309.8
Projected Target Levels (refer to tables 1 and 2)	252.85	397.05	241.97	366.21	230.48	342.02
Surplus Emission Reductions (target levels minus emissions obtained)	.05	32.45	8.67	32.31	6.28	32.22

B. Motor Vehicle Emissions Budgets

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43779). A control strategy SIP identifies and establishes the MVEBs to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standard. Maryland is required to identify motor MVEBs for both NO_X and VOCs in the Baltimore post 96 ROP plans for all milestone years. The budgets for the Baltimore area are shown in Table 7 below.

TABLE 7.—ROP MOTOR VEHICLE EMISSION BUDGETS FOR THE BALTIMORE AREA IN TONS PER DAY

	VOC	NO_X
1999	69.8	115.7
2002	54.0	112.6
2005	48.6	104.1

As explained previously, EPA determined the 2002 and 2005 MVEBs identified and established in the December 21, 1999 submittal of the ROP plans and shown Table 7 above adequate for use in conformity determinations on February 15, 2000. That determination became effective on March 8, 2000 (see 65 FR 8701 published February 22, 2000). However, as also explained previously, on June 19, 2001, EPA determined the revised 2005 MVEBs, identified and established in the December 28, 2000 submittal of the revised attainment demonstration plan for the Baltimore area, adequate for use in conformity determinations. That determination became effective on July 20, 2001 (see 66 FR 35421 published July 5, 2001). Those 2005 attainment plan MVEBs budgets are 45.5 tons per day of VOC and 96.9 tons per day of NO_X. These more restrictive MVEBs, established and identified in the December 28, 2000 revised attainment demonstration plan submitted by MDE, are the applicable MVEBs to be used in

transportation conformity demonstrations for the year 2005 for the Baltimore area.

C. Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures that would have to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. EPA issued guidance that allows states to implement their contingency measures early, provided the measures are not needed now to demonstrate ROP. EPA does not believe it is logical to penalize areas that are taking extra steps to implement contingency measures early, nor should states be required to backfill for the early activation of contingency measures.

In the Baltimore ROP plan, Maryland outlines its approach for using already implemented control measures for contingency purposes. The EPA encourages the early implementation of required control measures and of contingency measures as a means of guarding against failure to meet a milestone or to attain. Maryland has adopted more emission control programs than is necessary to demonstrate ROP in the Baltimore nonattainment area. These extra or ''surplus'' emission reductions are shown in Table 6 above. Maryland's plan for the Baltimore area shows an adequate amount of emission reductions have occurred beyond those required for ROP, and therefore, any surplus emission reductions can be considered as early implementation of contingency measures. Surplus emission reductions associated with control measures that are not required in the nonattainment area by the Act can be used for contingency purposes. Maryland has adopted several measures which are available for consideration as the early implementation of contingency measures, including controls on open burning, enhanced rule compliance, the National Low Emissions Vehicle program and the OTC NO_X Budget program.

Therefore, the requirements of the Act with regard to providing contingency measures should the area fail to achieve ROP, have been satisfied for the Baltimore area in accordance with EPA guidance.

EPA's review of Maryland's SIP revisions indicates that the post 1996 ROP requirements of the Act have been met for the Baltimore ozone nonattainment area. EPA is proposing to approve the post 1996 ROP plans for Baltimore for milestone years 1999, 2002 and 2005 that were submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is soliciting public comments on its proposal to approve these post 1996 ROP plans and the contingency measures as discussed in this document. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to approve the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Baltimore severe ozone nonattainment area submitted on December 24, 1997, as revised on April 24 and August 18, 1998, December 21, 1999 and December 28, 2000. EPA is also proposing to approve the contingency plans for failure to meet ROP in the Baltimore nonattainment area, submitted in conjunction with the ROP demonstrations.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve 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 proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule to approve the post 1996 ROP plans for the Baltimore severe ozone nonattainment area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

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

Dated: July 26, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–19563 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 120–1120; FRL–7024–4]

Approval and Promulgation of Implementation Plans and Part 70 Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) and part 70 Operating Permits Program. EPA is approving a revision to Missouri rule ''Submission of Emission Data, Emission Fees, and Process Information.'' This revision will ensure consistency between the state and Federally approved rules, and ensure Federal enforceability of the state's air program rule revision pursuant to both section 110 of the Clean Air Act and part 70 Operating Permits Program.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by September 5, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: July 17, 2001.

William A. Spratlin,

Acting Regional Administrator, Region 7.

[FR Doc. 01–19455 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–038–EXTb; FRL–7024–1]

Clean Air Act Promulgation of Extension of Attainment Date for the San Diego, California Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the attainment date for the San Diego serious ozone nonattainment area from November 15, 2000, to November 15, 2001. This extension is based in part on monitored air quality readings for the 1-hour national ambient air quality standard (NAAQS) for ozone during 2000. In the final rules section of this **Federal Register,** we are approving the State's request as a ''direct final'' rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule.

If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive substantive adverse comments which have not already been responded to, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received before September 5, 2001.

ADDRESSES: Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below: California Air Resources Board, 1001 I Street, Sacramento, CA 95812.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register.**

Dated: July 25, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–19457 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7024–5]

RIN 2060–AG13

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Engines Weighing 14,000 Pounds Gross Vehicle Weight or Less

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency is revising the public comment period on the Service Information Availability Notice of Proposed Rulemaking (NPRM) which was published in the **Federal Register** on June 8, 2001 (66 FR 30830). The NPRM dealt with the use of on-board diagnostic systems and emission-related repairs on light-duty vehicles and trucks

and heavy-duty vehicles and engines. The public comment period was to end on August 7, 2001. The purpose of this document is to provide an additional 20 days to the comment period, which will end on August 27, 2001. This extension of the comment period is provided to provide the public with 30 days following the public hearing, which is scheduled for July 25, 2001, to comment on this NPRM.

DATES: EPA will accept public comments until August 27, 2001.

ADDRESSES: Comments must be submitted to Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

Materials relevant to this rulemaking are contained in EPA Air Docket No.A–2000–49. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105. Telephone 734–214–4288; Fax 734–214–4053; e-mail *pugliese.holly@epa.gov.*

Dated: July 31, 2001.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–19567 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–7023–6]

Minnesota; Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of tentative determination on application of State of Minnesota for final approval, public hearing and public comment period.

SUMMARY: The State of Minnesota has applied for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Minnesota application and has made the tentative decision that Minnesota's underground storage tank program satisfies all of the requirements necessary to qualify for approval. The Minnesota application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

DATES: A public hearing is scheduled for September 28, 2001, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by August 27, 2001. EPA will determine by September 5, 2001, whether there is significant interest to hold the public hearing. The State of Minnesota will participate in the public hearing held by EPA on this subject. Written comments on the Minnesota approval application, as well as requests to present oral testimony, must be received by the close of business on September 28,2001.

ADDRESSES: Copies of the Minnesota approval application are available at the following addresses for inspection and copying:

Minnesota Pollution Control Agency, Regular Facilities Section, Metro District, 520 Lafayette Road North, St. Paul, Minnesota 55155, Telephone: (651) 296–7790, 8 am through 4 pm, Central Daylight Savings Time.

U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, Telephone: (703) 603–9230, 9:00 am through 4:00 pm, Eastern Daylight Savings Time; and

U.S. EPA Region 5 Library, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 353–2022, 10 am through 4 pm, Central Daylight Savings Time.

Written comments should be sent to Mr. Andrew Tschampa, Chief of Underground Storage Tank Section, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 886–6136.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of Minnesota's application for program approval on September 28, 2001, at 9:00 am, Central Daylight Savings Time, at the Minnesota Pollution Control Agency (MPCA), MPCA Board Room, Lower Level, 520 Lafayette Road North, St. Paul, Minnesota. Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts after September 5, 2001:

Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 886–6136, or

Mr. Bob Dullinger, Supervisor, Tanks Program, Regular Facilities Section, Metro District, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155, Telephone: (651) 297–8608.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, Telephone: (312) 886–6136.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: is ''no less stringent'' than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions.

II. Minnesota

The Minnesota Pollution Control Agency (MPCA) is the implementing agency for underground storage tank activities (UST) activities in the State.

On July 13, 1991, Minnesota adopted UST program regulations for petroleum and hazardous substance underground storage tanks. Prior to the adoption of

the regulations, Minnesota solicited public comments on the draft UST program regulations.

The MPCA submitted their application for State Program Approval (SPA) of Minnesota's UST program to U.S. EPA by letter dated May 11, 2000. The EPA reviewed the application for completeness and determined before the application could be considered complete a number of items had to be addressed. All the outstanding items were addressed. EPA notified the MPCA in a February 26, 2001, letter that the Minnesota application was complete. In addition, EPA has reviewed the MPCA application and has tentatively determined that the State's UST program meets all of the requirements necessary to qualify for final approval.

EPA will hold a public hearing on its tentative decision on September 28, 2001, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until September 28, 2001. Copies of the Minnesota application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the hearing, or received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Minnesota. EPA expects to make a final decision on whether or not to approve Minnesota's program within 60 days of the close of the public comment period, and will give notice of it in the **Federal Register**. The document will include a summary of the reasons for the final determination and a response to all major comments.

Included in the State's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the State's statutory and regulatory authority and details concerning areas where the State program is broader in scope or more stringent than the federal program.

In addition to the areas noted in the Attorney General's statement, several aspects of the State's program should be noted.

1. Corrective Action Requirements and Program Implementation

The MPCA requirements for corrective action are found in State statutes, rules, and MPCA procedures and guidance documents. The term ''waters of the state'' found in Minnesota Statute Section 115.061(a) provides the legal foundation for the State's corrective action requirements and program. MPCA broadly interprets the ''waters of the state'' definition to include waters, including but not limited to, ponds, waterways, aquifers, and drainage systems. The MPCA requires that all spills, except petroleum spills of five gallons or less, be reported to the agency. Minnesota Statute 115.061(a) also requires that responsible persons must recover as rapidly and as thoroughly as possible the spilled material and take other actions to minimize or abate pollution.

The MPCA implements its corrective action program through broad statutory language, as summarized in the Attorney General's statement, in conjunction with commissioner's orders, and program guidance, and other documentation. In addition, the MPCA developed fact sheets and forms to provide technical guidance for all phases of petroleum release reporting, investigation, and cleanup. Through the enforcement of commissioner's orders, incorporating technical guidance documents by reference, the MPCA has the authority to require responsible persons to carry out effective corrective actions to address UST releases.

2. Financial Responsibility Requirements

The MPCA's requirements for financial responsibility are found in State statutes and rules that ensure the availability of sufficient resources to clean up a petroleum release. Minnesota Statute Section 115C.03 requires a responsible person to take corrective action for underground storage tank releases. Minnesota Statute 115C.07 establishes the Petroleum Tank Release Compensation Board (the ''Petro Board'') and Section 115C.08 establishes the Petrofund to provide for reimbursement of expenditures for cleanup of petroleum releases. If the responsible person fails to complete corrective action as required, the MPCA is authorized to complete all appropriate corrective actions, using funds from the Petrofund, and to seek to recovery of those costs from the responsible person. Therefore, EPA believes the Petrofund program meets the financial responsibility objective under 40 CFR 281.37.

It should be noted in Minnesota, tank facilities, including pipeline terminals, with more than 1 million gallons of total petroleum storage capacity at the tank facility are excluded from the Petrofund reimbursement program. Most product stored at these sites is in aboveground storage tanks. The MPCA has determined that currently only six of these sites also have UST systems. The EPA directly contacted each of the six facilities to determine if these facilities meet the federal financial responsibility requirements found at 40 CFR part 280, subpart H. EPA determined that each facility was in compliance with those requirements.

The Minnesota Petrofund is an essential component in the State's program in meeting the financial responsibility State program approval objective. Therefore, any future changes to the Petrofund could impact State program approval. Minnesota Statute Section 115C.13 contains a Repealer provision which includes and affects Section 115C.08, the Petroleum Tank Fund. Specifically, the Petrofund is scheduled to be repealed on June 30, 2005. If the Petrofund expires in 2005, the State of Minnesota will need to adopt other requirements to meet the Federal financial responsibility objective to retain State Program Approval.

3. Indian Lands/Country Clarification

Minnesota is not authorized to carry out the Federal underground storage tank program in Indian country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of federally recognized Indian reservations within or abutting the State of Minnesota;
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a federally recognized Indian reservation that qualifies as Indian country pursuant to 18 U.S.C. 1151.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA, Subtitle I program on these lands.

4. Heating Oil Tanks Clarification

In Minnesota, 1100 gallon or greater USTs that contain heating oil for consumptive purposes must comply with the State tank notification requirements. In the Federal UST regulations, all USTs storing heating oil for consumptive use on the premises are exempt from regulation. Therefore, we consider Minnesota's program to be broader in scope in this area because the State requires tank notifications for these types of USTs.

III. Administrative Requirements

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. Minnesota's participation in EPA's state program approval process under RCRA Subtitle I is voluntary. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may own and/or operate underground storage tanks, they are already subject to the regulatory requirements under the existing State requirements that EPA is now approving and, thus, are not subject to any additional significant or unique requirements by virtue of this action. Thus, the requirements of section 203 of the UMRA also do not apply to today's rule.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that own and/or operate underground storage tanks are already subject to the State underground storage tank requirements which EPA is now approving. This action merely approves for the purpose of RCRA section 9004 those existing State requirements.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13045 (Children's Health)

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a state program.

Compliance With Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

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

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Minnesota is not approved to implement the RCRA underground storage tank program in Indian country. This action has no effect on the underground storage tank program that EPA implements in the Indian country within the State. Thus, Executive Order 13175 does not apply to this rule.

Compliance With Executive Order 13132 (Federalism)

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

the States, or on the distribution of power and responsibilities among the various levels of government.'' Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. It will not have a substantial direct effect on 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, because it affects only one State. This action simply provides EPA approval of Minnesota's voluntary proposal for its State underground storage tank program to operate in lieu of the Federal underground storage tank program in that State. Thus, the requirements of section 6 of the Executive Order do not apply.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 13, 2001.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. 01–19561 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7023–4]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed notice of intent to delete the Kem-Pest Laboratories Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 7 is issuing a notice of intent to deletion of the Kem-Pest Laboratories Superfund Site, located in Cape GirardeauCounty, Missouri, from the National Priorities List (NPL) and is only requesting adverse public comment(s) on the direct final notice. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and HazardousSubstances Pollution Contingency Plan. The EPA and the state of Missouri, through the Missouri Department of Natural Resources, has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund. In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Kem-Pest Laboratories Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comments(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by September 5, 2001.

ADDRESSES: Written comments should be addressed to Hattie Thomas, Community Involvement Coordinator, U.S. EPA, Region 7, Office of External Programs, 901 N. 5th Street, Kansas City, Kansas 66101, or at (913) 551–7003 or toll free at 1–800–223–0425.

FOR FURTHER INFORMATION CONTACT: Victor A. Lyke, Remedial Project Manager (RPM) at U.S. EPA, Region 7, Superfund Division, 901 N. 5th Street, Kansas City, Kansas, 66101 or (913) 551–7256 or toll free at 1–800–223–0425.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA, Region 7 Superfund Records Center, 901 N. 5th Street, Kansas City, Kansas 66101 and Cape Girardeau Public Library 711 N. Clark Street, Cape Girardeau, Missouri 63701.

List of Subjects in 40 CFR Part 300

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

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

Dated: July 24, 2001.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–19319 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1771, MM Docket No. 01–164, RM–10135]

Digital Television Broadcast Service; New Orleans, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by LeSEA Broadcasting Corporation, licensee of station WHNO(TV), NTSC channel 20, New Orleans, Louisiana, requesting the substitution of DTV channel 21 for station WHNO(TV)'s assigned DTV channel 14. DTV Channel 21 can be allotted to New Orleans, Louisiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (29–55–11 N. and 90–01–29 W.). As requested, we propose to allot DTV Channel 21 to New Orleans with a power of 300 and a height above average terrain (HAAT) of 254 meters.

DATES: Comments must be filed on or before September 21, 2001, and reply comments on or before October 9, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John E. Fiorini III, Lee G. Petro, Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel for LeSEA Broadcasting Corporation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–164, adopted July 26, 2001, and released July 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Louisiana is amended by removing DTV Channel 14 and adding DTV Channel 21 at New Orleans.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–19410 Filed 8–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1772, MM Docket No. 01–165, RM–9768]

Digital Television Broadcast Service; Clarksburg, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Davis Television Clarksburg, LLC, licensee of station WVFX(TV), NTSC Channel 46, Clarksburg, West Virginia, requesting the substitution of DTV Channel 10 for its assigned DTV Channel 28. DTV Channel 10 can be allotted to Clarksburg, West Virginia, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates 39–18–02 N. and 80–20–37 W. DTV Channel 10 can be allotted Clarksburg with a power of 30 kW and a height above average terrain (HAAT) 260 meters. Since the community of Clarksburg is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before September 21, 2001, and reply comments on or before October 9, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ross G. Greenberg, Leventhal, Senter & Lerman, Suite 600, 2000 K Street, NW, Washington, DC 20006–1809 (Counsel for Davis Television Clarksburg, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–165, adopted July 26, 2001, and released July 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia is amended by removing DTV Channel 28 and adding DTV Channel 10 at Clarksburg.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–19411 Filed 8–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1773, MM Docket No. 01–166, RM–10182]

Digital Television Broadcast Service; Calumet, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Scanlan Television, Inc, licensee of Station WBKP–TV, NTSC Channel 5, Calumet, Michigan, requesting the substitution of DTV Channel 11 for DTV Channel 18. DTV Channel 11 can be allotted to Calumet, Michigan, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (46–26–17 N. and 88–02–58 W.). However, since the community of Calumet is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this allotment. As requested, we propose to allot DTV Channel 11 to Calumet with a power of 96.2 and a height above average terrain (HAAT) of 318 meters.

DATES: Comments must be filed on or before September 21, 2001, and reply comments on or before October 9, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kevin C. Boyle, Latham & Watkins, 555 Eleventh Street, Suite 1000, Washington, DC 20004 (Counsel for Scanlan Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–166, adopted July 26, 2001, and released July 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan is amended by removing DTV Channel 18 and adding DTV Channel 11 at Calumet.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–19412 Filed 8–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1774, MM Docket No. 01–167, RM–10180]

Digital Television Broadcast Service; Calais, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Maine Public Broadcasting Corporation, licensee of noncommercial educational station WMED–TV, NTSC channel *13, Calais, Maine, requesting the substitution of DTV channel *10 for station WMED–TV's assigned DTV channel *15. DTV Channel *10 can be allotted to Calais, Maine, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (45–01–45 N. and 67–19–26 W.). As requested, we propose to allot DTV Channel *10 to Calais with a power of 3.5 and a height above average terrain (HAAT) of 133 meters. However, since the community of Calais is located within 400 kilometers of the U.S. Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before September 21, 2001, and reply comments on or before October 9, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for Maine Public Broadcasting Corporation)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–167, adopted July 26, 2001, and released July 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Maine is amended by removing DTV Channel *15 and adding DTV Channel *10 at Calais.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–19413 Filed 8–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1828, MM Docket No. 01–171, RM–10158]

Television Broadcast Service; Destin, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Kaleidoscope Partners, E. Terrill Weiss d/b/a West Florida TV Acquisition Company, Delta Media Corporation, Marri Broadcasting Corporation, ValueVision International, Inc., and Winstar Broadcasting Corporation, mutually exclusive applicants for a construction permit for a new TV station on channel 64+ at Destin, Florida, requesting the substitution of channel 48 for channel 64+ at Destin. TV channel 48 can be allotted to Destin, Florida, in compliance with Section 73.623(c) of the Commission's Rules with a zero offset at coordinates 30–30–52 N. and 86–13–12 W. Pursuant to the provisions outlined in the Commission's Public Notice, released November 22, 1999, DA 99–2605, we will not accept competing expressions of interest in the use of TV channel 48 at Destin.

DATES: Comments must be filed on or before September 24, 2001, and reply comments on or before October 9, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard M. Weiss, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for joint applicants).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–171, adopted July 31, 2000, and released August 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Florida is amended by removing TV Channel 64+ and adding TV Channel 48 at Destin.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–19504 Filed 8–3–01; 8:45 am]

BILLING CODE 6172–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG99

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of the Draft Economic Analysis for Proposed Critical Habitat for the Oahu Elepaio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed determination of critical habitat for the Oahu elepaio (*Chasiempis sandwichensis ibidis*), a bird, on the island of Oahu, Hawaii. We are also providing notice of the reopening of the public comment period for the proposal to designate critical habitat for this bird to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened public comment period and will be fully considered in the final rule.

DATES: We will accept public comments until September 5, 2001.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife

Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. For electronic mail address and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, or Eric VanderWerf, Biologist, U.S. Fish and Wildlife Service, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Oahu elepaio is a small forest-dwelling bird, and is a member of the monarch flycatcher family Monarchidae. It is dark brown above and white below, with light brown streaks on the breast. The tail is long and often held up at an angle. Adults have conspicuous white wing bars, a white rump, and white tips on the tail feathers. Oahu elepaio inhabit a variety of forest types, but are most common in riparian vegetation along streambeds and in mesic forest with a tall canopy and a well-developed understory. They are not currently found in very wet, stunted forest on windswept summits or in very dry shrub land, but these areas may be used by dispersing individuals. Forest structure appears to be more important to elepaio than plant species composition, and unlike many Hawaiian forest birds, elepaio are found in disturbed forest composed of introduced plants. Historically the elepaio was common and widespread on Oahu, but it has declined seriously and the current population is approximately 1,982 birds distributed in six core subpopulations and several smaller subpopulations.

We were petitioned by Mr. Vaughn Sherwood on March 22, 1994, to list the Oahu elepaio as an endangered or threatened species with critical habitat. The November 15, 1994, Animal Notice of Review (59 FR 58991) classified the Oahu elepaio (then *Chasiempis sandwichensis gayi*) as a category 1 candidate. Category 1 candidates were those species for which we had sufficient data in our possession to support a listing proposal. On June 12, 1995 (60 FR 30827), we published a 90-day petition finding stating that the petition presented substantial information that listing may be warranted. Category 1 candidates were those taxa for which we had on file sufficient information of biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. In our February 28, 1966, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7595), we discontinued designation of multiple categories of candidates. Only those taxa meeting the definition of former category 1 are now considered candidates for listing. On October 6, 1998 (63 FR 53623), we published the proposed rule to list the Oahu elepaio as an endangered species. Because *C. s. gayi* is a synonym of *C. s. ibidis*, the proposed rule constituted the final 12-month finding for the petitioned action. On April 18, 2000 (65 FR 20760), we published the final rule to list the Oahu elepaio as an endangered species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) also state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. In the proposed listing rule we indicated that designation of critical habitat for the Oahu elepaio was not prudent because we believed a critical habitat designation would not provide any additional benefit beyond that provided through listing as endangered. Based partly on comments we received on the proposed listing rule and on recent court rulings which address the prudency standard, in the final listing rule we determined that a critical habitat designation for the Oahu elepaio was prudent because such a designation could benefit the species beyond listing as endangered by extending protection under section 7 of the Act to currently unoccupied habitat and by providing informational and educational benefits.

Although we determined in the final listing rule that critical habitat designation for the Oahu elepaio would be prudent, we also indicated in the final listing rule that we were not able to develop a proposed critical habitat designation for the Oahu elepaio at that time due to budgetary and workload constraints. However, on June 28, 2000, the United States District Court for the District of Hawaii established, in the case of *Conservation Council for Hawaii* v. *Babbitt*, CIV. NO. 00–00001 HG-BMK, a timetable to designate critical habitat for the Oahu elepaio, and ordered that the Service publish the final critical habitat designation by October 31, 2001.

On November 9, 2000, we mailed letters to 32 landowners on Oahu informing them that the Service was in the process of designating critical habitat for the Oahu elepaio and requesting from them information on management of lands that currently or recently (within the past 25 years) supported Oahu elepaio. The letters contained a fact sheet describing the Oahu elepaio and critical habitat, a map showing the historic and current range of the Oahu elepaio, and a questionnaire designed to gather information about land management practices, which we requested be returned to us by November 27, 2000. We received 11 responses to our landowner mailing with varying types and amounts of information on current land management activities. Some responses included detailed management plans, provided new information on locations where elepaio have been observed recently, and described management activities such as fencing, hunting, public access, fire management, methods for controlling invasive weeds and introduced predators, and collaboration with conservation researchers. In addition, we met with several landowners and managers, including the U.S. Army and the Hawaii State Division of Forestry and Wildlife, to obtain more specific information on management activities and suitability of certain habitat areas for elepaio. The information provided in the responses and during public meetings was considered and incorporated into the proposed rule to designate critical habitat for the Oahu elepaio published in the **Federal Register** on June 6, 2001 (66 FR 30372).

We have proposed to designate critical habitat consisting of five units whose boundaries encompass a total area of approximately 26,853 hectares (ha) (66,354 acres (ac)) on the island of Oahu, Hawaii.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously

published proposal to designate critical habitat for the Oahu elepaio, and comments received during the previous comment periods, we have prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available at the Internet and mailing addresses in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this reopened public comment period. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and proposed rule by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *FW1PIE_OahuElep_crithab@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AG99'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Pacific Islands Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at http://pacificislands.fws.gov/wesa/endspindex.html or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Author(s)

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181.

Authority

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

Dated: July 27, 2001.

Rowan W. Gould,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 01–19766 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 66, No. 151

Monday, August 6, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–023N]

Codex Alimentarius Commission: Thirty-Fourth Session of the Codex Committee on Food Hygiene

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meetings and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), Department of Health and Human Services, are sponsoring two public meetings, on August 30 and September 25, 2001. The purpose of the meetings is to provide information and receive public comments on agenda items that will be discussed at the Thirty-fourth Session of the Codex Committee on Food Hygiene (CCFH), which will be held in Bangkok, Thailand, on October 8–13, 2001. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Thirty-fourth Session of the CCFH and to address items on the agenda.

DATES: The public meetings are scheduled for August 30 and September 25, 2001, from 1 p.m. to 5 p.m.

ADDRESSES: The public meetings will be held in Conference Room 1409, Federal Office Building 8, 200 C Street, SW., Washington, DC 20204. Reference documents will be available for review in the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex.* Submit one original and two copies of written comments to the FSIS Docket Room and reference Docket #01–023N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. Scarbrough at the above number.

SUPPLEMENTARY INFORMATION

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The CCFH was established to draft basic provisions on food hygiene for all foods. The Government of the United States hosts this Committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

The following issues and referenced documents will be discussed during the public meetings:

1. Matters referred by the Codex Alimentarius Commission and other Codex committees, CX/FH 01/2.
2. Endorsement of hygiene provisions in the Codex standards and codes of practice, ALINORM 01/18 Appendix V.
3. Code of practice for fish and fish products.
4. Draft code of hygienic practice for the primary production of fresh fruits and vegetables, ALINORM 01/13A, Appendix V.
5. Report of the ad hoc expert consultation of risk assessment of microbiological hazards in food and related matters, CX/FH 01/5.
6. Proposed draft guidelines for the control of Listeria monocytogenes in foods, CX/FH 01/6.
7. Proposed draft principles and guidelines for the conduct of microbiological risk management, CX/FH 01/7.
8. Proposed draft code of hygienic practice for milk and milk products, CX/FH 01/8.
9. Proposed draft guidelines for hygienic reuse of processing water in food plants, CX/FH 01/9.
10. Proposed draft guidelines on the application of HACCP in small and/or less developed business, CX/FH 01/10.
11. Proposed draft revision of the code of hygienic practice for egg products, CX/FH 01/11.
12. Discussion paper—risk profile on the antimicrobial resistant bacteria in food, CX/FH 01/12.
13. Discussion paper on the proposed draft guidelines for the validation of food hygiene control measures, CX/FH 01/13.
14. Discussion paper on the proposed draft guidelines for evaluating objectionable matter in food, CX/FH 01/14.

Public Meeting

At the August 30th public meeting, the issues will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. At the September 25th public meeting, draft United States positions on the issues will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Please state that your comments relate to CCFH activities and specify which issues your comments address.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register**

publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on July 31, 2001.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 01–19595 Filed 8–3–01; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–026N]

Residue Policy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing its intention to harmonize its procedures with those of the Food and Drug Administration (FDA) with respect to the target tissue/marker residue policy in testing animal tissues for residues of new animal drugs. FSIS has reviewed its approach regarding the disposition of carcasses containing residues and has determined that its approach is not consistent with FDA's approach. To ensure that meat containing unsafe levels of chemical residues is not being released into commerce, FSIS intends to modify its approach to testing and disposition of carcasses for violative residues to be more consistent with FDA's target tissue/marker residue policy.

DATES: Comments may be submitted by no later than September 5, 2001. FSIS will review comments and address them in another notice. That notice will announce when the procedural changes addressed in this notice are effective.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, Docket # 00–026N, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Lazenby, Acting Director, Technical Analysis Staff, Office Policy, Program Development and Evaluation; (202) 205–0210.

SUPPLEMENTARY INFORMATION:

Background

When a new animal drug is given to an animal, some of the parent drug and resulting metabolites remain in the animal as residues. A new animal drug is defined under 21 CFR 510.3(g) and examples of ''newness'' are specified in 21 CFR 510.3(i).

For new animal drugs approved prior to 1976, tolerances were assigned for each of the edible tissues. Collection and testing of multiple tissues is routine for these new animal drugs. As each tissue is tested, it is either released or condemned, depending on whether it is found to have an acceptable level of residue.

Since 1976, FDA has been establishing tolerance levels for new animal drugs using a ''marker residue.'' The term ''marker residue'' is defined in the Food and Drug Administration's (FDA) Center for Veterinary Medicine's Guideline, ''*General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals,*'' (CVM Guideline #3, *http://www.fda.gov/cvm/guidance/guideline3toc.html*) as being the residue selected for assay whose concentration is in a known relationship to the total residue of toxicological concern in the last tissue to deplete to its permitted concentration.

These marker residues serve as a sentinel for the levels of all residues associated with that drug (parent and metabolites) in all edible tissues of the food animal. CVM's Guideline ι3 defines target tissue as being the edible tissue selected to monitor for residues in the target animals, including, where appropriate, milk or eggs. When the FDA-approved conditions of use for a new animal drug are followed, the concentration of marker residue in the target tissue should be below the target tissue tolerance when the animal is sent to slaughter. To establish an appropriate tolerance for the marker residue, FDA must know the relationship between the concentration of the marker residue in the target tissue and the concentrations of total residues in each of the edible tissues (CVM Guideline ι3). FDA obtains this information from the drug's sponsor who, in submitting a New Animal Drug Application (NADA), includes total residue depletion and metabolism studies with radiolabeled compound in species for which approval is sought (CVM's Guideline #3). The target tissue is usually liver, kidney, or fat because residues generally deplete from these tissues more slowly than from other tissues, i.e., muscle tissue.

In those cases where FDA has established a marker residue tolerance in target tissue, when the marker residue in the target tissue depletes to a concentration equal to or less than the target tissue tolerance(based on the total residue depletion and metabolite data),it can be reliably anticipated that the concentration of total residue in each edible tissue has reached its respective permitted safe concentration. In other words, when the concentration of the marker residue is at or below its tolerance in the target tissue, the entire carcass is considered safe to eat, without additional testing of the individual edible parts of the animal carcass. Similarly, if the level of the marker residue in the target tissue exceeds the tolerance, FDA will consider the entire carcass to be adulterated, because the residue in the target tissue is imputed to the rest of the animal.

In addition, for 15 new animal drugs FDA has specifically established tolerances for residues found in muscle tissue and analytical methods for detecting those residues. Therefore, the muscle tissue may be released for human consumption if it meets the muscle residue tolerance level. This is true even when the marker residue tolerance in the target tissue has been exceeded. The target tissue, however, would be condemned. In this situation, documenting that the drug residues in muscle are less than the muscle tolerance will only demonstrate that the muscle tissue is safe, and does not imply that any other part of the animal carcass is safe, except in those few instances where muscle has been designated to be the target tissue.

FSIS Practice

FSIS regulations regarding residues state that ''* * *Animal drug residues are permitted in meat and meat food products if such residues are from drugs which have been approved by the Food

and Drug Administration and any such drug residues are within tolerance levels approved by the Food and Drug Administration * * *''(9 CFR 318.20). FSIS has not strictly applied FDA's marker residue/target tissue approach in determining whether drug residues are within tolerance levels.

Specifically, FSIS has condemned only the organ with a violative residue level and has conducted a laboratory analysis of the muscle tissue to determine whether the muscle portion of the carcass can be salvaged. This has been the practice even for residues of those new animal drugs for which FDA has not established a tolerance or testing methodology for the muscle tissue. Historically, if no drug residue was detected in the muscle, FSIS released the muscle portion of the carcass for human consumption.

FSIS's practice has generated on-going questions regarding whether or not the muscle or other organs are safe. FSIS has referred these questions to FDA, which addresses them on an *ad hoc* basis.

FSIS needs to modify its procedures to be consistent with the determinations that underlie FDA's approach. Therefore, for those new animal drugs for which FDA has established a marker residue tolerance in a specified target tissue without establishing a tolerance for a residue in muscle and an official analytical method for muscle residues, FSIS will only test the target tissue that is identified in FDA regulations. If the residues found in the target tissue exceed the FDA tolerances, FSIS will condemn the entire carcass. If FDA has also established a tolerance for a residue in muscle and an official analytical method for muscle residues, FSIS will test the muscle using the official methodology to determine whether the concentration of residues in the muscle is at or below the muscle tolerance. If acceptable, FSIS will permit the release of the muscle. For those new animal drugs for which a marker residue tolerance in a specified target tissue has not been identified, FSIS will continue to collect and monitor multiple edible tissues.

FSIS is aware that the change in its procedures announced in this notice will affect the industry. To ensure that animals do not have violative amounts of residues, establishments may change their purchasing practices. Establishments should consider incorporating controls into their HACCP plans to avoid exceeding residue tolerances. Exceeding residue tolerances may result in the condemnation of more product than is currently being condemned. FSIS invites comment on this impact and will welcome any cost data. FSIS will consider these data and consider in what ways it may lessen the impact.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington DC, on: July 31, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–19597 Filed 8–3–01; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–051N]

Residue Testing Procedures

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is changing the action it will take when livestock or poultry are presented for slaughter at official establishments that come from producers and others who have previously marketed such animals with violative levels of drug, pesticide, or other chemical residues (''chemical residues''). FSIS will no longer test livestock and poultry carcasses at official establishments for chemical residues until a specific number of the carcasses consecutively test negative for violative chemical residues (i.e., FSIS ''5/15'' policy). Instead, FSIS will post on its website the names and addresses of the sellers of livestock and poultry who the Food and Drug Administration has determined are responsible for the repeated sale of livestock or poultry that contain violative levels of chemical residues. FSIS believes that this action will help better ensure that meat and poultry products distributed in commerce are not adulterated with violative residues. FSIS is taking this action partly in response to a request from certain industry groups.

DATES: The new procedures will be effective September 5, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel L. Lazenby, Acting Director, Technical Analysis Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 409, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 205–0210.

SUPPLEMENTARY INFORMATION

Background

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers. This program among other things helps to prevent the distribution in commerce of adulterated products of livestock and poultry. Under the FMIA and the PPIA, it is illegal to sell or transport, offer for sale or transportation, or receive for transportation, in commerce, meat and poultry products that are capable of use as human food that are adulterated (21 U.S.C. 458(a)(2)(A) and 610(c)(1)). Meat and poultry products are considered adulterated under the FMIA and PPIA if they bear or contain illegal amounts of drugs, pesticides, and other chemicals (21 U.S.C. 453(g)(1), (g)(2), and (g)(3) and 601(m)(1), (m)(2), and (m)(3)).

Both the FMIA and the PPIA include requirements for Federal inspection. They prohibit the sale, transportation, offer for sale or transportation, or receipt for transportation, in commerce, of meat and poultry products that are required to be inspected unless they have been inspected and passed (21 U.S.C. 458(a)(2)(B) and 610(c)(2)).

Meat and poultry products prepared at establishments that operate solely within a State are effectively subject to the same inspection requirements and

adulteration prohibitions discussed above. These requirements and prohibitions are imposed pursuant to a State inspection program or by the FMIA and PPIA as a result of the designation of a State for Federal inspection (21 U.S.C. 454(c)(1) and 661(c)(1)).

Since the 1960's, the public and private sectors have tried to meet the challenges presented by various types of product adulteration that organoleptic examination generally cannot detect. The control of chemical residues in meat and poultry products is a particularly appropriate subject for an improved regulatory approach that involves a well-integrated and seamless, prevention-oriented farm-to-table strategy.

At the Federal regulatory level, efforts to prevent residue-related food safety problems principally involve, in addition to FSIS, the Food and Drug Administration (FDA), acting under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 321 *et seq.*), and the Environmental Protection Agency (EPA), acting under the FFDCA, the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*), and the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). FDA and EPA establish, respectively, what, if any, levels of animal drug and pesticide residues in food are safe, and thus can legally remain in the tissue of livestock and poultry. EPA also may make recommendations regarding what level, if any, of other chemical hazards that may be associated with substances that occur in meat and poultry products as a result of environmental contamination are safe. These levels are known as action or tolerance levels. FSIS enforces the tolerance and action levels set by the EPA and FDA to ensure that meat and poultry products do not contain levels of animal drugs, pesticides, or other chemicals above the level that is considered safe.

At slaughter, FSIS looks for indications of illegal chemical use or exposure and collects livestock and poultry carcass samples for residue analysis. The analytical components of the Agency's residue control activities are collectively known as the ''National Residue Program''(NRP). Initiated more than 30 years ago, the NRP has generally been a success. It has been instrumental in reducing the incidence of such residue violations as sulfamethazine in market hogs. The most recent NRP reports are the ''1999 FSIS National Residue Program'' and the ''Domestic Residue Data Book National Residue Program 1998'' (referred to informally as the ''Blue Book'' and the ''Red Book'', respectively.)

The prevention of illegal chemical residues in the food supply is an integral aspect of maintaining a high level of food safety. As part of FSIS's inspection program to screen for violative levels of chemical residues in livestock and poultry carcasses to ensure that meat and poultry products are not adulterated, Agency inspection program personnel sample meat and poultry carcasses at official establishments and submit the samples for testing to determine whether they contain violative drug, pesticide, or other chemical residues.

If it is confirmed that a carcass contains a violative drug, pesticide, or other chemical residue, the Slaughter Operations Staff at FSIS' Technical Service Center (TSC) opens a case file about this matter and initiates an investigation to determine who is the violator. A violator is defined as a firm or person, (e.g., farmer, hauler, auction market) who sells livestock or poultry for slaughter that contains violative levels of drugs, pesticides, or other chemical residues. If the TSC staff is able to obtain from the official establishment the name of the producer (e.g. farmer) of the livestock or poultry, the TSC sends an ''FSIS Violation Notification Letter'' to this person. The letter provides the results of the residue tests taken and requests that the producer submit five animals to FSIS for residue testing at a designated official establishment.

The TSC staff informs the appropriate FSIS personnel at the designated official establishment to sample the carcasses of animals presented for slaughter by the producer. There is no specific time period in which these carcasses must be presented. The case file remains open until five consecutive carcasses from animals presented for slaughter by the producer test negative for violative residues.

If the TSC staff is not able to obtain the name of the producer who supplied the violative livestock or poultry carcass to the official establishment, then inspection program personnel are instructed to sample 15 carcasses from animals provided by the auction, market, or buyer that had previously supplied livestock or poultry to the official establishment that had been found to contain violative chemical residues. Inspection program personnel will select carcasses from three or more different lots for sampling and testing. There is no specific time period in which these carcasses must be presented. The case file remains open until 15 consecutive carcasses from animals presented for slaughter test negative for violative residues.

The sampling and testing undertaken at official establishments of a specified consecutive number of carcasses of livestock or poultry that contained violative chemical residues is known as FSIS' ''5/15'' residue policy.

Under an October 1984, Memorandum of Understanding with FDA, when FSIS finds violative drug, pesticide, or other chemical residues in livestock or poultry, FSIS transmits to FDA information, including the name of the official establishment where the livestock or poultry that was presented for slaughter was confirmed positive for violative chemical residues and information about the violator. This information is transmitted via the Residue Violation Information System (RVIS). RVIS is a nationwide interagency computer information system that was designed by FSIS in cooperation with FDA to handle pertinent regulatory information related to residue violations.

FDA uses the information it receives from RVIS to conduct an investigation of the violator to determine whether the violator is a repeat violator. A repeat violator is an individual or firm who sells an animal for slaughter whose carcass is found to contain a violative level of a drug, pesticide, or other chemical residue within a 12-month period after having received a FSIS Violation Notification Letter.

On July 27, 2000, the American Meat Institute, the Livestock Marketing Association, the National Livestock Producers Association, the National Cattleman's Beef Association, and the National Meat Association wrote to FSIS and requested that the Agency make certain changes in how it responded to residue violations by sellers of livestock. The associations stated that they were particularly interested in reducing the sales of market cattle that contained violative levels of animal drug residues. The associations requested that FSIS terminate its ''5/15'' policy ''in favor of a more meaningful cooperative program with FDA.'' They contended that FSIS' ''5/15'' policy was not an effective deterrent for firms or persons who knowingly and repeatedly sold medicated livestock.

In place of FSIS' ''5/15'' policy, the associations requested that FSIS publish and disseminate a list that contains the names and addresses of the sellers of livestock that FDA has investigated and determined to be responsible for more than one residue violation in a 12-month period (repeat violators). The associations recommended that these violators remain on the published list

for a period of one year following a ''responsible party'' designation by FDA, and that this time period be extended another twelve months for each subsequent residue violation for which the seller was determined to be responsible.

FSIS has reviewed the associations' request. FSIS has determined that the list requested may more effectively prevent, than its current ''5/15'' policy does, the distribution of meat products that are adulterated with violative levels of chemical residues. FSIS has also determined that this type of list may also more effectively prevent, than the current ''5/15'' policy does, the distribution of poultry products that contain violative chemical residues. FSIS believes that its current ''5/15'' policy may not be the best way to deter the repeated sale of livestock and poultry with violative chemical residues because, once a producer is notified about a residue violation, it is not difficult for a seller of livestock and poultry to temporarily present animals for slaughter that do not contain violative drug, pesticide, or other chemical residue levels. FSIS also believes that the suggested approach is more consistent with the approach embodied in HACCP than is the ''5/15'' policy.

Therefore, FSIS will implement the change requested by the associations not only in regard to persons who have marketed livestock with violative chemical residues, but also in regard to persons who have marketed poultry that contain violative chemical residues. In cooperation with FDA, FSIS will make a list of repeat chemical residue violators publicly available by posting a list of repeat violators on the FSIS Homepage (www.fsis.usda.gov). The list will contain the names and addresses of the sellers of livestock and poultry that FDA has investigated and determined to be responsible for more than one drug, pesticide or other chemical residue violation in a 12-month period. The names and addresses of violators will remain on the list for a year from the time of being listed. For any subsequent violation, the time period will be extended by a year from the time of that subsequent violation.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS webpage located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: July 31, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–19596 Filed 8–3–01; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

American Electric Power (Formerly Appalachian Power Company) Transmission Line Construction—Jackson's Ferry (Cloverdale), Virginia, to Oceana, West Virginia. George Washington and Jefferson National Forests, Appalachian National Scenic Trail, the New River, and R.D. Bailey Lake Flowage Easement Land. Virginia Counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland, Tazewell, Wythe and Giles and the West Virginia Counties of Monroe, Summers, Mercer, McDowell and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Revised Notice—Revises the proposed action based on the application submitted by the proponent (American Electric Power) to include a different federal land crossing; identifies a new construction endpoint; identifies three new counties in Virginia and West Virginia affected by the transmission line proposal; notifies interested parties of the federal agencies' intent to prepare a supplemental draft environmental impact statement; establishes the date, time and location of 3 public meetings; and provides the dates for the publication of the supplemental draft and final environmental impact statements.

SUMMARY: On June 28, 1996 the Forest Service published a draft environmental impact statement for American Electric Power's (AEP's) proposed crossing of federal lands with a 765,000-Volt transmission line. AEP has since revised their preferred route for the line and changed the location of the endpoint of the transmission line from Cloverdale to Jackson's Ferry, Virginia. The Virginia State Corporation Commission and the West Virginia Public Service Commission have approved the private land components (79 miles) of the proposed transmission line. The Commissions do not have the authority to approve transmission line corridors across federally administered lands.

The actions and assessments of the two Commissions represent significant new information for the federal agencies to consider. They also present a substantial change in the proposed action. Accordingly, the Forest Service will prepare a supplemental draft environmental impact statement, before publishing a final environmental impact statement, on a proposed action to authorize American Electric Power (formerly the Appalachian Power Company) to construct a 765,000-volt transmission line across approximately 11 miles of the George Washington and Jefferson National Forests, as well as portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake) and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River).

The revised proposal by American Electric Power (AEP) crosses federal lands outside the area analyzed by the federal agencies in the draft environmental impact statement published in July of 1996. The revised AEP proposal includes the previously unaffected Virginia Counties of Wythe and Tazewell, and the West Virginia County of McDowell in addition to the Virginia Counties of Bland and Pulaski and the West Virginia County of Wyoming. The total length of the revised AEP proposal is approximately 90 miles.

The American Electric Power (AEP) proposal involves federal land under the administrative jurisdiction of the USDA Forest Service (George Washington and Jefferson National Forests and the Appalachian National Scenic Trail) and the US Army Corps of Engineers (New River and R.D. Bailey Lake Flowage Easement Land).

The Forest Service is the lead agency and is responsible for the preparation of the environmental impact statement. The National Park Service and the US

Army Corps of Engineers are cooperating agencies in accordance with 40 CFR 1501.6. In initiating and conducting the analysis the federal agencies are responding to the requirements of their respective permitting processes and the need for the AEP to cross federal lands with the proposed transmission line.

The Forest Service additionally will assess how the proposed transmission line conforms to the direction contained in the Jefferson National Forest's Land and Resource Management Plan (LRMP). Changes in the LRMP could be required if the transmission line is authorized across the George Washington and Jefferson National Forests.

The Notice of Intent for the proposed action was published in the **Federal Register** on November 21, 1991 (56 FR 58677–58679). The Notice was revised on March 13, 1992 (57 FR 8859), April 24, 1992 (57 FR 15049), June 16, 1993 (58 FR 33248–33250) June 21, 1994 (59 FR 31975–31978), June 9, 1995 (60 FR 30511–30514), October 3, 1995 (60 FR 51770–51773) and June 5, 1996 (61 FR 28562–28565). The Notice of Availability was published on June 28, 1996 (61 FR 33735–33736).

DATES: Comments concerning this proposal should be received in writing by October 15, 2001 to ensure timely consideration. See the **SUPPLEMENTARY INFORMATION** section for the dates and locations of the public meetings.

ADDRESSES: Send written comments to William E. Damon, Jr., Forest Supervisor, George Washington and Jefferson National Forests, 5162 Valley pointe Parkway, Roanoke, Virginia 24019.

FOR FURTHER INFORMATION CONTACT: Ken Landgraf, Forest Service Project Coordinator, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019/(540) 265–5170.

SUPPLEMENTARY INFORMATION: AEP submitted an application to the George Washington and Jefferson National Forest in 1991 requesting authorizing to construct a 765,000-volt electric transmission line across approximately twelve miles of the National Forest. Portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake), and R.D. Bailey Lake Flowage Easement Land (at Guyandottee River) would also be crossed by the proposed transmission line.

Studies conducted by AEP and submitted to the Virginia State Corporation Commission and the West Virginia Public Service Commission, as part of its application and approval process, indicate a need to reinforce its extra high voltage transmission system in order to maintain a reliable power supply for projected demands within its service territory in central and western Virginia and southern West Virginia.

The total length of the electric transmission line originally proposed by the AEP was approximately 115 miles with approximately 12 miles crossing the George Washington and Jefferson National Forests. In preparing the draft environmental impact statement, the federal agencies identified a study area in which alternatives to the proposed action were developed. The study area included land located in the Virginia counties of Botetourt, Roanoke, Craig, Montgomery, Pulaski, Bland and Giles and the West Virginia counties of Monroe, Summers, Mercer and Wyoming.

In the draft environmental impact statement a range of routing alternatives was considered to meet the purpose and need for the proposed action. A no action alternative was also analyzed.

Following the publication of the Draft Environmental Impact Statement, AEP revised the location of their proposed transmission line. On May 27, 1998 AEP received approval from the West Virginia Public Service Commission to allow construction of the line of a revised route in West Virginia. On May 25, 2001 AEP received approval from the Virginia State Corporation Commission to allow construction on a new route in Virginia. Both Commissions acknowledged the need to improve reliability and that the proposed transmission line is the best means to achieve the need.

The decisions to be made following the federal agencies' analysis are whether the Forest Service and the US Army Corps of Engineers will authorize AEP to cross the George Washington and Jefferson National Forests (including the Appalachian National Scenic Trail) and the new River and R.D. Bailey Lake Flowage Easement Land, respectively, with the proposed 765,000-volt transmission line and, if so, under what conditions a crossing would be authorized.

The federal analysis will include an analysis of the effect of the proposed transmission line along the entire proposed route as well as alternative routes. Currently identified alternatives to be considered include three route modifications and the Hogback Mountain alternative that were discussed in the Virginia State Corporation Commission Hearing Examiner's report.

The significant issues previously identified for the federal analysis are listed below:

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) affect soil productivity by increasing soil compaction and erosion; (2) affect geologic resources (karst areas, Peters, Lewis, Potts Mountains, Arnolds Knob) and unique geologic features like caves through blasting, earthmoving or construction machinery operations; and (3) result in unstable structural conditions due to the placement of the towers.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) degrade surface and ground water quality due to the application of herbicides; (2) degrade surface and ground water quality because of sedimentation resulting from soil disturbance and vegetation removal; (3) reduce the quantity of ground and spring water due to the disturbance of aquifers resulting from blasting, earthmoving or construction machinery operation; and (4) adversely affect the commercial use of ground and surface waters due to herbicide contamination and sedimentation.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect existing cultural resources, and historic structures and districts through the direct effects of the construction and maintenance activities and by changing the existing resource setting.

—The operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect human health through (1) direct and indirect exposure to herbicides and (2) exposure to electromagnetic fields and induced voltage.

—The construction of the 765kV transmission line may adversely affect the safety of those operating aircraft at low altitudes or from airports located near the transmission line.

—The operation of the 765kV transmission line may (1) adversely affect communications by introducing a source of interference; (2) increase noise levels for those in close proximity to the line.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) adversely affect trails (including the Appalachian Trail) and trail facilities by facilitating vehicle access through new road construction and the upgrading of existing roads; and (2) reduce hiker safety by facilitating

vehicle access to remote trail locations.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect hunting, fishing, hiking, camping, boating and birding opportunities and experiences because (1) the setting in which these pursuits take place may be altered; and (2) the noise associated with the operation of the line may detract from the backcountry or recreation experience.

—The construction and operation of the 765kV transmission line and the associated access roads and right-of-way may affect local communities by (1) reducing the value of private lands adjacent to the line (2) decreasing tax revenues due to the reductions in land value; and (3) influencing economic growth, industry siting, and employment.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) conflict with management direction contained in resource management plans and designations; (2) affect the uses that presently occur on and adjacent to the proposed right-of-way; (3) affect the wild, scenic and/or recreational qualities of the New River; (4) affect sensitive land uses like schools, churches, and community facilities; (5) affect the cultural attachment residents feel toward Peters Mountain; (6) affect the scenic and/or recreational qualities of the Appalachian National Scenic Trail (Appalachian Trail); and (7) result in family displacement.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect the visual attributes of the area because the line, the associated right-of-way, and access roads may (1) alter the existing landscape; and (2) conflict with the standards established for scenic designations.

—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect wildlife, plant and aquatic populations, habitat and livestock because (1) habitats are created, changed or eliminated; (2) herbicides are used and herbicides may be toxic; (3) the transmission line presents a flight hazard to birds; (4) electromagnetic fields and induced voltage may be injurious.

—The construction of the 765kV transmission line and the associated access roads and right-of-way may have a disproportionately high and adverse human health or environmental effects on minority and low income populations as indicated in Executive Order 12898.

—The construction and operation of the 765kV transmission line may adversely affect astronomical observation activities at the Martin Observatory (VPI) due to the introduction of obstructions to the sky (lines and towers), the introduction of light from coronal discharge, and the disruption of sensitive electronic equipment by electromagnetic fields.

—The construction and operation of the 765kV transmission line may adversely affect seismological observation activities at the VPI seismic stations located near Forest Hill and Potts Mountain.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect the cultural attachment that residents have for the valley between Blacksburg and Catawba, Craig County, Giles County, Mercer County and portions of Montgomery County.

The following permits and/or licenses would be required to implement the proposed action:

—Certificate of Public Convenience and Necessity (Virginia State Corporation Commission—received on May 25, 2001)

—Certificate of Public Convenience and Necessity (West Virginia Public Service Commission—received on May 27, 1998)

—Special Use Authorization (Forest Service)

—Section 10 Permit (US Army Corps of Engineers)

—Right-of-Way Easement (US Army Corps of Engineers)

—Consent to Easement (US Army Corps of Engineers)

—Other authorizations may be required from a variety of Federal and State agencies.

Public participation occurred at several points during the federal analysis process. The first point in the analysis was the scoping process (40 CFR 1501.7). The Forest Service obtained information, comments, and assistance from Federal, State and local agencies, the proponent of the action, and other individuals or organizations who are interested in or affected by the electric transmission line proposal. This input was utilized in the preparation of the draft environmental impact statement. The scoping process included, (1) identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

With the change in the location of the proposed action, the federal agencies will resume the scoping process by holding 3 public meetings and accepting additional comments on the scope of the analysis. The following meetings have been scheduled to provide the public with information regarding the federal analysis and to accept written comments on the proposal. The open-house portion of the meetings will begin at 5 p.m. and end at 8 p.m. At 7:00 there will be a short presentation followed by an opportunity for questions.

August 20, 2001 at Springville Elementary School, North Tazewell, Virginia.

August 21, 2001 at Fort Chiswell High School, Max Meadows, Virginia.

August 23, 2001 at Bland County High School, Bland, Virginia.

The supplemental draft environmental impact statement is expected to be filed with the Environmental Protection agency (EPA) and available for public review by April 8, 2002. At that time, EPA will publish a notice of availability of the supplemental draft environmental impact statement in the **Federal Register**. The comment period on the supplemental draft environmental impact statement will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The final environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October, 2002.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental impact statement review process. First, reviewers of draft (and supplemental draft) environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement (including supplemental draft environmental impact statements) stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon*

v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D.Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the supplemental draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the supplemental draft environmental impact statement. Comments may also address the adequacy of the supplemental draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the supplemental draft environmental impact statement, the comments will be analyzed, considered, and responded to be the three federal agencies in preparing the final environmental impact statement.

The responsible officials will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding the proposal to cross federal lands with a 765,000-bolt transmission line. The responsible officials will document their decisions and reasons for their decisions in a Record of Decision.

The responsible official for the Forest service is William E. Damon, Jr., Forest Supervisor, George Washington and Jefferson National Forests, 5162 Valleypointe Parkway, Roanoke, Virginia, 24019. The responsible official for the National Park Service is Pamela Underhill, Park Manager, Appalachian National Scenic Trail, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia 25425. The responsible official for the US Army Corps of Engineers in West Virginia is Colonel John D. Rivenburgh, US Army Corps of Engineers, Huntington District, 508 8th Street, Huntington, West Virginia 25701–2070. The responsible official for the US Army Corps of Engineers in Virginia is Colonel David L. Hansen, US Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia 23510.

Dated: July 31, 2001.

William E. Damon, Jr.,

Forest Supervisor, George Washington and Jefferson National Forests.

[FR Doc. 01–19555 Filed 8–3–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 073101A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gear-Marking Requirements for the Harbor Porpoise Take Reduction Plan.

Form Number(s): None.

OMB Approval Number: 0648–0357.

Type of Request: Regular submission.

Burden Hours: 21.

Number of Respondents: 25.

Average Hours Per Response: 1 minute per net tagged.

Needs and Uses: Federal regulations at 50 CFR 229.34 limit the number of nets that can be used in certain mid-Atlantic fisheries that appear to be most closely linked with the accidental catch of harbor porpoises. Fishermen in these fisheries must obtain and attach numbered tags for their nets. Because the number of tags per vessel is capped, the tagging program helps to limit the number of nets in use and helps NOAA to identify the number in use.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Third-party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–19511 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 073101B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting Requirements for the Ocean Salmon Fishery off the Coasts of Washington, Oregon, and California.

Form Number(s): None.

OMB Approval Number: 0648–0433.

Type of Request: Regular submission.

Burden Hours: 10.

Number of Respondents: 40.

Average Hours Per Response: 15 minutes.

Needs and Uses: Based on the management regime specified each year, designated regulatory areas in the commercial ocean salmon fishery off the coasts of Washington, Oregon, and California may be managed by numerical quotas. To accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. Requirements to land salmon within specific time frames and in specific areas may be implemented in the preseason regulations to aid in timely and accurate catch accounting for a regulatory area. State landing systems normally gather the data at the time of landing. If unsafe weather conditions or mechanical problems prevent compliance with landing requirements, fishermen need an alternative to allow for a safe response. Fishermen would be exempt from landing requirements so long as the appropriate notifications are made providing the name of the vessel, the port where delivery will be made, the approximate amount of salmon (by species) on board, and the estimated time of arrival.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–19512 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 080801A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Raised Footrope Trawl Exempted Fishery.

Form Number(s): None.

OMB Approval Number: 0648–0422.

Type of Request: Emergency submission.

Burden Hours: 230.

Number of Respondents: 288.

Average Hours Per Response: 2 minutes.

Needs and Uses: Framework 35 to the Northeast Multispecies Fishery Management Plan modified existing multispecies regulations to allow for a seasonal whiting raised footrope trawl exempted fishery. Persons holding multispecies Federal Fisheries Permits and wanting to participate in the exempted fishery must: (1) request a certificate to fish in the fishery, and (2) provide notification when they withdraw from the fishery. Requests for certificates must include the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. The information is needed for management of the fishery and enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent prior to August 15, 2001 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–19600 Filed 8–1–01; 3:20 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 01–BXA–03]

Mark Jin, Also Known as Zhongda Jin Individually and FJ Technology, Respondent; Decision and Order

On June 25, 2001, the Administrative Law Judge (hereinafter ''ALJ'') issued a Recommended Decision and Order in the above-captioned matter. The Recommended Decision and order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The Recommended Decision and Order sets forth the procedural history of the case, the facts of the case, and the detailed findings of fact and conclusions of law. The findings of fact and conclusions of law concern whether Mark Jin, also known as Zhongda Jin, individually, and FJ Technology Service, Inc., also known as FJT Technology (hereinafter collectively referred to as ''Jin''), committed 34 violations of the former and current Export Administration Regulations (hereinafter ''Regulations'') [1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 & Supp. 2000)) (hereinafter the ''Act''),[2] and a recommended penalty for those violations.

Based on the allegations in the charging letter, the Recommended Decision and Order found that Jin had committed one violation of section 787.4, one violation of section 787.6 four violations of section 787A.4, and four violations of section 787A.6 of the former Regulations; and twelve violations of section 764.2(a) and twelve violations of section 764.2(e) of the Regulations (for a total of 34 violations). These violations resulted from shipping arsine, phosphine, trimethylgallium, trimethylaluminum, and trimethylindium to China on seventeen occasions between March 1996 and January 2000 without obtaining the export licenses that Jin knew or had reason to know were required for such exports under both the former and current Regulations. Based on these violations, the ALJ recommended that Jin's export privileges be denied for a period of 25 years.

Based on my review of the record and pursuant to section 766.22(c) of the Regulations, I am affirming the June 25, 2001 Recommended Decision and Order finding that Jin committed 34 violations of the former and current Regulations. I also am imposing as a penalty for these knowing and continual violations the 25-year denial of Jin's export privileges that was recommended by the ALJ.

Accordingly, It Is Therefore Ordered,

First, that, for a period of 25 years from the date of this Order, Mark Jin, also known as Zhongda Jin, individually, and FJ Technology

[1] The violations at issue occurred between 1996 and 2000. The Regulations governing the violations are found in the 1996, 1997, 1998 1999, and 2000 versions of the Code of Federal Regulations (15 CFR parts 768–799 (1996), as amended (61 FR 12,714, March 25, 1996) (hereinafter the ''former Regulations'') and 15 CFR parts 730–774 (1997, 1998, 1999, and 2000)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing regulations as 15 CFR parts 768A–799A. In addition, the March 25 **Federal Register** published the restructured and reorganized Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. Compliance with either the former Regulations or the Regulations was permitted until November 1, 1996, at which time the removal of the former Regulations became effective. Both the former Regulations and the Regulations define the various violations that BXA alleges occurred in this matter. The Regulations establish the proceedings that apply to this matter.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), which had been extended by successive presidential Notices, the most recent being that of August 3, 2000 (65 FR 48.347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. *See* Pub. L. 106–508

Service, Inc., also known as FJ Technology, 1895 Dobbin Drive, Suite B, San Jose, California 95133 (hereinafter collectively referred to as ''Jin''), may not directly or indirectly participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported form the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of Jin any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Jin of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Jin acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Jin of any item subject to the Regulations that has been exported from the United States;

D. Obtain from Jin in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by Jin, or service any item, of whatever origin, that is owned, possessed, or controlled by Jin if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Jin by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that a copy of this Order shall be served on Jin and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 31, 2001.

Kenneth I. Juster,

Under Secretary of Commerce for Export Administration.

Recommended Decision and Order

On February 28, 2001, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter ''BXA''), issued a charging letter initiating this administrative proceeding against Mark Jin, also known as Zhongda Jin, individually, and FJ Technology Service, Inc., also known as FJ Technology (hereinafter collectively referred to as Jin). The charging letter alleged that Jin committed 34 violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2001)) (the Regulations),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app 2401–2420 (1991 & Supp. 2000)) (the Act).[2]

Specifically, the charging letter alleged that on or about March 15, 1996, Jin exported phosphine and arsine from the United States to the People's Republic of China without obtaining the validated export license required by section 772.1(b) of the former Regulations. BXA alleged that, by exporting from the United States commodities contrary to the provisions of the Act or any regulations, order or license issued thereunder, Jin violated section 787.6 of the Regulations. The charging letter also alleged that in connection with the export made on or about March 15, 1996, Jin knew or had reason to know that the export of phosphine and arsine to the People's Republic of China required a validated export license. BXA alleged that, by selling or transferring commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order or license issued thereunder has occurred, was about to occur, or was intended to occur, Jin violated section 787.4 of the former Regulations.

Further, the charging letter alleged that on four separate occasions between on or about May 14, 1996, and on or about June 25, 1996, Jin exported phosphine and arsine from the United States to the People's Republic of China without obtaining the validated export license required by section 772A.1(b) of the former Regulations. BXA alleged that, by exporting commodities from the United States contrary to the provisions of the Act or any regulation, order, or license issued thereunder, Jin committed four violations of section 787A.6 of the former Regulations. The charging letter also alleged that in connection with the exports made between on or about May 14, 1996, and on or about June 25, 1996, Jin knew or had reason to know that the export from the United States of phosphine and arsine to the People's Republic of China required validated export licenses. BXA alleged that, by selling or transferring commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order or license issued thereunder has occurred, was

[1] The alleged violations occurred in 1996, 1997, 1998, 1999 and 2000. The Regulations governing the violations at issue are found in the 1996, 1997, 1998, 1999, and 2000 versions of the Code of Federal Regulations (15 CFR Parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter ''the former Regulations'')), and 15 CFR parts 768–799 (1997, 1998, 1999 and 2000)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR parts 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. *See* Pub. L. 106–508.

about to occur, or was intended to occur, Jin committed four violations of section 787A.4 of the former Regulations.

In addition, the charging letter alleged that on 12 separate occasions between on or about June 6, 1997, and on or about January 16, 2000, Jin exported phosphine, arsine, trimethylgallium, thimethylaluminum, and trimethylindium from the United States to the People's Republic of China without obtaining the export licenses required by section 742.4 of the Regulations. BXA alleged that, by engaging in conduct prohibited by or contrary to the Act, Regulations, or any order, license or authorization issued thereunder, Jin committed 12 violations of section 764.2(a) of the Regulations. The charging letter also alleged that in connection with the exports made between on or about June 6, 1997, and on or about January 16, 2000, Jin knew or had reason to know that the export from the United States of phosphine, arsine, trimethylgallium, thimethylaluminum, and trimethylindium to the People's Republic of China required export licenses. BXA alleged that, by selling or transferring commodities exported or to be exported from the United States with knowledge that a violation of the Act, or the Regulations, or any order, license or authorization issued thereunder, has occurred, was about to occur, or was intended to occur, Jin committed 12 violations of section 764.2(e) of the Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at respondent's last known address. In accordance with that section, on February 28, 2001, BXA sent to Jin, at his address in San Jose, California, notice that it had issued a charging letter against him. BXA has established that delivery of the notice was made at that address on March 5, 2001.

To date, Jin has not filed an answer to the charging letter. Accordingly, because Jin has not answered the charging letter as required by and in the manner set forth in section 766.6 of the Regulations, Jin is in default.

Pursuant to the default procedures set forth in section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letter, and hereby determine that Jin committed one violation of section 787.4, one violation of section 787.6, four violations of section 787A.4, and four violations of section 787A.6 of the former Regulations, and 12 violations of section 764.2(a) and 12 violations of section 764.2(e) of the Regulations, for a total of 34 violations.

Section 764.3 of the Regulations establishes the sanctions available to BXA for the violations charged in this default proceeding. The applicable sanctions as set forth in the Regulations are a civil monetary penalty, suspension from practice before BXA, and/or a denial of export privileges. *See* 15 CFR 764.3 (2001).

BXA urges that I recommend to the Under Secretary for Export Administration[3] that Jin be denied all U.S. export privileges for a period of 25 years for the following reasons.

First, BXA believes that Jin has left the United States. Jin has not responded to the allegations set forth in the charging letter issued, and Jin has not demonstrated any intention of ever resolving this matter, either through the hearing process or through settlement. In light of these circumstances, the denial of all of Jin's export privileges is the appropriate sanction, because it is unlikely that Jin would ever pay a civil monetary penalty or that BXA would ever collect a civil monetary if one were imposed.

Second, an appropriate sanction should be tailored to the severity of the violation. Jin, for a period of five years, exported commodities from the United States to the People's Republic of China without the required BXA licenses. Jin exported the commodities with full knowledge that licenses were required but he did not obtain the licenses. Given the fact that Jin is charged with multiple violations of the Regulations over a course of several years, a 25 year denial is warranted.

Given the foregoing, I concur the BXA, and recommend that the Under Secretary for Export Administration enter an Order against Jin denying his export privileges for a period of 25 years.[4]

Accordingly, I am referring my recommended decision and order to the Under Secretary for review and final action for the agency, without further notice to the respondent, as provided in section 766.7 of the Regulations.

Within 30 days after receipt of this recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order. *See* 15 CFR 766.22(c)(2001).

Dated: June 25, 2001.

Edwin M. Bladen,

Administrative Law Judge.

[FR Doc. 01–19614 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–DT–M

[3] Pursuant to section 13(c)(1) of the Act and section 766.17(b)(2) of the Regulations, in export control enforcement cases the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

[4] Denial orders can be either ''standard'' or ''non-standard.'' A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the interim rule.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or George Callen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0410 and (202) 482–0180, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR Part 351 (2000).

Preliminary Determination

We preliminarily determine that certain folding gift boxes (gift boxes) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We initiated this investigation on March 12, 2001. *See Initiation of Antidumping Duty Investigation: Certain Folding Gift Boxes From the*

People's Republic of China, 66 FR 15400 (March 19, 2001) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice*, 66 FR at 15400. On March 20, 2001, Harvard Folding Box Company and Field Container Company, Inc. (collectively, ''the petitioners'') requested that the scope of the investigation be amended to exclude gift boxes for which no side of the box when assembled is at least nine inches in length and gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard. We have adopted the changes requested by the petitioners. See Memorandum from Thomas Schauer to the File dated March 21, 2001. (Public versions of memoranda identified in this notice are available in the Central Records Unit, Room B–099, of the main Commerce building.)

Since the initiation of this investigation the following events have occurred.

On March 29, 2001, we issued a letter to interested parties in this investigation providing an opportunity to comment on the characteristics we should use in identifying the different models the respondents sold in the United States. The petitioners submitted comments on April 10, 2001. No other party submitted comments. After reviewing the petitioners' comments, we have adopted the characteristics proposed by the petitioners.

The petitioners argued, in their February 20, 2001, petition, that the Department should extend the period of investigation (POI) to cover all of calendar year 2000. In order to collect the data necessary to determine whether to extend the POI and to identify respondents, on March 27, 2001, we sent partial section A questionnaires to all producers/exporters of the subject merchandise listed in the petition and to the Chinese government asking for its assistance in delivering the questionnaire to all producers/exporters of the subject merchandise. We received responses from Max Fortune Industrial Ltd. (Max Fortune), Red Point Paper Products Co., Ltd. (Red Point), Luk Ka Paper Industrial Ltd. (Luk Ka), and Dexon Workshop Company (Dexon) that indicated that these companies all exported subject merchandise to the United States during the POI. We also received responses from Leo Paper Products Ltd., Chung Tai Printing (China) Co., Ltd., Mang Sang Envelope Manufacturing Co., Ltd., Hung Hing Off-Set Printing Co., Ltd., and K.C. (Hong Kong) Ltd. These companies indicated they did not export subject merchandise to the United States during calendar year 2000.

We did not receive responses from the other producers/exporters identified in the February 20, 2001, petition. These companies are Rank Sharp Investments, Ltd., Bigfield Goldenford Holdings Ltd., Fangyuan International Economy and Trade Co., and Hong Kong Dasan Paper Products Co., Ltd. The record indicates that these companies received our March 27, 2001, questionnaire. See Memorandum from Thomas Schauer to the file dated July 13, 2001. On April 13, 2001, we sent a letter to these firms to reiterate our request for a response to our March 27, 2001, questionnaire. We received no responses from these firms.

On April 13, 2001, the United States International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC, which the ITC published in the **Federal Register** on April 18, 2001. See *Folding Gift Boxes From China*, 66 FR 19981 (April 18, 2001) (*ITC Preliminary Determination*).

On May 1, 2001, the Department selected Red Point, Luk Ka, and Max Fortune as mandatory respondents and decided not to extend the POI. See Memorandum from Laurie Parkhill to Richard W. Moreland dated May 1, 2001.

On May 1, 2001, the Department issued its antidumping questionnaire to Red Point, Luk Ka, and Max Fortune. On June 13, 2001, we learned from counsel for Luk Ka that Luk Ka was not going to submit a response to our questionnaire. See Memorandum from Thomas Schauer to the File dated June 13, 2001. On June 21, 2001, we received responses to our questionnaire from Red Point and Max Fortune.

The petitioners filed comments on the respondents' submissions in June 2001. On June 29, 2001, the Department issued supplemental questionnaires to Red Point and Max Fortune. On July 13, 2001, we received responses to our supplemental questionnaires from Red Point and Max Fortune.

On June 6, 2001, we requested publicly available information for valuing the factors of production and comments on surrogate-country selection. On June 29, 2001, we received comments from Max Fortune on the surrogate country it believes is appropriate to use for valuing the factors of production.

On July 20, 2001, the petitioners submitted additional factors information and argument for the use of Indonesia as the surrogate country. However, this information came in too late for us to be able to use it in our preliminary determination. We intend to re-examine the issue of surrogate-country selection for our final determination and invite parties to comment pursuant to the instructions in the ''Public Comment'' section of this notice, below.

Period of Investigation

The POI corresponds to each exporter's two most recent fiscal quarters prior to the filing of the petition, *i.e.,* July 1, 2000, through December 31, 2000.

Scope of Investigation

The products covered by this investigation are certain folding gift boxes. Certain folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Certain folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the investigation excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope of the investigation also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Certain folding gift boxes are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes certain folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Certain folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope of the investigation excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as ''not-for-

resale'' gift boxes or ''give-away'' gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the investigation also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are classified under *Harmonized Tariff Schedules of the United States* (HTSUS) subheadings 4819.20.00.40 and 4819.50.40.60. These subheadings also cover products that are outside the scope of this investigation. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. There is no data on the record that indicates conclusively the number of producers/exporters from the PRC that exported the subject merchandise to the United States during the POI.

On March 27, 2001, the Department sent partial section A questionnaires addressed to all producers/exporters of the subject merchandise listed in the petition and to the Chinese government asking for its assistance in delivering the questionnaire to all producers/exporters of the subject merchandise. On April 11, 2001, Max Fortune and Red Point submitted their responses. On April 17, 2001, we received a response from Dexon. Finally, on April 19, 2001, we received a response from Luk Ka. All of these companies had export sales to the United States. However, Dexon indicated that it went out of business on March 26, 2001. On this basis, we have no reason to believe that Dexon continues to be a going concern that would be affected by this antidumping investigation. For this reason, we found that it is not necessary to investigate Dexon further. In addition, Red Point, Luk Ka, and Max Fortune were responsible for over 99.7 percent of all exports during the POI of subject merchandise of the companies that responded to our March 27, 2001, questionnaire. Therefore, we examined Red Point, Luk Ka, and Max Fortune as mandatory respondents but did not investigate Dexon. See Memorandum from Laurie Parkhill to Richard W. Moreland dated May 1, 2001.

Non-Market-Economy Country Status

The Department has treated the PRC as a non-market-economy (NME) country in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104 (December 20, 1999), and *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998)). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME. When we investigate imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a market economy at a comparable level of economic development and that is a significant producer of comparable merchandise. The sources used to value individual factors are discussed in the ''Factor Valuations'' section, below.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. In this case, two respondents have requested separate company-specific rates. Max Fortune is a Hong Kong company which is wholly owned by two Hong Kong nationals. Red Point is a Hong Kong company which is wholly owned by non-PRC nationals. Because Hong Kong companies are treated as market-economy companies (see *Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong,* 62 FR 42965 (August 11, 1997)), we determine that no separate-rate analysis is required for either Max Fortune or Red Point.

Although the record indicates that Luk Ka is located in Hong Kong, Luk Ka did not respond in full to our questionnaire. See Memorandum to File dated June 13, 2001. Therefore, we have no information as to who owns Luk Ka, whether it is registered for business in Hong Kong or the PRC, or what degree of control the government of the PRC exercises over Luk Ka. Therefore, we preliminarily determine that Luk Ka has not rebutted the presumption that it is subject to PRC government control and is part of the PRC-wide entity.

The PRC-Wide Rate

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received questionnaire responses from Red Point and Max Fortune. Luk Ka did not respond to our full questionnaire, but its response to our March 27, 2001, questionnaire indicated it exported the subject merchandise to the United States during the POI. For this reason, we preliminarily determine that at least one PRC exporter of certain folding gift boxes failed to respond to our questionnaire. Moreover, because Rank Sharp Investments, Ltd., Bigfield Goldenford Holdings Ltd., Fangyuan International Economy and Trade Co., and Hong Kong Dasan Paper Products Co., Ltd., did not respond to our March 27, 2001, request for information, we assume that these companies also exported the subject merchandise to the United States during the POI. Consequently, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from Red Point and Max Fortune.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) The

information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available.

As explained above, the exporters comprising the single PRC-wide entity failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the PRC-wide rate because we did not receive the data needed to calculate a margin for that entity. Also, because the exporters comprising the PRC-wide entity failed to respond to the Department's requests for information, the Department has found that the PRC-wide entity failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for that entity. As adverse facts available, we recalculated the margins that the petitioners alleged in their February 20, 2001, petition using the surrogate values we selected for the preliminary determination and selected the higher of the two margins because the margins derived from the information in the petition are higher than the margins we have calculated for the responsive exporters.

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (SAA), states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

The petitioners' methodology for calculating the export price (EP) and normal value (NV) in the petition is discussed in the initiation notice. See *Initiation Notice,* 66 FR at 15401–15402. To corroborate the petitioners' EP calculations, we compared the prices in the petition to the prices submitted by Max Fortune for comparable products. To corroborate the petitioners' NV calculations, we compared the petitioners' factor-consumption data to the data reported by Max Fortune and Red Point. Finally, we valued the factors in the petition using the surrogate values we selected for the preliminary determination.

As discussed in the memorandum to the file entitled Corroboration of Facts Available, dated July 30, 2001, we found that the EP and factors-of-production information in the petition were reasonable and, therefore, we preliminarily determine that the petition information has probative value. Accordingly, we find that the highest margin based on petition information and adjusted as described above, 164.75 percent, is corroborated within the meaning of section 776(c) of the Act.

Accordingly, for the preliminary determination, the PRC-wide rate is 164.75 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries selected in accordance with section 773(c)(4) of the Act. In accordance with that provision, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed in the ''Normal Value'' section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See Memorandum from Jeffrey May to Laurie Parkhill: Antidumping Duty Investigation on Certain Folding Gift Boxes from the People's Republic of China, dated June 12, 2001. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. In this case, we have found that India is a significant producer of comparable merchandise and we have reliable data from India which we can use to value the factors of production.

We have used India as the surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. See Surrogate Country Selection Memorandum to The File from Thomas Schauer dated July 30, 2001 (Surrogate Country Memorandum). We have obtained and relied upon publicly available information wherever possible. See Factor Valuation Memorandum to Laurie Parkhill from Thomas Schauer, dated July 30, 2001 (Factor Valuation Memorandum).

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Fair Value Comparisons

To determine whether sales of certain folding gift boxes to the United States by Red Point and Max Fortune were made at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, we used EP for Max Fortune and Red Point because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs.

We calculated EP based on prices to unaffiliated purchasers in the United States. For Max Fortune we made deductions, where appropriate, for foreign inland freight, seaport charges, brokerage and handling, and declaration fees. All of these charges were provided by Hong Kong companies and charged in Hong Kong dollars. Therefore, valuation of these charges based on surrogate values was not necessary.

Red Point claimed that the Department should classify all of its sales as CEP sales because, it claimed, its importer, The Lindy Bowman Company, is an affiliated party within the meaning of section 771(33) of the Act. Based on our review of the business relationship of Red Point and Lindy Bowman, we concluded that Red Point has not demonstrated that the two firms are affiliated. See Red Point United States Price Analysis Memorandum dated July 30, 2001. We intend to examine this issue further at verification.

We calculated weighted-average EPs for Red Point's U.S. sales made to Lindy Bowman. We made deductions, where appropriate, for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, marine insurance, U.S. brokerage and handling, and U.S. Customs duties in accordance with section 772(c)(2)(A) of the Act. All of these charges were provided by Hong Kong or U.S. companies and charged in Hong Kong dollars or U.S. dollars. Therefore, valuation of these charges based on surrogate values was not necessary.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by respondents, for materials, energy, labor, by-products, and packing. We valued all input factors not obtained from market economies using publicly available published information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See* also *Lasko Metal Products* v. *United States*, 437 F.3d 1442, 1445–1446 (Fed. Cir. 1994). Both Max Fortune and Red Point reported that some of their inputs were purchased from market economies and paid for in market-economy currency. See ''Factor Valuations'' section below.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents, see the Factor Valuation Memorandum. For a detailed description of all actual values used for market-economy inputs, see the Red Point Preliminary Calculation Memorandum dated July 30, 2001, and the Max Fortune Preliminary Calculation Memorandum dated July 30, 2001.

Because we used Indian import values to value inputs purchased domestically by the Chinese producers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Because the values were not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from Monthly Trade Statistics of Foreign Trade of India—Volume II—Imports (Indian Import Statistics) for the time period of April 2000 through September 2000 because POI-specific Indian import statistics data were not available. We adjusted the value for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

As explained above, both Max Fortune and Red Point purchased certain raw material inputs from market-economy suppliers and paid for them in market-economy currencies. See Red Point's June 21, 2001, section D response at page 4 and Max Fortune's June 21, 2001, section D response at page D–5 for a description of these inputs. The evidence provided by the respondents indicated that their market-economy purchases of these inputs were paid for by the respondent in a market-economy currency. See Red Point's June 21, 2001, section D response at page 5 and Max Fortune's June 21, 2001, section D response at Exhibit 24. Therefore, the Department has determined to use the market-economy prices as reported by the respondents to value these inputs from both market-economy and NME suppliers because the market-economy inputs represented a significant quantity of the inputs in each case and they were paid for in a market-economy currency, in accordance with 19 CFR 351.408(c)(1).

To value electricity, we used the data we used in *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth New Shipper Review,* 66 FR 29080, (May 29, 2001) (see Factors Valuation of the Preliminary Results Memorandum for that proceeding dated May 21, 2001). We had obtained this data from the Indian publication ''1995 Conference of Indian Industries: Handbook of Statistics and The Center for Monitoring Indian Economy.'' Because the rate from this source was not contemporaneous with the POI, we adjusted the rate for inflation.

The respondents reported the following packing inputs: corrugated boxes, cartons, shrink wrap, polybags, hand tags, tape, labels, and inner paper. We used Indian Import Statistics data for the period April 2000 through September 2000 (adjusted for inflation) for Red Point. See the Factor Valuation Memorandum. Max Fortune obtained all of its packing inputs, except as described below, from market-economy suppliers. For all packing inputs Max Fortune obtained from market-economy suppliers, we used the market-economy prices as reported by Max Fortune, in accordance with 19 CFR 351.408(c)(1). Max Fortune obtained cartons from both market-economy and NME suppliers. See Max Fortune's June 21, 2001, section D response at Exhibit 24. In accordance with 19 CFR 351.408(c)(1), we used the market-economy prices as reported by Max Fortune to value all cartons.

We used Indian transport information to value transport for raw materials. To calculate domestic inland freight (truck), we used a price report from The Financial Express for transporting materials between Mumbai and Surat (263 kilometers), which was provided in Exhibit 22 of Max Fortune's June 29, 2001, surrogate-value submission. We converted the Indian Rupee value to U.S. dollars and adjusted for inflation.

Both respondents identified a by-product (paperboard scrap) which they

claimed is sold to customers in the PRC. The Department has offset the respondents' cost of production by the value of a reported by-product where the respondents' responses indicated that it was sold and/or where the record evidence demonstrates clearly that the by-product was re-entered into the production process. We intend to examine this issue more closely at verification for both respondents. See the Factor Valuation Memorandum for a complete discussion of by-product credits given and the surrogate values used.

To value factory overhead expenses, selling, general and administrative expenses (SG&A), and profit we calculated a rate based on financial statements from an Indian producer of comparable merchandise, Rollatainers Limited. For a further discussion of the surrogate values for overhead, SG&A and profit, see the Factor Valuation Memorandum.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at Import Administration's home page, Expected Wages of Selected NME Countries, revised in May 2000 (see http://ia.ita.doc.gov/wages). The source of the wage rate data on the Import Administration's Web site is the 1999 Year Book of Labour Statistics, International Labor Office (Geneva: 1999), Chapter 5B: Wages in Manufacturing.

Verification

As provided in section 782(i) of the Act, we will verify the information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Red Point Paper Products Co., Ltd	30.11
Max Fortune Industrial Ltd	14.05
PRC-wide Rate	164.75

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: July 30, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19622 Filed 8–3–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 11, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom (66 FR 18749). This review covers one manufacturer/exporter of the subject merchandise (Imperial Chemical Industries, PLC). The period of review (POR) is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan or Michele Mire, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5253 or (202) 482–4711, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On April 11, 2001, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on INC from the United Kingdom. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Industrial Nitrocellulose from the United Kingdom*, 66 FR 18749 (April 11, 2001).

In response to the Department's invitation to comment on the preliminary results of this review, Imperial Chemical Industries, PLC (ICI or respondent) filed its case brief on May 11, 2001. No other interested parties filed case or rebuttal briefs.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Period of Review

The POR is July 1, 1999 to June 30, 2000.

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) from Bernard T. Carreau, Deputy Assistant Secretary, Group II, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 20, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. 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, room B–099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculation. These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period July 1, 1999 through June 30, 2000:

Manufacturer/Exporter	Percent margin
Imperial Chemical Industries, PLC	3.44

Assessment

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. Where the importer-specific assessment rate is above *de minimis,* we will instruct Customs to assess duties on all entries of subject merchandise by that importer. The Department will issue appraisement instructions directly to Customs.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for ICI will be the rate shown above; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 11.13 percent, the ''all-others'' rate established in the LTFV investigation (55 FR 21058, May 22, 1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment

1. Ministerial Errors

[FR Doc. 01–19620 Filed 8–3–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent not to revoke order in part.

SUMMARY: In response to requests by American Silicon Technologies and Elkem Metals Company (collectively petitioners), and requests by Companhia Brasileira Carbureto De Calcio (CBCC), Ligas de Aluminio S.A. (LIASA), and RIMA Industrial S.A. (RIMA) (collectively respondents), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 1999 through June 30, 2000.

We preliminarily determine that no respondent sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct Customs to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument: (1) A statement of the issue(s), and (2) a brief summary of the argument (not to exceed five pages). Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482–5831 or Ron Trentham at (202) 482–6320, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil. *See Antidumping Duty Order: Silicon Metal from Brazil* 56 FR 36135 (July 31, 1991). On July 20, 2000, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1999 through June 30, 2000. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 65 FR 45035 (July 20, 2000). On July 24, 2000, in accordance with 19 CFR 351.213(b)(1), LIASA requested that the Department conduct an administrative review of its sales and partially revoke the order with respect to LIASA pursuant to 19 CFR 351.222(e). On July 26, 2000, in accordance with 19 CFR 351.213(b)(1), CBCC requested that the Department conduct an administrative review of its sales and partially revoke the order with respect to CBCC pursuant to 19 CFR 351.222(e). On July 31, 2000, RIMA requested that the Department conduct an administrative review of its sales and partially revoke the order with respect to RIMA pursuant to 19 CFR 351.222(e).

On July 31, 2000, petitioners requested that the Department conduct an administrative review of sales made by CBCC, Eletrosilex, LIASA, Companhia Ferroligas Minas Gerais-Minasligas (Minasligas) and RIMA. On August 8, 2000, the Department issued questionnaires to CBCC, Eletrosilex, LIASA, Minasligas and RIMA. On August 18, 2000, petitioners withdrew their request that the Department conduct an administrative review of sales made by Eletrosilex. On August 31, 2000, the Department informed Eletrosilex that it should not reply to the Department's August 8, 2000, questionnaire because an administrative review of its sales would not be conducted. On September 6, 2000, in accordance with 19 CFR 351.221(b)(1), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980 (September 6, 2000).

On September 22, 2000, the Department received responses to sections A through D of the questionnaire from Minasligas. On October 6, 2000, the Department received responses to sections A through D of the questionnaire from CBCC and LIASA. On October 10, 2000, the Department received responses to sections A through D of the questionnaire from RIMA. The Department issued a supplemental questionnaire to Minasligas on November 17, 2000 and received a response on December 1, 2000. The Department issued a supplemental questionnaire to LIASA on November 21, 2000 and received a response on December 19, 2000. The Department issued supplemental questionnaires to CBCC on December 4, 2000, February 16, February 23 and May 25 of 2001, and received responses on January 2, March 9, March 16 and June 22 of 2001, respectively. The Department issued supplemental questionnaires to RIMA on December 8, 2000 and February 1, 2001 and received responses on January 3, 2001 and March 1, 2001, respectively.

On March 15, 2001, in accordance with section 751(a)(3)(A) of the Act, the Department published in the **Federal Register** its notice extending the deadline for the preliminary results until July 30, 2001. *See Silicon Metal from Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 15078 (March 15, 2001). The Department is conducting this review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99

percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by RIMA and CBCC. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU—Public File). Following the publication of these preliminary results, we plan to verify, as provided in section 782(i) of the Act, information provided by CBCC's U.S. affiliate. At that verification, we will use standard verification procedures, including on-site inspection of the manufacture's facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We plan to prepare a verification report outlining our verification results and place this report on file in the CRU.

Intent Not To Revoke

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes, *inter alia,* that the exporter and producer: (1) Sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) are not likely in the future to sell the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2) (2000); *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Pure Magnesium from Canada,* 64 FR 12977, 12982 (March 16, 1999) (*Pure Magnesium from Canada*).

I. CBCC

On July 26, 2000, CBCC submitted a request, in accordance with 19 CFR 351.222(e), that the Department partially revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from CBCC that for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. CBCC also agreed to its immediate reinstatement in this antidumping order, as long as any firm is subject to the order, if the Department concludes that, subsequent to revocation, CBCC sold the subject merchandise at less than NV.

We received comments from CBCC and petitioners on March 16, 2001 concerning CBCC's revocation request. We received rebuttal comments from petitioners on March 26, 2001.

After a review of the record, the Department preliminarily determines that because CBCC did not have a zero or *de minimis* dumping margin during the preceding review period, the 1998–1999 POR, it has failed to make sales of subject merchandise ''at not less than NV for a period of at least three consecutive years'' as required by the Department's regulations. During the 1998–1999 review period, CBCC's weight-averaged dumping margin was determined to be 0.63 percent, a non-*de minimis* rate. *See Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil,* 66 FR 11256 (February 23, 2001) (*1998–1999 Silicon Metal Final*). Therefore, we do not intend to revoke the antidumping duty order with respect to CBCC. Additionally, because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issues of commercial quantities and whether the continued application of the antidumping duty order is necessary to offset dumping with respect to CBCC.

II. LIASA

On July 24, 2000, LIASA submitted a request, in accordance with 19 CFR 351.222(e), that the Department partially revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from LIASA that for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue do so in the future. LIASA also agreed to its immediate reinstatement in this antidumping order, as long as any firm is subject to the order, if the Department concludes that, subsequent to revocation, LIASA sold the subject merchandise at less than NV.

We received comments from LIASA on March 16, 2001 concerning LIASA's revocation request. We received rebuttal comments from petitioners on March 26, 2001.

After a review of the record, the Department preliminarily determines that because LIASA did not sell subject merchandise in commercial quantities during the most recently completed segment of this proceeding, the 1998–1999 POR, it has failed to demonstrate three consecutive years of sales in commercial quantities, as required by the Department's regulations. *See 1998–1999 Silicon Metal Final* and accompanying Decision Memo. A comparison of LIASA's aggregated U.S. sales during the 1998–1999 POR to its sales during the six month period of investigation (POI) revealed that LIASA's POR sales represented approximately 1.6 percent of its sales during the POI. *Id.* In addition, when LIASA's POI sales were annualized, its 1998–1999 POR sales declined even further, to approximately 0.8 percent, when compared to its POI sales volume. *Id.* On this basis, we concluded in the preceding administrative review that LIASA did not sell subject merchandise in commercial quantities during the 1998–1999 POR. Therefore, because LIASA did not sell subject merchandise in commercial quantities during the most recent three consecutive PORs, we do not intend to revoke the antidumping duty order with respect to LIASA. Additionally, because one of the

requirements to qualify for revocation has not been met, the Department has not addressed the issue of whether the continued application of the antidumping duty order is necessary to offset dumping with respect to LIASA.

III. RIMA

On July 31, 2000, RIMA submitted a request, in accordance with 19 CFR 351.222(e), that the Department partially revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from RIMA that for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. RIMA also agreed to its immediate reinstatement in this antidumping order, as long as any firm is subject to the order, if the Department concludes that, subsequent to revocation, it sold the subject merchandise at less than NV.

We received comments from RIMA and petitioners on March 16, 2001, concerning RIMA's revocation request. We received rebuttal comments from RIMA and petitioners on March 26, 2001.

For these preliminary results, the Department has relied upon RIMA's sales activity during the 1997–1998, 1998–1999 and 1999–2000 PORs in making its decision regarding RIMA's revocation request.

In accordance with the regulations described above, the Department must determine whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request. *See* 19 CFR 351.222(d)(1). In other words, the Department must determine whether the quantities sold during these time periods are reflective of the company's normal commercial activity. *See Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 64 FR 2175 (January 13, 1999) (*Certain Corrosion-Resistant Carbon Steel Flat Products from Canada*). Sales during a POR which, in the aggregate, are of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not generally provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. *Id.*; *see also*, *Pure Magnesium From Canada*, 64 FR 12977 (March 16, 1999). However, the determination as to whether or not sales volumes are made in commercial quantities is made on a case-by-case basis, based on the unique facts on the record of each proceeding. *See* section 751(d) of the Act; 19 CFR 351.222(e); *see also*, *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands,* 65 FR 742, 750 (January 6, 2000) (*Brass from Netherlands*).

In the present case, the Department compared RIMA's aggregate U.S. sales during each of the aforementioned PORs to the six-month POI. The POI is an appropriate benchmark because it reflects sales activity without the discipline of an antidumping order in place. The comparison indicates that RIMA's sales to the U.S. market during the three above-mentioned PORs represent 0.039 percent (1997–1998), 63 percent (1998–1999), and 296 percent (1999–2000) of the U.S. sales during the POI. *See* Memorandum Regarding ''Ninth Administrative Review: RIMA and Commercial Quantities,'' dated July 31, 2001 (Commercial Quantities Memo). When the POI sales are annualized, the sales for each of the three consecutive PORs decline to approximately 0.02 percent, 32 percent, and 148 percent, respectively, when compared to the POI sales volume. *Id.* In *Brass from Netherlands,* the Department denied revocation by stating that the volume of merchandise sold to the United States during one of the relevant PORs was not sold in commercial quantities because it represented approximately two percent of the volume of merchandise sold in the benchmark investigative period. *Id.* at 65 FR 752. Similarly, in the most recently completed segment of this proceeding, the Department denied revocation for LIASA because it failed to meet the commercial quantities threshold. In that particular administrative review, the Department determined that LIASA's aggregate sales during the review period, represented less than one percent of the sales volume sold during the POI. Based on that finding, the Department denied LIASA's revocation request. *See 1998–1999 Silicon Metal Final*. In the instant review, we find that during the 1997–1998 POR, RIMA's sales to the United States were significantly lower, as a percentage of its POI sales, than in cases mentioned above.

After a review of the criteria outlined at sections 351.222(b) and 351.222(d) of the Department's regulations, the Department's practice, the comments of the parties, and the evidence on the record, we have preliminarily determined that the requirements for revocation have not been met. Based on the preliminary results of this review and the final results of the two preceding reviews, RIMA has not demonstrated three consecutive years of sales in commercial quantities. Therefore, because RIMA has not sold subject merchandise in commercial quantities during each of the three consecutive review periods, we do not intend to revoke the antidumping duty order with respect to RIMA. *See* Commercial Quantities Memo.

Additionally, because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issue of whether the continued application of the antidumping duty order is necessary to offset dumping with regard to RIMA. However, should the decision regarding Rima's revocation be revised for the final results of review, it will be necessary to address this factor at that time. As a consequence, interested parties are invited to comment on this factor in their case briefs.

NV Comparisons

During the POR, U.S. sales by Brazilian respondents were both export price (EP) and constructed export price (CEP) sales. To determine whether EP sales of silicon metal by the Brazilian respondents to the United States were made at less than normal value, we compared EP to the NV, as described in the ''*EP*'' and ''*NV*'' sections of this notice, below. To determine whether CEP sales of silicon metal by the Brazilian respondents to the United States were made at less than normal value, we compared CEP to the NV, as described in the ''*CEP*'' and ''*NV*'' sections of this notice below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP or CEP transactions, as appropriate.

Sales Reviewed

We have continued to employ the approach, adopted in the final results of the second review of this order, covering the 1992–1993 POR, in determining which U.S. sales to review for all companies. If a respondent sold subject merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR. *See Silicon Metal from Brazil, Final Results of Antidumping Duty*

Administrative Review, 61 FR 46763 (September 5, 1996).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the ''*Scope of Review*'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Further, as in the preceding segment of this proceeding, we have continued to treat all silicon metal meeting the description of the merchandise under the ''*Scope of Review*'' section, above (with the exception of slag and contaminated products) as identical products for purposes of model-matching. *See Silicon Metal From Brazil: Preliminary Results, Intent To Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits,* 64 FR 43161 (August 9, 1999) (1997–1998 Silicon Metal Preliminary). Therefore, where there were no contemporaneous sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period.

Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction, as appropriate. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated or affiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773 (a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

I. CBCC

CBCC reported home market sales through one channel of distribution to three unaffiliated customer categories (*i.e.,* direct sales to traders, end-users and silicon metal producers). CBCC reported both EP and CEP sales in the U.S. market. For EP sales, CBCC reported one customer category and one channel of distribution (*i.e.,* direct sales to an unaffiliated trading company). CBCC claimed in its response that EP sales were made at the same LOT as home market sales to unaffiliated customers. For this reason, CBCC has not asked for a LOT adjustment to NV for comparison to its EP sales. For CEP sales, CBCC reported one customer category and one channel of distribution (*i.e.,* direct sales to an affiliated party). CBCC claimed in its response that CEP sales were made at the same LOT as home market sales to unaffiliated customers. For this reason, CBCC has not asked for a LOT adjustment to NV for comparison to its CEP sales.

In analyzing CBCC's selling activities for the home and U.S. markets, we determined that essentially the same selling functions were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that for CBCC, the LOT for all EP and CEP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment or CEP offset under section 773(a)(7) of the Act is warranted for CBCC.

II. LIASA

LIASA reported home market sales through one channel of distribution to one unaffiliated customer category (*i.e.,* direct sales to end-users). In the U.S. market, LIASA reported EP sales through one channel of distribution to one customer category (*i.e.,* direct sales to unaffiliated end-users). In its response, LIASA stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, LIASA has not requested a LOT adjustment.

In analyzing LIASA's selling activities for its EP sales, we determined that essentially the same services were provided for both markets. The selling functions in both markets were minimal in nature and usually limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined for LIASA that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for LIASA.

III. RIMA

RIMA reported home market sales through one channel of distribution to one customer category (*i.e.,* direct sales to unaffiliated end-users). In the U.S. market, RIMA reported EP sales through one channel of distribution to one customer category (*i.e.,* direct sales to unaffiliated end-users). In its response, RIMA stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, RIMA has not requested a LOT adjustment.

In analyzing RIMA's selling activities for the home and U.S. market, we determined that essentially the same selling functions were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that for RIMA, the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for RIMA.

IV. Minasligas

Minasligas reported home market sales through one channel of distribution to two unaffiliated

customer categories (*i.e.,* direct sales to domestic retailers and end-users). In the U.S. market, Minasligas reported EP sales through one channel of distribution to one unaffiliated customer category (i.e., direct sales to trading companies). In its response, Minasligas stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, Minasligas has not requested a LOT adjustment.

In analyzing Minasligas' selling activities for the home and U.S. markets, we determined that essentially the same services were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined for Minasligas that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Minasligas.

EP

For LIASA, RIMA, Minasligas, and a portion of CBCC's sales, we used the Department's EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by each producer outside the United States directly to the first unaffiliated purchaser in the United States prior to importation (or to unaffiliated trading companies for export to the United States). We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, foreign inland freight (where foreign inland freight was reported inclusive of the value-added tax (VAT), we deducted the VAT from the gross freight cost), brokerage and handling, and international freight. For Minasligas, we added duty drawback to the starting price. We made company-specific adjustments to EP as follows:

I. CBCC

We recalculated CBCC's home market inland freight, home market credit expense and international freight pursuant to corrections presented at verification. For a discussion of these changes, see Calculation Memorandum for CBCC dated , and Report on the Verification of the Sales and Cost Responses for CBCC, dated July 30, 2001, for further information regarding the sales verification.

CEP

Initially, in it's October 6, 2000, response, CBCC reported sales to its U.S. affiliate as EP sales. However, in response to the Department's December 4, 2000, supplemental questionnaire, CBCC reported all sales to its U.S. affiliate, Dow Corning Corporation (Dow), as CEP sales in its January 2, 2001, supplemental response. CBCC also reported that Dow further manufactured the purchased silicon metal into a multitude of other products, mostly chemicals, and sold these products in the United States. Therefore, CBCC requested that the Department apply section 772(e) of the Act to the further manufactured sales.

Where appropriate, in accordance with section 772(d)(2) of the Act, the Department deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) of the Act is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the Department has the discretion to determine the CEP using alternative methods.

The alternative methods for establishing export price are: (1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. The Statement of Administrative Action notes the following with respect to these alternatives:

> There is no hierarchy between these alternative methods of establishing the export price. If there is not a sufficient quantity of sales under either of these alternatives to provide a reasonable basis for comparison, or if the Department determines that neither of these alternatives is appropriate, it may use any other reasonable method to determine CEP, provided that it supplies the interested parties with a description of the method chosen and an explanation of the basis for its selection. Such a method may be based upon the price paid to the exporter or producer by the affiliated person for the subject merchandise, if the Department determines that such price is appropriate.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for one form of the merchandise sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. *See* 19 C.F.R. 351.402(2). Based on this analysis, and the information on the record, we determined that the estimated value added in the United States by Dow accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. As a consequence, the Department relied upon an alternative methodology to calculate CBCC's margin for these sales. As the alternative methodology, the Department used all sales of subject merchandise to CBCC's unaffiliated customers. For further discussion, see *Memorandum on Whether to Determine the Constructed Export Price for Certain Further-Manufactured Sales Sold by Companhia Brasileira Carbureto de Calcio in the United States During the Period of Review Under Section 772(e) of the Act,* dated July 31, 2001. *NV*

1. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for each respondent. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. Cost of Production (COP) Analysis

In the review segment of this proceeding most recently completed prior to initiating this review, we disregarded home market sales found to be below the COP for LIASA. *See 1997–1998 Silicon Metal Preliminary,* aff'd *Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil,* 65 FR 7497 (February 15, 2000). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this

review may have been made by LIASA at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act.

On October 10, 2000, petitioners in this proceeding filed a timely sales-below-cost allegation with respect to Minasligas. On October 24, 2000, petitioners in this proceeding filed a timely sales-below-cost allegation with respect to CBCC. In the cases of CBCC and Minasligas, the petitioners' allegations were based on the respective respondents' antidumping duty questionnaire responses. Upon review of the allegations, we found that petitioners' methodology provided the Department with a reasonable basis to believe or suspect that sales in the home market had been made at prices below the COP by both CBCC and Minasligas. Accordingly, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether CBCC's and Minasligas' sales of silicon metal were made at prices below COP during the POR. *See* Analysis of Petitioners' Allegation of Sales Below the COP for Minasligas, dated November 13, 2000; Analysis of Petitioners' Allegation of Sales Below the COP for CBCC, dated November 16, 2000.

We have not initiated a cost investigation with respect to RIMA because home market sales were not disregarded during the most recently completed segment of this proceeding (which was the 1997–1998 POR at the time this instant review was initiated) and petitioners did not file a sales-below-cost allegation. *See 1997–1998 Silicon Metal.*

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated company and product-specific COPs based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) expenses, including interest expenses, and packing costs.

We relied on the home market sales and COP information submitted by each respondent in its questionnaire responses.

B. Test of Home Market Sales Prices for CBCC, Minasligas and LIASA

For CBCC, Minasligas and LIASA, we compared the per-unit COP figures for the POR to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

C. Results of COP Test for CBCC, Minasligas and LIASA

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that only LIASA and Minasligas made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

2. CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on each respondents' cost of materials and fabrication in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and SG&A expenses as reported in the CV portion of the questionnaire response, adjusted as discussed in the ''Calculation of COP'' section, above. In addition, we used the U.S. packing costs as reported in the U.S. sales portion of the questionnaire responses. For selling expenses, we used the average of the direct and indirect selling expenses reported for HM sales, weighted by the total quantity of those sales.

Price-to-Price Comparisons

For those comparison products for which there were sales at prices above the COP, we based the respondents' NV on the prices at which the foreign like product was first sold to unaffiliated parties for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. We based NV on sales at the same level of trade as the U.S. transactions. For level of trade, please see the ''*Level of Trade*'' section above. In accordance with section 773(a)(6) of the Act, we made adjustments to home market price, where appropriate for inland freight, brokerage and handling charges, and rebates. Where inland freight was reported inclusive of value-added taxes VAT, we deducted the VAT from the gross freight cost.

To account for differences in circumstances of sale between the home market and the United States, where appropriate, we adjusted home market prices by deducting home market direct selling expenses (including credit) and commissions and adding an amount for late payment fees earned on home market sales, and by adding U.S. direct selling expenses (including U.S. credit expenses) and, where appropriate, deducting an amount for late payment fees earned on U.S. sales. Regarding CBCC's reported home market credit expense, the Department has reviewed documentation related to this expense and determined that the interest rate used by CBCC is substantially higher than the prevailing short-term interest rate in effect during the POR in Brazil. In the most recently completed segment of this proceeding, the Department denied CBCC's credit expense because ''* * * given the fact that there was only one short-term loan made during the course of the POR, a loan with an unusually high interest rate, it is the Department's opinion that the loan does not represent a short-term lending activity in the 'normal course of trade.' *See 1998–1999 Silicon Metal Final* and accompanying Decision Memo. In addition, CBCC's own internal memorandum stated that the loan ''* * * was made at an 'exorbitant' rate to be used only in 'emergency' situation [sic].'' *Id.*

Although there is no internal CBCC memorandum in the current review characterizing CBCC's loan activity as exorbitant, the Department finds that the conditions of CBCC's reported credit expense in this POR are similar to the conditions described in CBCC's internal memorandum from the 1998–1999 POR. *Id. See also* Calculation Memorandum

for CBCC dated July 31, 2001. We therefore determine that CBCC's short-term borrowing in this POR was not in the 'normal course of trade.' Therefore, for these preliminary results, as in the most recently completed segment of this proceeding, we have denied CBCC's reported credit expense and have used the Taxa Referential (TR) rate to calculate the expense. *See 1998–1999 Silicon Metal Final.*

Where commissions were paid on home market sales and no commissions were paid on U.S. sales, we increased NV by the lesser of either (1) the amount of commission paid on the home market sales or (2) the indirect selling expenses incurred on U.S. sales. *See* 19 CFR 351.410(e). In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act. Where home market prices were reported exclusive of VAT we made no adjustment. However, where home market prices were reported inclusive of VAT, we deducted the VAT from the gross home market price, consistent with past practice.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 1999 through June 30, 2000, and we preliminarily determine not to revoke the order covering silicon metal from Brazil with respect to sales of subject merchandise by CBCC, RIMA and LIASA.

Manufacturer/exporter	Weighted-average margin percentage
CBCC	0.00
LIASA	0.00
RIMA	0.00
Minasligas	0.00

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales. Where the assessment rate is above *de minimis*, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review except if the rate is less than 0.5 percent, and therefore, *de minimis,* the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other manufacturers and/or exporters of this merchandise, the cash deposit rate will continue to be 91.06 percent, the ''all others'' rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19621 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Woods Hole Oceanographic Institution; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 01–014. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* (2) Low-level Multicounter Systems. *Manufacturer:* Riso National Labs, Denmark. *Intended Use:* See notice at 66 FR 35224, July 3, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Ability to detect very low levels of radioactivity (having a background count <0.25 cpm), (2) a suitable signal-to-noise ratio and (3) high durability and portability for

transport from ship to ship for operation at sea. The National Institutes of Health advises in its memorandum of July 2, 2001 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–19623 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1999, through December 31, 1999. We have preliminarily determined that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice.

Because the requests for review were withdrawn, we are rescinding this review for the following companies: Pastificio F.lli Pagani, Commercio-Rappresentanze-Export S.r.L., Tamma Industrie Alimentari di Capitanata. S.r.L., Molino e Pastificio, La Molisana Alimentari S.p.A., Arrighi S.p.A. Industrie Alimentari, Industria Alimentare Colavita, S.p.A., Isola del Grano S.r.L., Italpast S.p.A., Italpasta S.r.L., Labor S.r.L., Pastificio Guido Ferrara, Pastificio Campano, S.p.A., Indalco, Audisio Industrie Alimentari de Capitanata, S.p.A., Pastificio Fabianelli, S.p.A. and Pastificio Di Martino Gaetano & F.lli S.r.l.

Interested parties are invited to comment on these preliminary results (*see* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Sally Hastings, Andrew Covington, or Meg Weems AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–1778, 482–3464, 482–3534, or 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). Unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Case History

The Department published the countervailing duty order on certain pasta from Italy on July 24, 1996 (*Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544). On July 20, 2000, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 1999 (*Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 65 FR 45035). We received review requests for 29 producers/exporters of Italian pasta. We initiated our review on September 6, 2000 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980).

Due to administrative resource constraints, the Department decided to limit the number of producers/exporters it would review. On September 18, 2000, the Department issued its ''Respondent Selection Memorandum'' stating that it had selected the largest 12 exporters as mandatory respondents. (*See* September 18, 2000 Memorandum to Deputy Assistant Secretary Richard W. Moreland regarding Respondent Selection. A public version of this memorandum is available in the Central Records Unit (''CRU'') in Room B–099 of the main Department building).

On September 21, 2000, Borden Foods Corporation (one of the original petitioners in this proceeding) withdrew its request for review of those producers/exporters that had been included in its July 31, 2000 request for review but were not selected as mandatory respondents. On October 18, 2000, Pastificio Di Martino Gaetano & F.lli s.r.l. (''Di Martino'') withdrew its request for review, and on November 6, 2000, Tamma Industrie Alimentari, S.r.L (''Tamma'') withdrew its request for review. We are rescinding this administrative review for all of these companies (*see,* the ''Partial Rescission'' section, below).

Thus, this administrative review of the order covers the following producers/exporters of the subject merchandise: Agritalia, S.r.L. (''Agritalia''), F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''), Delverde S.p.A. (''Delverde''), De Matteis Agroalimentare S.p.A. (''De Matteis''), Pastificio Antonio Pallante S.r.L. (''Pallante''), Pastificio Maltagliati S.p.A. (''Maltagliati''), P.A.M. S.r.L.—Prodotti Alimentari Meridionali (''PAM'') (PAM is also responding for Pastificio Liguori dal 1820, S.p.A.), Pastificio Riscossa F.lli Mastromauro S.r.L. (''Riscossa''), N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''), Rummo S.p.A. Molino e Pastificio (''Rummo''), and 28 programs.

On September 29, 2000, we issued countervailing duty questionnaires to the Commission of the European Union (''EC'') and the Government of Italy (''GOI''). We received responses to our questionnaires and issued supplemental questionnaires throughout the period October 2000 through February 2001. Responses to the supplemental questionnaires were received in January, February and March 2001.

On October 23, 2000, we were notified by a bankruptcy trustee that Maltagliati declared bankruptcy on February 9, 2000, and that its factory was closed that same month.

On April 3, 2001, the Department extended the time limit for issuing these preliminary results until no later than July 31, 2001 (*Certain Pasta From Italy and Turkey; Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews*, 65 FR 17683).

Partial Rescission

As noted above, the petitioner withdrew its request for review of those producers/exporters that were included in its July 31, 2000 request for review but were not selected by the Department

as mandatory respondents. These producers/exporters are: Pastificio F.lli Pagani, Commercio-Rappresentanze-Export S.r.L., Tamma Industrie Alimentari di Capitanata. S.r.L., Molino e Pastificio, La Molisana Alimentari S.p.A., Arrighi S.p.A. Industrie Alimentari, Industria Alimentare Colavita, S.p.A., Isola del Grano S.r.L., Italpast S.p.A., Italpasta S.r.L., Labor S.r.L., Pastificio Guido Ferrara, Pastificio Campano, S.p.A., Indalco, Audisio Industrie Alimentari de Capitanata, S.p.A., and Pastificio Fabianelli, S.p.A. Also, Di Martino and Tamma withdrew their requests for review.

Because these withdrawals were timely filed, we are finally rescinding this review with respect to these companies (*see* 19 CFR 351.213(d)(1)). We will instruct the U.S. Customs Service to liquidate any entries from these companies during the POR and to assess countervailing duties at the rate that was applied at the time of entry.

Use of Facts Available

As noted above, we were notified by a bankruptcy trustee that Maltagliati filed for bankruptcy in February 2000, shortly after the period covered by this administrative review. We did not receive a response to our countervailing duty questionnaire from this company.

Section 776(a)(2) of the Act provides that: If an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Section 776(b) of the Act further provides that adverse inferences may be employed when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this instance, we preliminarily determine that an adverse inference is not warranted. According to the bankruptcy trustee, all of Maltagliati's employees were dismissed and the facility closed prior to receipt of the questionnaire. Moreover, we have confirmed with the Customs Service that there have been no imports of pasta from Maltagliati since February 2000. Therefore, as facts available, we preliminarily determine that the countervailable subsidy bestowed on Maltagliati during the POR is 3.85 percent *ad valorem,* the ''all others'' rate established in *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy,* 61 FR 38544, July 24, 1996. Maltagliati was not investigated or included in any prior reviews. Therefore, entries during the POR from Maltagliati were subject to estimated countervailing duties of 3.85 percent.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione (''IMC''), by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by the Conzorzio per il Controllo dei Prodotti Biologici, or by Associazione Italiana per l'Agricoltura Biologica.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (''HTSUS'').* Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the countervailing duty order. (*See* August 25, 1997 memorandum from Edward Easton to Richard Moreland, which is on file in CRU in Room B–099 of the main Commerce building.)

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the countervailing duty order. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., which is on file in the CRU.)

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999 memorandum from John Brinkmann to Richard Moreland, which is on file in the CRU.)

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1, 1999 through December 31, 1999.

Attribution of Subsidies

Agritalia: Agritalia is a trading company which buys and sells pasta produced by non-affiliated suppliers. In accordance with section 351.525(c) of the regulations, we have cumulated the benefits received by Agritalia and by the two major companies supplying Agritalia to calculate the countervailing duty rate applicable to Agritalia.

DeCecco: DeCecco has responded on behalf of three members of the DeCecco Group: F.lli DeCecco di Filippo Fara San Martino S.p.A. (''Pastificio''), Molino e Pastificio F.lli DeCecco S.p.A. (''Pescara'') and Molino F.lli DeCecco di Filippo S.p.A. (''Molino''). Pastificio and Pescara manufacture pasta for sale in Italy and the United States; Molino produces semolina for Pastifico and Pescara. Pastifico and Pescara are directly or indirectly 100 percent-owned by members of the DeCecco family. Effective January 1, 1999, Molino was merged with Pastifico and ceased to be a separate entity. In accordance with section 351.525(b)(6)(i) and (ii) of the regulations, we are attributing subsidies received by all three entities to the combined sales of all three.

Delverde: Consistent with section 351.525(b)(6)(ii) of the regulations and the most recent administrative review of this order, we have continued to treat the two affiliated companies, Delverde and Tamma, as separate respondents (*see, Certain Pasta from Italy: Final Results of Third Administrative Review,* 66 FR 11269, February 23, 2001 (''*Third Review—Final Results*''). Thus, subsidies received by Delverde have been assigned solely to that company. Tamma is not being reviewed, and no subsidies received by Tamma have been attributed to Delverde.

DeMatteis: DeMatteis is 100 percent owned by DeMatteis Costruzioni S.r.L. (''Costruzioni''). Costruzioni also owns 100 percent of Demaservice S.r.L., (''Demaservice''). DeMatteis produces and sells pasta products. Costruzioni, a real estate management company, built a warehouse and office building for DeMatteis. Demaservice provides accounting services to Constuzioni and miscellaneous administrative and support services to DeMatteis. DeMatteis has responded on behalf of all three of these companies. In accordance with section 351.525(b)(6)(iii) of the regulations (*see,* in particular, discussion in the preamble to this regulation regarding ''non-producing'' subsidiaries), we are attributing subsidies received by all three entities to the combined sales of all three.

Pallante: Pallante has responded on behalf of Pastificio Antonio Pallante, S.r.L. (''Pallante'') and Industrie Alimentari Molisane S.r.L. (''IAM''), two separately incorporated companies. Pallante produces pasta. IAM is an integrated company that purchases wheat, mills it into semolina, and uses its semolina to produce pasta. We are treating Pallante and IAM as a single respondent, in accordance with section 351.525(b)(6)(ii) of the regulations, because a single shareholder, Antonio Pallante, has a controlling interest in both companies. Therefore, subsidies received by both companies are being attributed to the sales of both companies.

PAM: PAM has responded on behalf of five companies: PAM, Liguori, Pastificio D'Apuzzo S.p.A. (''D'Apuzzo''), Comimpex, S.r.L. (''Comimpex''), and En.Le.Ve. S.r.L. (''En.Le.Ve.''). PAM, D'Apuzzo, and Comimpex were involved in the production and sale of pasta during the POR, or in related milling operations. En.Le.Ve. provided administrative services to these three companies. Given the nature and extent of the common ownership between PAM, D'Apuzzo, Comimpex, and En.Le.Ve. (the details of which are proprietary), we are attributing subsidies received by these four companies to the combined sales of the four companies. Details of Liguori's relationship with PAM are proprietary. Therefore, Liguori is discussed separately (*see,* July 31, 2001 Proprietary Memorandum from Meg Weems to Richard W. Moreland regarding PAM—Attribution Issues).

PAM has objected to being asked to respond on behalf of Comimpex. Its reasons are proprietary. PAM's arguments and our position are also discussed in the July 31, 2001 Proprietary Memorandum from Meg Weems to Richard W. Moreland regarding PAM—Attribution Issues.

Puglisi: Puglisi has responded on behalf of N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi'') and its 100-percent owned subsidiary, CE.S.A.P. S.r.L. (''CE.S.A.P.''). CE.S.A.P. provides quality control and maintenance services to Puglisi. We have attributed the subsidies received by both companies to their combined sales.

Riscossa: Riscossa is an integrated pasta producer, buying its wheat, milling the wheat into semolina, and producing pasta from its semolina. In accordance with section 351.525(b)(6)(i) of the regulations, the Department has attributed subsidies received by Riscossa for the production of semolina and pasta to Riscossa's sales of pasta.

Rummo: Rummo is a family-owned business with no affiliated companies producing subject merchandise or inputs into subject merchandise. Therefore, all subsidies received by Rummo have been attributed to pasta it produces and sells, and to the ''pasta waste'' (a by-product) it sells as animal feed.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: In accordance with section 351.505(a)(1) and 351.524(d)(3) of the regulations, we have used the amount the company actually paid on a comparable commercial loan as the benchmark/discount rate, when the company had a commercial loan in the same year as the government loan or grant. However, there were several instances where a company did not take out any loans which could be used as benchmarks/discount rates in the years in which the government grants or loans under review were received. In these instances, consistent with section 351.505(a)(3)(ii) of the regulations, we used a national average interest rate for a comparable commercial loan. Specifically, for years prior to 1995, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. For subsidies received in 1995 and later, we used the Italian Bankers' Association (''ABI'') interest rate, increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.

Allocation Period: In the *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy,* 61 FR 30288, June 14, 1996, (''*Pasta Investigation*''), the Department used as the allocation period for non-recurring subsidies the average useful life (''AUL'') of renewable physical assets in the food-processing industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS tables''), *i.e.,* 12 years. However, the U.S. Court of International Trade (''CIT'') ruled against this allocation methodology for non-recurring subsidies (*see British Steel plc* v. *United States,* 879 F.Supp. 1254, 1289 (CIT 1995) (''*British Steel I*'')). In accordance with the CIT's remand order, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies was a company-specific AUL of renewable physical assets. This remand determination was affirmed by the CIT on June 4, 1996 (*see British Steel plc v. United States,* 929 F.Supp. 426, 439 (CIT 1996) (''British Steel II'')).

Consistent with the ruling in *British Steel II*, we developed company-specific AULs in the first and second administrative reviews of this order (*see Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review,* 63 FR 43905, 43906, August 17, 1998 (''*First Review—Final Results*'') and *Certain Pasta from Italy: Final Results of the Second Countervailing Duty Administrative Review,* 64 FR 44489, 44490–91, August 16, 1999 (''*Second Review—Final Results*''). We used these company-specific AULs to allocate any non-recurring subsidies that were not countervailed in the investigation. However, for non-recurring subsidies which had already been countervailed in the investigation, the Department used the original allocation period, *i.e.,* 12 years, because it was deemed neither reasonable nor practicable to reallocate those subsidies over a different time period. This methodology was consistent with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997).

The third review of this order was subject to section 351.524(d)(2) of the regulations. Under this regulation, the Department will use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period. In *Third Review—Final Results,* all subsidies received in the POR were assigned a 12-year allocation period, consistent with the IRS tables.

In the current review, no respondent has contested the 12-year AUL in the IRS tables. Therefore, we are assigning a 12-year allocation period to non-recurring subsidies received in the POR, as well as any non-recurring subsidies received in prior years by companies that were not included in previous reviews.

Change in Ownership

In 1991, Delverde purchased a pasta factory from an unaffiliated party. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership. In *Third Review—Final Result,* the Department applied the methodology it developed to comply with the Court of Appeals for the Federal Circuit's decision in *Delverde* v. *United States,* 202 F.3rd 1360, 1369 (Fed. Cir. 2000), to Delverde's purchase of the pasta factory. We determined that the post-sale entity was, for all intents and purposes, the same ''person'' as the pre-sale entity. Consequently, all the elements of a subsidy are established with regard to the post-sale Delverde and it continues to benefit in full from all of the subsidies that were provided to the previous owner prior to the sale of the pasta factory.

No new information has been submitted in this review to warrant reconsideration of our determination regarding the countervailability of these subsidies. Therefore, we have included these subsidies in the countervailing duty rate calculated for Delverde.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Subsidies

1. Law 64/86 Industrial Development Grants

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project. (Loans were also provided under Law 64/86; *see* below.)

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (*see* below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993.

DeCecco, Delverde, DeMatteis, Pallante, Puglisi, and Riscossa received grants under Law 64/86 which conferred a benefit during the POR.

In *Pasta Investigation,* the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In *Pasta Investigation,* the Department treated the industrial development grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. Also, consistent with our treatment of these grants in the *Third Review—Final Results,* for companies which previously have been investigated or reviewed, we have continued to expense or allocate grants disbursed prior to 1998 (the POR in the third review) according to the practice in place at the time of the investigation or review. (*See Countervailing Duties* (Proposed Rules), 54 FR 23366, 23384 (19 CFR 355.49(a)(3)) (May 31, 1989).) For grants disbursed in 1998 and this POR, 1999, we have followed the methodology described in section 351.524(b)(2) of our new countervailing duty regulations, which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is countervailed in full (''expensed'') in the year of receipt. We have also applied the methodology described in section 351.524(b)(2) of the regulations to grants approved prior to 1998 for companies that were not previously investigated or reviewed.

We used the grant methodology described in section 351.524(d) of the regulations to calculate the countervailable subsidy from those grants that were allocated over time. We divided the benefit received by each company in the POR by its total sales, or total pasta sales, as appropriate, in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 0.94 percent *ad valorem* for DeCecco, 1.55 percent *ad valorem* for Delverde, 0.16 percent *ad valorem* for DeMatteis, 1.20 percent *ad valorem* for Pallante, 2.83 percent *ad valorem* for Puglisi, and 0.81 percent *ad valorem* for Riscossa.

2. Law 488/92 Industrial Development Grants

In 1986, the European Union (''EU'') initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the Mezzogiorno. After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1, Objective 2, and Objective 5(b) areas by the EU (*see* ''European Social Fund'' section below). The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants. (Loans are not provided under Law 488/92.)

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

DeCecco, Delverde, DeMatteis, Pallante and Puglisi received grants under Law 488/92 which conferred a benefit during the POR.

Industrial development grants under Law 488/92 were found countervailable in *Second Review—Final Results.* The

grants are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In *Second Review—Final Results,* the Department treated industrial development grants under Law 488/92 as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We expensed or allocated these grants according to the methodology applied to the Law 64/86 industrial development grants discussed above.

We used the grant methodology as described in section 351.524(d) of the regulations to calculate the subsidy for those grants that were allocated over time. We divided the benefits received by each company in the POR by its total sales, or total pasta sales, as appropriate, in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.31 percent *ad valorem* for DeCecco, 0.28 percent *ad valorem* for Delverde, 1.17 percent *ad valorem* for DeMatteis, 0.07 percent *ad valorem* for Pallante, and 2.55 percent *ad valorem* for Puglisi.

3. Law 183/76 Industrial Development Grants

In 1983, Riscossa applied for an industrial development grant under Law 183/76. The GOI approved the application and disbursed the grant in tranches. Only the last of these disbursements, received by Riscossa in 1988, falls within that company's 12-year AUL period. Therefore, only this last disbursement is being countervailed in the current review.

In *Pasta Investigation* and subsequent reviews, the Department determined that the industrial development grant received by Riscossa confers a countervailable subsidy within the meaning of section 771(5) of the Act. This grant is a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, this grant was found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor Riscossa has provided new information which would warrant reconsideration of our determination that this grant is a countervailable subsidy.

We have previously treated Riscossa's industrial development grant as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We allocated the last disbursement of this grant over time because it exceeded 0.5 percent of Riscossa's sales in the year of receipt.

We used the grant methodology described in section 351.524(d) of the regulations to calculate the countervailable benefit. We divided the benefit received by Riscossa in the POR by the company's total pasta sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 183/76 industrial development grant to be 0.08 percent *ad valorem* for Riscossa.

4. Law 64/86 Industrial Development Loans

In addition to the industrial development grants discussed above, Law 64/86 also provided reduced rate industrial development loans with interest contributions paid by the GOI on loans taken by companies constructing new plants or expanding or modernizing existing plants in the Mezzogiorno. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants, but not to establish new plants. The interest rates on these loans were set at the reference rate with the GOI's interest contributions serving to reduce this rate. Although Law 64/86 was abrogated in 1992 (effective 1993), projects approved prior to 1993, were authorized to receive interest subsidies after 1993.

DeCecco, Delverde, De Matteis, Pallante, and Puglisi had Law 64/86 industrial development loans outstanding during the POR.

In *Pasta Investigation,* the Department determined that the Law 64/86 loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, these loans were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these loans are a countervailable subsidy.

In accordance with section 351.505(c)(2) of the regulations, we calculated the benefit for the POR by computing the difference between the payments the loan recipients made on their Law 64/86 loans during the POR and the payments the companies would have made on a comparable commercial loan. We divided the benefit received by each company by its total sales or total pasta sales, as appropriate, in the POR.

Pallante reported having received loans under Law 64/86. Based on the underlying documents submitted, it appears that for some of these loans Pallante received interest contributions but it did not receive reduced interest rates. For these loans, the interest contributions were received prior to the POR. Moreover, the interest contributions were less than 0.5 percent of Pallante's sales in the years the bestowals were approved. Therefore, we have not included these loans in our calculations for Pallante. Instead, we are only calculating a benefit for those Law 64/86 loans to Pallante that were outstanding during the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development loans to be 0.63 percent *ad valorem* for DeCecco, 0.35 percent *ad valorem* for Delverde, 0.08 percent *ad valorem* for DeMatteis, 0.13 percent *ad valorem* for Pallante, and 0.18 percent *ad valorem* for Puglisi.

5. Law 341/95 Interest Contributions on Debt Consolidation Loans

Law 85/95 created the *Fondo di Garanzia* aimed at improving the financial structure of small- and medium-sized companies located in EU Objective 1 areas (*see,* ''European Social Fund'' section below). Under Article 2 of Law 341/95, monies from the *Fondo di Garanzia* are used to make interest contributions on debt consolidation loans obtained by eligible companies. The company first enters into a loan contract with a commercial bank. Then, the contract is submitted to the approving authority. After approval, the loan is made.

DeCecco had a Law 341/95 debt consolidation loan outstanding during the POR.

We preliminarily determine that the interest contributions on this loan confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the interest contributions. Also, these interest contributions are regionally specific within the meaning of section 771(5A) of the Act.

Because DeCecco anticipated receiving the interest contributions when it applied for the debt

consolidation loan, we are calculating the amount of the subsidy as if this were a reduced interest loan (*see,* section 351.508(c)(2) of the regulations). Thus, we have divided the interest contributions received by DeCecco in the POR by DeCecco's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from interest contributions under Law 341/95 to be 0.02 percent *ad valorem* for DeCecco.

6. Law 598/94 Interest Subsidies

Under Law 598/94, the GOI pays a portion of the interest on certain loans granted to small- and medium-sized industrial companies. These loans are to be used for investments related to technological innovation and/or environmental protection.

During the POR, DeMatteis, Riscossa, and Rummo received interest subsidies under this program.

In *Third Review—Final Results,* the Department determined that these interest contributions confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds bestowing a benefit in the amount of the interest contribution.

Regarding specificity, we recognized that different levels of interest contributions were made depending on the region in which the recipient company was located. In particular, the level of the interest contribution was set at 45 percent for companies located in EU Objective 1, 2, and 5(b) areas (*see*, ''European Social Fund'' section below), while firms in all other regions could receive interest contributions of 30 percent. Although we sought information in that review about the actual use and distribution of interest contributions in the non-disadvantaged regions, the GOI did not provide it. Similarly in this review, the GOI has not provided information showing that the 30 percent interest contributions are not specific in fact. Therefore, consistent with our determination in *Third Review—Final Results,* we preliminarily determine that the 45 percent interest contributions are regionally specific and that the 30 percent interest contributions are specific in fact, within the meaning of section 771(5A) of the Act.

Because the recipient companies anticipated receiving interest contributions when they applied for the loans, we are calculating the amount of the subsidy as if this were a reduced interest loan (*see,* section 351.508(c)(2) of the regulations). Thus, we have divided the interest contributions received by DeMatteis, Riscossa, and Rummo in the POR by each company's total sales, or total pasta sales, as appropriate, in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 598/94 interest subsidies to be 0.18 percent *ad valorem* for DeMatteis, 0.20 percent *ad valorem* for Riscossa, and 0.20 percent *ad valorem* for Rummo.

7. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the Mezzogiorno, to use a variety of exemptions and reductions (''*sgravi*'') of the payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The *sgravi* benefits are regulated by a complex set of laws and regulations and are sometimes linked to conditions such as creating more jobs. The benefits under some of these laws (*e.g.*, Laws 183/76 and 449/97) are available only to companies located in the Mezzogiorno and other disadvantaged regions. Other laws (*e.g.*, Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country.

The various laws identified as having provided *sgravi* benefits during the POR are: Law 1089/68 (''Sgravi Unico''); Law 183/76; Law 863/84, Law 407/90; Law 223/91; Law 56/97; Law 196/97; Law 449/97; and Law 448/98. (Laws 449/97 and 448/98 are related and sometimes referred to jointly as ''Sgravi Capitario.'') All the respondent companies in this review received some form of *sgravi* benefits during the POR.

In *Pasta Investigation* and subsequent reviews, the Department determined that the various forms of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies. Also, they were found to be regionally specific within the meaning of section 771(5A) of the Act because they were limited to companies in the Mezzogiorno or because the higher levels of benefits were limited to companies in the Mezzogiorno. In this review, neither the GOI nor the responding companies provided new information which would warrant reconsideration of our determination that these tax savings are a countervailable subsidy.

In accordance with section 351.524(c) of the regulations and consistent with our methodology in the investigation and previous reviews, we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided each company's savings in social security contributions during the POR by that company's total sales in the POR. In those instances where the applicable law provided a higher level of benefits to companies based on their location, we divided the amount of the *sgravi* benefits that exceeded the amount available to companies in other parts of Italy by the recipient company's total sales in the POR (*see*, section 351.503(d)(1) of the regulations).

On this basis, we preliminarily determine the countervailable subsidy from the *sgravi* program to be 0.21 percent *ad valorem* for Agritalia, 0.11 percent *ad valorem* for DeCecco, 0.22 percent *ad valorem for* Delverde, 0.61 percent *ad valorem* for De Matteis, 0.18 percent *ad valorem* for Pallante, 0.26 percent *ad valorem* for PAM, 0.56 percent *ad valorem* for Puglisi, 0.04 percent *ad valorem* for Riscossa, and 0.46 percent *ad valorem* for Rummo.

Delverde requested that it receive an offset or credit against current *sgravi* benefits to reflect repayment of certain *sgravi* benefits received in the past. Specifically, because Molise and Abruzzo have lost their status as regions entitled to higher benefit levels, Delverde has begun repayment of benefits it received between December 1, 1994 and November 30, 1996.

Because the repayments made by Delverde relate to prior recurring subsidies previously countervailed and because countervailing duties have already been assessed on the relevant imports of pasta, we have not credited the repayment of these past benefits against current *sgravi* benefits because they do not qualify as a permissible offset within the meaning of section 771(6) of the Act.

8. IRAP Exemptions

On January 1, 1998, the local income tax (ILOR) was replaced with a new regional tax, the IRAP, as a result of Legislative Decree 446 (December 15, 1997). Existing exemptions from the ILOR continued under IRAP. In particular, income from production facilities located in the Mezzogiorno was exempt from tax for ten years.

DeCecco claimed the IRAP tax exemption on its tax return filed during the POR.

In *Pasta Investigation,* the Department determined that the ILOR tax exemption confers a countervailable subsidy within

the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the taxing authority and confers a benefit in the amount of the tax savings to the recipient companies. Also, this tax exemption was found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided any information to indicate that the substitution of the IRAP for the ILOR would warrant reconsideration of our determination that this tax exemption is a countervailable subsidy.

In accordance with sections 351.509(b) of the regulations and our treatment of the ILOR tax exemption in *Pasta Investigation*, we are calculating the countervailable subsidy by dividing each company's tax savings in the POR by its total sales, or total pasta sales, as appropriate, during the POR.

On this basis, we preliminarily determine the countervailable subsidy from the IRAP tax exemption to be 0.08 percent *ad valorem* for DeCecco.

9. Law 236/93 Training Grants

Under Law 236/93, which is administered by the regional governments but funded by the GOI, grants are provided to Italian companies for worker training.

Delverde received a grant under this program during the POR. Its grant application was approved in 1997, and tranches of the grant were disbursed in 1998 and 1999.

In *Third Review—Final Results*, the Department determined that Law 236/93 training grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, because the GOI and the regional government of Abruzzo did not provide adequate information about the distribution of grants under this program, we determined that Law 236/93 training grants were specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the Government of Abruzzo has provided information that would warrant reconsideration of our determination that these grants are countervailable subsidies.

Consistent with section 351.524(c)(1) of the regulations and our treatment of this grant in the prior review, the Department is treating this worker training subsidy as a recurring benefit. Therefore, to calculate the countervailable subsidy, we divided the amount received by Delverde in the POR by the company's total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy for this program to be 0.02 percent *ad valorem* for Delverde.

10. Law 304/90 Export Marketing Grants

Under Law 304/90, the GOI provided grants to promote the sale of Italian food and agricultural products in foreign markets. The grants were given for pilot projects aimed at developing links and integrating marketing efforts between Italian food producers and foreign distributors. The emphasis was on assisting small-and medium-sized producers.

Delverde received a grant under this program for an export sales pilot project in the United States. The purpose of the project was to increase the presence of all Delverde's products in the U.S. market, not only pasta.

In *Pasta Investigation,* the Department determined that these export marketing grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A) of the Act because their receipt was contingent upon exportation. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

Also in *Pasta Investigation,* the Department treated export marketing grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment.

Because this grant exceeded 0.5 percent of Delverde's exports to the United States in the year of receipt, we used the grant methodology described in section 351.524(d) of the regulations to allocate the benefit over time. We divided the benefit attributable to the POR by the value of Delverde's total exports to the United States in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 304/90 export marketing grants to be 0.34 percent *ad valorem* for Delverde.

11. European Regional Development Fund (ERDF)

The ERDF is another of the European Union's Structural Funds. It was created pursuant to the authority in Article 130 of the Treaty of Rome in order to reduce regional disparities in socio-economic performance within the EU. The ERDF program provides grants to companies located within regions which meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) under the Structural Funds.

DeMatteis and PAM received ERDF grants which conferred a benefit during the POR.

In *Pasta Investigation*, the Department determined that ERDF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the EU, the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that ERDF grants are countervailable subsidies.

In Pasta Investigation, the Department treated ERDF grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. In accordance with section 351.524(b)(2) of the regulations, we determined that the ERDF grants received by these companies exceeded 0.5 percent of their respective sales in the years in which the grants were approved.

We used the grant methodology described in section 351.524(d) of the regulations to calculate the countervailable benefit. We divided the benefit received by each company in the POR by its total sales, or total pasta sales, as appropriate, in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the ERDF grant to be 0.13 percent *ad valorem* for DeMatteis and 0.12 percent *ad valorem* for PAM.

12. Export Restitution Payments

The EU provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products. The program is designed to compensate pasta producers for the difference between EU prices and world market prices for durum wheat. Generally, under this program, a restitution payment is available to any EU exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EU.

Agritalia, DeCecco, Delverde, Pallante, PAM, Puglisi, and Rummo received export restitution payments during the POR for shipments of pasta to the United States.

In *Pasta Investigation*, the Department determined that export restitution payments confer a countervailable

subsidy within the meaning of section 771(5) of the Act. These payments are a direct transfer of funds from the EU bestowing a benefit in the amount of the payment. The restitution payments were found to be specific because their receipt is contingent upon export performance. In this review, the GOI, the EU, and the responding companies have not provided new information which would warrant reconsideration of our determination that export restitution payments are countervailable subsidies.

In *Pasta Investigation*, we treated the export restitution payments as recurring benefits. We have found no reason to depart from this treatment in the current review. Therefore, to calculate the countervailable subsidy, we generally divided the export restitution payments received by the recipient companies in the POR for pasta shipments to the United States by the value of each company's pasta exports to the United States in the POR. For Pallante, we divided total export restitution payments by exports to all markets, because the reported benefits were not segregated by market.

On this basis, we preliminarily determine the countervailable subsidy from the export restitution program to be 0.07 percent *ad valorem* for Agritalia, 0.11 percent *ad valorem* for DeCecco, 0.51 percent *ad valorem* for Delverde, 2.52 percent *ad valorem* for Pallante, 0.70 percent *ad valorem* for PAM, 1.36 percent *ad valorem* for Puglisi, and 0.60 percent *ad valorem* for Rummo.

13. Duty-Free Import Rights

Under Italian and EU customs procedures, companies may seek authorization for duty-free importation of certain agricultural input products, on the condition that processed agricultural products are exported. Under the *Temporanea Importazione* scheme, a processor of agricultural products can apply to import its input duty free and, after processing, to export the processed product. Under the *Riesportazione Preventiva* scheme, the order is reversed: after exporting the processed product, the agricultural input product can be imported duty free. The authorizations for duty-free importation, granted by the customs authorities, are transferable.

During the POR, Agritalia received authorizations for duty-free importation of durum wheat which it sold.

In situations where a producer imports its inputs and then exports the product processed from those imported inputs, this scheme appears to operate as a non-excessive duty drawback system and, hence, would not confer a countervailable subsidy. However, where the exporter of the processed product is not the importer and processor of the imported input, we cannot equate the scheme to a non-excessive duty drawback scheme. Instead, when the exporter and importer are different, the exporter receiving duty-free import rights is receiving a ''privilege'' which can be sold, and the importer purchasing that ''privilege'' is exempt from duties and is under no obligation to export.

Based on this analysis, we preliminarily determine that the granting of duty-free import rights confers a countervailable subsidy within the meaning of section 771(5) of the Act. In authorizing duty-free importation of inputs, the GOI is forgoing revenue that it is otherwise due. These authorizations are specific within the meaning of section 771(5A) because they are contingent upon exportation.

In analyzing the benefit arising from the authorization of transferable duty-free import rights, we have considered the nature of the financial contribution, *i.e.,* the forgoing of revenue by the GOI, and we preliminarily determine that the total benefit is equal to the duty savings. However, those savings are essentially shared between the producer that is able to import duty free and the exporter (Agritalia) that sells the privilege of importing duty free. Specifically, the benefit to the importer is the amount of the duty that would have been paid absent the duty-free import rights, less the amount that the importer paid for those rights, while the benefit to the exporter is the amount it receives from importer.

On this basis, we preliminarily determine the countervailable subsidy from the duty-free import rights to be 0.38 percent *ad valorem* for Agritalia. We do not have information identifying the companies that purchased the duty-free import rights for these preliminary results. We are seeking this information for the final results.

II. Programs Preliminarily Determined Not To Confer Countervailable Subsidies in the POR

1. IRPEG Exemptions

In addition to providing sgravi benefits, Law 449/97 also provides partial exemptions from a corporate income tax, the IRPEG. These partial exemptions are given for new employees hired between October 1, 1997 and December 31, 2000. Only firms located in EU Objective 1 areas are eligible for these exemptions.

It appears from DeCecco's response that the company applied a partial exemption it received under Law 449/97 to estimated IRPEG payments it made in 1999. The estimated payments would apply to tax year 1999, and the tax return for tax year 1999 would not be filed until 2000.

Under section 351.509(c) of the Department's regulations, direct tax benefits are assigned to the date on which the recipient firm would otherwise have had to pay the taxes. Since it appears that the partial exemption was applied towards estimated taxes in 1999 and that DeCecco's ultimate liability for tax year 1999 would not be known until 2000, we preliminarily determine that any benefit from the IRPEG exemption would not occur in this POR.

We are seeking further information from DeCecco to confirm our understanding that the partial exemption was applied to estimated IRPEG payments made during the POR for taxes that will ultimately be paid after the POR.

2. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77

The ''Special Section for Export Credit Insurance'' (''SACE'') insures and reinsures Italian companies with foreign operations for political, catastrophic, economic, commercial and exchange rate risks. Article 33 of Law 227/77 provides for the remission of insurance taxes on policies that are directly insured or reinsured with SACE.

In *Pasta Investigation*, the Department determined that the remission of this tax was a countervailable subsidy. To calculate the tax savings during the POI, the Department multiplied the premiums paid during the POI by the insurance tax rate (12.5 percent). This amount was then divided by exports to the United States to determine the *ad valorem* benefit.

Pallante reported that it insured shipments in years prior to the POR and received tax remissions in those years. However, it did not receive tax remissions in the POR. Therefore, we preliminarily determine that there was no benefit to Pallante during the POR.

3. ADAPT

DeCecco reported that it received a training grant during the POR aimed at enhancing its sales forces in Italy. According to DeCecco, the grant was made available under the European program ''ADAPT.'' The funding for this program comes in part from the EU's Social Fund and from the GOI. The GOI's Ministry of Labor administers these contributions on behalf of the EU.

DeCecco claims, and has provided supporting information, that assistance

under the ADAPT program is neither *de jure* nor *de facto* specific. According to DeCecco, the ADAPT Program is focused on small- and medium-sized companies, is widely available throughout the EU and has been widely used.

Based upon our review of the data provided by DeCecco regarding the ADAPT Program, it appears that this assistance differs from the European Social Fund worker training grants that we have countervailed in *Pasta Investigation* and subsequent reviews. In particular, the grants we have countervailed in the past have been given to support one or more of the specific objectives described in the ''European Social Fund'' section, above. In the case of the ADAPT program, it appears that the funding is not given under these specific objectives. Also, as DeCecco claims, the ADAPT program appears to be focused on the non-specific group of small and medium-sized enterprises (*see*, section 351.502(e)), and to be available to and used by companies across the EU.

Therefore, we preliminarily determine that the ADAPT Program does not confer a countervailable subsidy. For the final results, we intend to seek further information on the ADAPT Program from the EU and the GOI.

4. Law 1329/65 Interest Contributions (Sabatini Law)

The Sabatini Law was enacted to encourage the purchase of production equipment. It provides, *inter alia,* for one-time, lump-sum interest contributions from the Mediocredito Centrale on loans taken out to purchase production equipment. Pallante reported that it received interest contributions under the Sabatini Law prior to the POR.

In *Pasta Investigation*, the Department determined that the interest contributions to firms in Southern Italy confer countervailable subsidies. The Department also determined that companies were able to anticipate the interest contributions at the time the loans were taken out. Consequently, in accordance with sections 351.508(c)(2) and 351.505(c)(2) of the Department's regulations any benefit would be countervailed in the year of receipt.

Since Pallante received the interest contributions prior to the POR, we preliminarily determine that the Sabatini Law did not confer a benefit during the POR.

5. European Social Fund

The European Social Fund (''ESF''), one of the EU's structural funds, was created under Article 123 of the Treaty of Rome to improve employment opportunities for workers and to help raise their living standards. There are six different objectives identified for the structural funds: Objective 1 covers projects located in underdeveloped regions; Objective 2 addresses areas in industrial decline; Objective 3 relates to the employment of persons under the age of 25; Objective 4 funds training for employees in companies undergoing restructuring; Objective 5 pertains to agricultural areas; and Objective 6 applies to regions with very low population (*i.e.,* the far north).

In *Pasta Investigation*, the Department determined that ESF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act.

DeMatteis reported that it received an ESF grant in 1995. DeMatteis states that its grant was a one-time measure that required a separate application and government approval, and, therefore, that its ESF grant should be treated as a non-recurring subsidy.

In accordance with section 351.524(b)(2) of the regulations, we divided the amount of the ESF grant by the value of DeMatteis' total sales in the year the grant was approved. On this basis, we preliminarily determine that the benefit from this grant is properly allocated to the year of receipt, 1995. Hence, there is no benefit to DeMatteis during the POR.

III. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

1. Law 64/86 VAT Reductions.
2. Export Credits under Law 227/77.
3. Capital Grants under Law 675/77.
4. Retraining Grants under Law 675/77.
5. Interest Contributions on Bank Loans under Law 675/77.
6. Interest Grants Financed by IRI Bonds.
7. Preferential Financing for Export Promotion under Law 394/81.
8. Urban Redevelopment under Law 181.
9. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (''PRISMA'').
10. European Agricultural Guidance and Guarantee Fund (''EAGGF'').

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter covered by this administrative review. For the period January 1, 1999 through December 31, 1999, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (''Customs'') to assess countervailing duties at these net subsidy rates. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Company	Ad valorem rate (percent)
Agritalia, S.r.L	2.94
F.lli De Cecco di Filippo Fara San Martino S.p.A	2.21
Delverde S.p.A	3.27
De Matteis Agroalimentare S.p.A	2.33
Pastificio Antonio Pallante S.r.L	4.10
Pastificio Maltagliati S.p.A	3.85
P.A.M. S.r.L.—Prodotti Alimentari Meridionali	1.08
Pastificio Riscossa F.lli Mastromauro S.r.L	1.13
N. Puglisi & F. Industria Paste Alimentari S.p.A	7.48
Rummo S.p.A. Molino e Pastaficio	1.26

We calculated the *ad valorem* rate for Agritalia, an export trading company, by weight averaging the subsidy rates for its two main suppliers of pasta for export to the United States and adding this amount to the subsidy rate calculated for Agritalia based on the subsidies it received directly. This is consistent with the calculation methodology used for Agritalia in *Pasta Investigation,* 61 FR 30288, 30309.

The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

For companies that were not named in our notice initiating this administrative review (except Barilla G. e R. F.lli S.p.A. (''Barilla'') and Gruppo Agricoltura Sana S.r.L. (''Gruppo'') which were excluded from the order during the investigation), the Department has directed Customs to assess countervailing duties on all entries between January 1, 1999 and

December 31, 1999 at the rates in effect at the time of entry. For those companies for which this review has been rescinded (Pastificio F.lli Pagani, Commercio-Rappresentanze-Export S.r.L., Tamma Industrie Alimentari di Capitanata. S.r.L., Molino e Pastificio, La Molisana Alimentari S.p.A., Arrighi S.p.A. Industrie Alimentari, Industria Alimentare Colavita, S.p.A., Isola del Grano S.r.L., Italpast S.p.A., Italpasta S.r.L., Labor S.r.L., Pastificio Guido Ferrara, Pastificio Campano, S.p.A., Indalco, Audisio Industrie Alimentari de Capitanata, S.p.A., and Pastificio Fabianelli, S.p.A., and Pastificio Di Martino Gaetano & F.lli s.r.l.), we will direct Customs to liquidate all entries between January 1, 1999 and December 31, 1999 at the rates in effect at the time of entry.

For all non-reviewed firms, we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 38544 (July 24, 1996) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 4, 2001.

Faryar Shiryard,

Assistant Secretary for Import Administration.

[FR Doc. 01–19624 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050701A]

Small Takes of Marine Mammals Incidental to Specified Activities; Shallow-water Hazard Activities in the Beaufort Sea

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of bowhead whales and other marine mammals by harassment incidental to conducting shallow hazard surveys in the central and eastern Alaskan Beaufort Sea, has been issued to BP Exploration (Alaska), Inc; ExxonMobil Production Co, a division of Exxon Mobil Corporation; and Phillips Alaska, Inc. (BP/EM/PAI), working as members of a study team referred to in their application as the North American Natural Gas Pipeline Group, and now known as the Alaska Gas Producers Pipeline Team.

DATES: Effective July 23, 2001, through September 30, 2001.

ADDRESSES: The application, authorization, monitoring plan, Biological Opinion, and a list of references used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713–2055, ext 128; Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing IHAs under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 20, 2001, NMFS received an application from BP/EM/PAI requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting shallow hazards surveys during the open water season in the Beaufort Sea between Prudhoe Bay, AK and the United States/Canadian border. Weather permitting, the survey is expected to take place between approximately July 20 and September 1, 2001. A more detailed description of the work proposed for 2001 is contained in the application (BP/EM/PAI, 2001) which is available upon request (see **ADDRESSES**).

BP/EM/PAI plan to conduct a nearshore shallow hazards survey along a proposed natural gas pipeline route in the central and eastern Alaskan Beaufort Sea during the 2001 open-water season. The primary purpose of the survey is to acquire detailed data on sea bottom and

sub-bottom characteristics to support pipeline route selection, pipeline design, safe pipeline operation, and acquisition of pipeline right-of-way permits and a Federal Energy Regulatory Commission Certificate of Convenience and Public Necessity. A secondary purpose of the survey is to locate and document areas of potential archaeological significance along the proposed pipeline route as required by the Minerals Management Service (MMS) and other regulations. Two vessels will conduct the planned geophysical survey activities. In addition, a smaller support vessel will be used for resupply to enable the survey to be completed expeditiously. Water depths within the proposed pipeline route range from 20-60 ft (6.1-18.3 m).

The primary activity planned under this proposed IHA is a high-resolution shallow hazards pipeline route survey along a 500-m (1640-ft) wide strip from Prudhoe Bay to the Alaska/Canada border. This work would likely occur preceding the period when hunters from Nuiqsut and Kaktovik hunt for bowheads (usually between September 1st and October 15th). The shallow hazards survey will involve the use of acoustic energy sources of substantially lower power than airgun arrays used during marine seismic surveys. The acoustic recording of received signals from one of the shallow hazards sources will be accomplished using a mini-streamer hydrophone array towed by the source vessel.

To increase the probability of completing the survey in a single open-water season, two vessels will be used. One vessel will acquire sub-bottom data using piezoelectric and electromagnetic sub-bottom profiling systems along with side-scan sonar and single-beam bathymetric sonar (sub-bottom vessel). A second vessel will be devoted to seabottom survey activities, and will operate side scan sonar, single-beam bathymetric sonar, and multi-beam bathymetric sonar (multi-beam vessel). Each vessel will complete one round trip along the pipeline route. The sub-bottom vessel will transit the centerline, a parallel line offset 150 m (492 ft) to one side of the centerline, and cross-tie lines. The cross-tie lines will be spaced approximately 16 km (10 mi) and will be approximately 500 m (1640.4 ft) long. The multi-beam vessel will transit the centerline and a parallel line offset 150 m (492 ft) to the other side of the centerline. In the event that hard-bottom habitat with the potential to meet the Alaska Biological Task Force definition of Boulder Patch is encountered, the survey vessels will circle to the north or south of the planned route in an attempt to better define the sea floor anomaly and to locate an alternate route around the hard-bottom area. The precise bathymetric contour to be surveyed will be determined by BP/EM/PAI later, but BP/EM/PAI has determined that the pipeline corridor will be within the zone where water depth is 20 to 60 ft (6.1 to 18.3 m)(see Figure 1 in BP/EM/PAI's application).

The result of the two-vessel survey will be single coverage of the flanking lines and double coverage of the centerline. Both vessels are expected to operate at a towing speed of 3-5 knots and one will follow the other within a distance of approximately 7.4 km (4.6 mi), although operational considerations may necessitate altering this separation as the survey progresses. It is expected that each one-way survey transit time may take 7 to 10 days, or more, to complete. Wave and ice conditions may affect the specific timing of the survey. The entire shallow hazard survey may take 20 to 40 days.

To conduct the shallow hazards survey, a minisparker will be used in addition to a mid-frequency sub-bottom profiler and several high-frequency sonars. The sonars will include a side-scan sonar system, a multi-beam bathymetric sonar system and a single-beam bathymetric sonar system. The minisparker system would provide a frequency range of about 100 to 2500 Hz, with a typical resolution of one meter. Typical pulse repetition frequencies are one pulse every one-half to 2 seconds. Pulse duration is typically 0.1 to 1.0 milliseconds (ms) and the nominal source level is 198 dB (re 1 μPa (on a root-mean-square (rms) basis) (200 to 1000 Joules on an energy basis) depending on sub-bottom characteristics. A mid-frequency piezoelectric sub-bottom profiler operating at a range from 2 kHz to 16 kHz range will be used to obtain a high-resolution profile of the shallow sea bottom sediments. Typical pulse frequencies are approximately 12 pulses/sec, with pulse duration between 10 and 40 ms at an energy level of 200 to 800 Joules. The nominal source level is 210 dB re 1 μPa (peak) with an rms source level approximately 198 dB re 1 μPa. A dual-channel side scan sonar system will be used to acquire continuous images of the sea bottom. The source level for a typical side scan sonar system is approximately 228 dB (re 1 μPa (peak)). The normal operating frequency will be 105 kHz, but may on occasion operate at 390 kHz. The side-scan sonar will have a pulse rate of up to 7 pulses per second. Pulse duration could range from 0.01 ms to 0.1 ms. Information on the single- and multi-beam bathymetric sonars are provided in comment 2 later in this document.

Comments and Responses

On May 30, 2001 (66 FR 29287), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC), BP/EM/PAI, the Northern Alaska Environmental Center (on behalf of several environmental organizations)(NAEC), the Alaska Wilderness League (AWL), the Alaska Eskimo Whaling Commission (AEWC) and some private citizens. NMFS has not addressed in this document those comments and/or information that are contained in, and not in disagreement with, statements made in either the BP/EM/PAI application or the notice of proposed authorization (66 FR 29287, May 30, 2001).

Activity Concerns

Comment 1: BP/EM/PAI clarify several points in regard to its proposed shallow hazards survey. These are: (1) a boomer will not be used during the 2001 survey, (2) drilling or coring operations are not planned for the 2001 open-water season, and (3) a 43-ft (13.1-ft) utility support vessel, as mentioned previously, will be employed. The support vessel operations may include: medical evacuation or rescue, route reconnaissance, transport of replacement parts and personnel, and acoustical measurements.

Response: Thank you for providing this information. These modifications are reflected in this document.

Comment 2: BP/EM/PAI wrote to provide minor, additional information and corrections on the proposed acoustic sources. First, the rms of the mini-sparker is not 203 dB, as quoted in the proposed authorization document, but will be about 198 dB re 1 μPa.

Second, the sub-bottom profiler's frequency range will be from 2 to 16 kHz, not 2-15 kHz. The pulse repetition rate will be ca.12 pulses per second (vs 10) with a pulse duration 10 (not 0.1) to 40 ms. The nominal source level is 210 dB re 1 μPa (peak). Burgess and Lawson (2001) found that the rms levels for a similar sub-bottom profiler were ca.12 dB less than peak levels; therefore, the rms source level of the unit is probably about 198 dB re 1 μPa (rms). The signal is beamed, with a beam width varying from 10 to 20 degrees. Effective source levels for receivers outside the beam width will be lower. Also the tow depth in the application (and **Federal Register** notice) was in error. The correct figure

is 1.5 m (5 ft) (Burgess and Lawson, 2001).

Third, the side-scan sonars will normally operate at 105 kHz, but may, on infrequent occasions operate at 390 kHz (not 100 to 500 kHz noted in the IHA application, nor 200 to 500 kHz noted in the FR notice). The nominal source level will be 228 dB re 1 μPa (peak), not in rms as stated in the FR notice. The rms source level would be lower than 228 dB by some unknown amount. These source levels would apply only for a receiver in the narrow beam; effective source level would be substantially lower outside the beam.

Fourth, the 215 dB source level of the single-beam 200-kHz bathymetric sonar quoted from the manufacturer is likely a peak (or possibly peak-to-peak) level. Source levels are low and moderate power settings are 202 dB and 209 dB at peak levels. The corresponding rms levels would be lower by an unknown amount.

Fifth, the multi-beam source will operate at 240 kHz, which is within the 200-500 kHz range specified in the IHA application. The quoted 210 dB re 1 μPa source level is probably a peak level, not an rms level.

Response: Thank you for providing this information. Appropriate changes have been made where necessary in this document.

Comment 3: The NAEC state that the BP/EM/PAI project is an attempt to initiate the process of developing an offshore natural gas pipeline through the Beaufort Sea.

Response: As stated in the BP/EM/PAI small take application, the pipeline survey route is part of an overall environmental, technical, and economic evaluation of two alternate gas pipeline routes for delivery of Alaska North Slope natural gas via Canada to the lower 48 States market. The northern route comprises a marine segment from Prudhoe Bay to the Mackenzie Delta. One of the route alternatives for a gas pipeline from Alaska to the lower 48 states is called the Highway Route which originates at Prudhoe Bay and then follows the Trans-Alaska Pipeline corridor to about Delta junction. Then the route essentially follows the Alaska Highway corridor into Canada through the Yukon Territory and northern British Columbia into northern Alberta. From Alberta, various alternatives are being considered to transport the gas to lower 48 markets. Whether a pipeline is constructed is a matter for later determinations by other Federal agencies after completion of the National Environmental Policy Act (NEPA) process.

Comment 4: The AWL states that if multiple low-frequency (LF) sources are used, as contemplated, the decibel level of BP/EM/PAI's boomer/minisparker systems will increase substantially as the convergence of their respective sound waves will produce even more intense levels of sound.

Response: If sound waves (whether low-, mid- or high-frequency) converge, the sounds produced would not be more intense (greater) than would be if independent of, or not in convergence with, other sources. However, if in phase, these sound waves can result in lower attenuation, meaning that the sounds would be projected further with less loss of intensity. This is the physics for the U.S. Navy's Surveillance Towed Array Sensor System-Low Frequency Active (SURTASS LFA) sonar. For the BP/EM/PAI acoustic systems however, as stated in the BP/EM/PAI application, there will only be a single LF source used, so convergence is not possible. As explained by BP/EM/PAI in comment 1, the minisparker has been chosen as the LF sound source for this activity; a boomer will not be used.

Marine Mammal Impact Concerns

Comment 5: The AWL notes several concerns regarding bowhead whale abundance, distribution, and impacts that will result because the proposed seismic activity would take place during a period of up to 40 days prior to September 1 in the Alaskan waters of the central Beaufort Sea. Therefore, the Beaufort stock of bowhead whales is likely to be present during seismic testing.

Response: First, as noted in the proposed authorization document, the proposed activity is not a ''seismic survey'' but a shallow hazards survey. Seismic surveys utilize towed arrays having a number of high energy, low frequency (LF) sound sources (called airguns), while shallow hazard surveys use different types of low-energy sound sources. Acousticians have estimated the sounds from the minisparker, the acoustic device being used in this project that will have the largest zone of influence on marine mammals, will attenuate to 160 dB at about 155 m (508.5 ft) from the source. On the other hand, standard airgun arrays commonly used in the Alaskan Beaufort Sea, at similar water depth, would be expected to attenuate to 160 dB at approximately 1,800 m (5,905.5 ft). Therefore, impacts to marine mammals from the minisparker and other sonar sources would be less than expected during standard seismic surveys. The potential impacts from shallow hazards survey equipment on marine mammals, especially bowhead whales, is described elsewhere in this document.

Second, it is recognized by BP/EM/PAI and NMFS that bowhead whales may be in the Alaskan Beaufort Sea prior to September 1. This was described in the BP/EM/PAI application and adopted by NMFS in the proposed authorization Federal Register notice (66 FR 29287, May 30, 2001). However, the number of bowhead whales that might be within U.S. waters prior to September 1 are few in comparison to the numbers expected after September 1, 2001. It should be noted that BP/EM/PAI estimates that if the survey ends by August 31, between 42 and 1,601 bowheads could potentially incur a harassment to the noise. If the shallow hazards survey continues until September 15, 2001, NMFS estimates that approximately 943 bowheads would incur a harassment response.

Comment 6: The AWL believes that the base of biological and behavioral information (especially on long term effects of industrial noise), necessary for management decisions regarding potential impact on an endangered species by industrial activities, is not available either to NMFS or to the applicant in support of its petition.

Response: NMFS disagrees that the sufficient biological information regarding bowhead whales and other potentially affected marine mammals is not available. NMFS is required to make its determinations under section 101(a)(5)(D) of the MMPA on the best scientific information available. This information is available in several documents that are cited in the proposed authorization notice (66 FR 29287, May 30, 2001).

Comment 7: The NAEC believes that the BP/EM/PAI request fails to consider the cumulative impacts from all of the seismic projects that will take place in the Beaufort Sea this summer. The NAEC is aware that summer seismic testing will occur in the area from Camden Bay to Harrison Bay-an area that overlaps the study area proposed by BP/EM/PAI. Other activities that will add to the cumulative noise and visual impacts include the construction and installation of modules at Northstar, other potential seismic activities in the vicinity, and the normal Beaufort Sea barge traffic. The NAEC is concerned that these combined activities could have a considerable negative effect on ringed, spotted and bearded seals, polar bears, and beluga and bowhead whales and could negatively impact subsistence hunting by the Inupiat.

Response: Cumulative impacts were addressed by the Corps of Engineers in its final environmental impact statement

(EIS) for Northstar (Corps, 1999). In addition, NMFS has reviewed the cumulative impacts on marine mammals due to Northstar and seismic in its 1999 Environmental Assessment (EA) for that year's seismic activity. Finally, LGL Ltd (environmental research associates)(LGL) provided NMFS with a draft document that reviewed the cumulative impacts of conducting more than a single seismic survey during the open water season. Considering that shallow hazard surveys are often part of the open water seismic activity in the Beaufort Sea, NMFS believes that the cumulative impacts of shallow hazard surveys combined with other activities have been adequately addressed.

Comment 8: The AWL state that sounds propagate better at great depths, and, therefore, a bowhead whale will be more vulnerable to sound disturbance when deep underwater than when near the surface.

Response: While the statement is true, the shallow hazards survey is being conducted in shallow water in the Beaufort Sea; deep water propagation is unlikely to occur in water depths inhabited by bowhead whales in the Alaskan Beaufort Sea during their western migration. In addition, BP/EM/PAI are required to make acoustic measurements of all its sonars and sparker units to ensure that the estimated sound pressure levels (SPLs) are accurate.

Comment 9: BP/EM/PAI notes that, as discussed in the IHA application, the 200 to 240 kHz sounds from the single- and multi-beam sonars are above the frequency range audible to any marine mammals in the Beaufort Sea. The 105 kHz sounds from the main side-scan sonars are above the frequency range audible to any marine mammals in the Beaufort Sea, except for the few belugas that might be encountered in nearshore waters. Because the side-scan sonar signals are beamed (i.e., not omnidirectional), and because at 105 kHz, absorption by seawater will cause the sounds to attenuate by an additional 39 dB/km over and above the usual spreading losses (see Richardson *et al.*, 1995, p.73), impacts by the side-scan sonars are further reduced.

Response: NMFS concurs that harassment or injury takings of marine mammals in the Alaskan Beaufort Sea are unlikely if the sounds are above those frequencies within which an animal can hear.

Comment 10: BP/EM/PAI note that contrary to statements made in the Federal Register notice, that the 40- to 60-ft (12.2 to 18.3 m) depth contours are within the southern portion of the bowhead migration corridor. Also, the three species of seals covered by the IHA application can all occur anywhere within the 20 to 60 ft (6.1 to 18.3 m) depth zone.

Response: Thank you for providing this information. NMFS has made the appropriate changes in this document.

Comment 11: BP/EM/PAI clarify that, contrary to statements made in the Federal Register notice, if the shallow hazards survey operations continued into September, then it is possible that the survey route could pass through one or more local areas of concentrated feeding by bowhead whales. Feeding concentrations occur in some (not all) years at unpredicted sites within the 20- to 60-ft (6.1- to 18.3-m) zone (Richardson *et al.*(eds), 1987).

Response: NMFS has made the appropriate changes in this document and has taken this information into account when making its determinations under the MMPA.

Comment 12: The AWL notes that although sonar systems have been used for seismic testing for many years, recent developments, such as the beaked whale stranding incidents in the Kyparissiakos Gulf in the Mediterranean in 1996 and in the Bahamas in 2000, indicate that certain uses of sonar may kill or severely impact marine mammals, rather than merely changing behavioral patterns, masking sounds temporarily, or inflicting stress.

Response: We agree that certain sonars, because of the type and intensity of sounds used, have the potential to injure or kill marine mammals.

Comment 13: The AWL states that the sonar system used by the Navy, to which the impacts described in the previous comment reference, reportedly operates at levels up to 240 dB and at stated operating ranges between 100 Hz and 500 Hz.

Response: The AWL is confusing two different Navy sonars. While the Navy's SURTASS LFA sonar system operates between 100 Hz and 500 Hz, each of the 18 transmitters has a maximum SPL of 215 dB, not 240 dB. The sonar system used by several ships transiting the Bahamas Channel, and implicated in the Bahamas stranding incident in March, 2000, were standard, hull-mounted mid-frequency sonars with normal frequency ranges and power outputs of 3.5 and 7.5 kHz and 235 dB, respectively.

Comment 14: The AWL states that underwater 170 dB has been described as equivalent to 144 dB in air, which is comparable to a jet engine at full throttle, which emits 140 dB.

Response: A fully-loaded Boeing 747 jet aircraft, measured up-close at takeoff is approximately 150 dB (re 20 μPa); other aircraft may make more or less noise. To convert the in-air standard to the water standard used in this document (re 1 μPa), 62 dB needs to be added to the aerial standard (26 dB for the different sound reference levels, plus 36 dB for the specific impedance differences between air and water). By this conversion, the underwater equivalent of the 747 sound at takeoff is 150 dB + 62 dB = 212 dB. If the jet aircraft makes 140 dB of noise, the equivalent underwater level would be 202 dB, not 170 dB as stated.

Subsistence Concerns

Comment 15: BP/EM/PAI note that they have had several meetings with representatives of the AEWC to discus development of a Conflict Avoidance Agreement (CAA). BP/EM/PAI has reviewed drafts of a proposed agreement and are in the process of completing a final agreement which is expected to be executed in early July.

Response: Thank you for this information.

Comment 16: The AEWC strongly opposes the construction of a natural gas pipeline along the northern route, including the shallow hazard survey proposed by BP/EM/PAI. All 10 villages of the AEWC have signed a resolution to this effect on February 20, 2001. However, recognizing that the shallow hazard survey has already been permitted, the AEWC anticipates signing a CAA with BP/EM/PAI for the 2001 open water season and expects that the CAA will provide sufficient mitigation for any noise-related impacts to subsistence hunting as a result of the proposed shallow hazards survey.

Response: Thank you for this information. The AEWC has subsequently notified NMFS that the AEWC, and the whaling captains from the villages of Kaktovik and Nuiqsut, signed a CAA with BP/EM/PAI on this action.

Mitigation, Monitoring and Reporting Concerns

Comment 17: The MMC concurs with NMFS that the short-term impact of conducting the proposed shallow hazards survey in the Alaskan Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and pinnipeds and that the monitoring and mitigation measures proposed by BP/EM/PAI appear to be adequate to ensure that the planned surveys will not result in the mortality or serious injury of any marine mammals or have unmitigable adverse effects on the availability of marine mammals for taking by Alaska Natives for subsistence uses. Therefore, the

MMC recommends that the requested IHA be issued, provided that NMFS is satisfied that the monitoring and mitigation programs will be carried out as described in the application.

Response: Thank you for the comment. On June 5, 2001, NMFS convened a peer-review/stakeholders meeting in Seattle, WA to discuss the proposed monitoring and mitigation measures for this shallow hazards survey program. As a result of suggestions made by participants at this meeting, LGL revised the monitoring and mitigation program contained in the BP/EM/PAI application. The revised monitoring plan is available upon request (see **ADDRESSES**). A description of the monitoring and mitigation that will be required for this activity is described later in this document.

Although NMFS has no reason to believe that the monitoring and mitigation plans will not be carried out, a report on all activities under the IHA will be required to be submitted to NMFS within 90 days of completion of the planned survey. This report will be reviewed by NMFS to determine whether BP/EM/PAI fully complied with the terms and conditions of the IHA, including the monitoring and mitigation requirements.

Comment 18: The MMC questions however, whether there is a sufficient basis for concluding that the activity, combined with past and possible future activities, will not have non-negligible cumulative effects on any of the potentially affected marine mammal species or their availability to Alaska Natives for subsistence uses. Therefore, the MMC recommends (as in previous letters) that NMFS, if it has not already done so, assess whether the monitoring required as a condition of this and possible future IHAs will be adequate to detect possible non-negligible cumulative effects, and if not, what additional steps need to be taken to ensure that any such effects will be detected before they reach significant levels.

Response: The proposed shallow hazards survey is unlikely to have more than minimal behavioral effects on affected marine mammal species. If the survey period extends into the fall bowhead migration season, there may be some effect on those bowheads inshore but sounds would be unlikely to reach the main migration path for bowheads which is well offshore.

For cumulative effects from anthropogenic noise, NMFS believes that at a minimum, shipboard monitoring of the safety zone must continue to implement mitigation measures to protect marine mammals from potential injury. The Scientific Peer Review Workshop participants concluded previously that the current research and monitoring proposed by Western Geophysical for seismic surveys and by BPX for oil development at Northstar (see 66 FR 32321, June 14, 2001 and 65 FR 34014, May 25, 2000), coupled with existing projects to monitor bowhead population abundance (trends in abundance), is the best way currently available to obtain the information necessary to determine overall cumulative impacts from noise on bowhead whales. Existing projects include those by the North Slope Borough (spring bowhead census), the MMS autumn aerial survey, and the MMS-funded photo-identification of bowhead whales being conducted as part of a bowhead feeding study. Provided trends in bowhead abundance continue to be positive, NMFS presumes industrial development on the North Slope is not adversely affecting the bowhead population. Similar work is underway for ringed seals.

MMPA Concerns

Comment 19: The AWL claims that the taking of endangered species is governed by the MMPA, which requires that the Federal government observe a strict policy of species and habitat conservation.

Response: The taking of endangered species is governed by the Endangered Species Act (ESA); the taking of endangered marine mammals is governed by both the ESA and the MMPA. NMFS must comply with the requirements of both acts prior to issuance of authorizations to take marine mammals incidental to lawful maritime activities.

Comment 20: The AWL believes that the proposed activity would violate the MMPA since the proposed activity may deafen or even kill unknown numbers of the Beaufort Sea stock of bowhead whales. Thus, the AWL believes the BP/EM/PAI application does not support an affirmative finding of ''negligible impact.''

Response: For reasons provided in detail elsewhere in this document, NMFS has reviewed the best scientific information available on this issue, and has determined that use of low-intensity, minisparker, a mid-frequency sub-bottom profiler and several high-frequency sonars, including a side-scan sonar system, a multi-beam bathymetric sonar system, and a single-beam bathymetric sonar system will not result in more than small numbers of marine mammals being affected, have more than a negligible impact on bowhead whales or other species of marine mammals, nor have an unmitigable adverse impact on the subsistence harvesting of marine mammals. NMFS has determined that the acoustic devices proposed for use by this activity are of low intensity which are simply incapable of causing serious injury or mortality.

ESA Concerns

Comment 21: The AWL states that if the current application (by BP/EM/PAI) to take by seismic testing is granted, it will be granted for a period during NMFS' review of an ESA petition to designate critical habitat for bowhead whales in the Beaufort Sea in order to determine whether the Beaufort Sea area should be permanently protected from seismic testing. If NMFS grants the petition to take during the review period for the ESA petition to protect, it will defeat the entire purpose of its own review process.

Response: On May 22, 2001 (66 FR 28141), NMFS announced receipt of a petition from the Center for Biological Diversity and the Marine Biodiversity Protection Center to designate critical habitat for the Western Arctic stock of bowhead whales under the ESA. NMFS is currently reviewing this petition to determine whether designation of critical habitat is warranted. There is no provision under the ESA that activities that might impact critical habitat cease while a review is underway. However, Federally-permitted oil and gas exploration activities require consultation under section 7 of the ESA if endangered or threatened species might be taken. A consultation with the MMS was concluded on May 23, 2001. The finding of that consultation was that oil and gas exploration, and the issuance of small take authorizations under section 101(a)(5)(D) of the MMPA, are not likely to jeopardize the continued existence of any species under the jurisdiction of NMFS. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

NEPA Concerns

Comment 22: The NAEC believes that the offshore natural gas pipeline development project must undergo a complete EIS process, including scoping, prior to onset of the survey. Shallow hazard surveys should not be treated separately from the rest of the project or given a categorical exclusion from the complete NEPA process.

Response: NMFS disagrees. NEPA does not mandate ground- truth surveys be delayed until completion of NEPA. Information obtained during on-site evaluations, biological data gathering, and research are needed prior to

drafting an EIS in order for the document to contain the best scientific and cultural information obtainable, fully address alternatives, and make environmental impact analyses. The reason why NMFS considers issuance of a small take authorization for this activity as a Categorical Exclusion is provided later in this document (see NEPA).

Other Concerns

Comment 23: Several commenters noted that the Alaska State Legislature passed, and the Governor of Alaska signed into law, a bill prohibiting leases under the Right-of-Way Leasing Act on state land in or adjacent to the Beaufort Sea. The bill (SB 164) became effective on May 17, 2001. The intent of this new law is to specifically prohibit the placement of a natural gas pipeline in the Beaufort Sea. Thus, the NAEC notes, any application made by BP/EM/PAI for the study of such a route should summarily be denied as contrary to the laws of the State of Alaska.

Response: As explained in detail in the proposed authorization document and in this document, the proposed action before NMFS is not an authorization to take marine mammals incidental to construction of a natural gas pipeline, but rather an authorization to take marine mammals incidental to a shallow hazards survey. It is the pipeline construction that is prohibited by SB 164, not the shallow hazards survey.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several documents (Corps, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996) and is not repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (Balaena mysticetus), gray whales (Eschrichtius robustus), beluga (Delphinapterus leucas), ringed seals (Phoca hispida), spotted seals (Phoca largha) and bearded seals (Erignathus barbatus). Descriptions of the biology and distribution of these species and of others can be found in BP/EM/PAI (2001), NMFS (1999), Western Geophysical (2000) and several other documents (Corps, 1999; Lentfer, 1988; MMS, 1992, 1996; Ferrero *et al.*, 2000). Information on cetacean and pinniped hearing can be found in BP/EM/PAI (2001) and Richardson et al. (1995) and other sources. Please refer to these documents for additional information on marine mammals.

Potential Effects of Underwater Noise on Marine Mammals

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any human-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics, echolocation sounds of odontocetes, and environmental sounds such as surf noise; and (6) very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Disturbance by anthropogenic noise is the principal means of taking by this activity. Vessels may provide a potential secondary source of noise. In addition, the physical presence of vessels could also lead to non-acoustic effects on marine mammals involving visual or other cues. For a discussion on the anticipated effects of ships, boats, and aircraft on marine mammals and their food sources, please refer to the BP/EM/PAI application. Information on these effects is adopted by NMFS as the best information available on this subject.

The pulsed sounds produced by shallow hazards operations will be detectable to marine mammals some distance away from the area of the activity, depending on ambient conditions and the sensitivity of the receptor (Balla-Holden *et al.*, 1998; Greene, 1998; Burgess and Lawson, 2000). There are no available data on bowhead or beluga reactions to shallow hazards acoustic sources and limited data are available for seals. However, the planned types of shallow hazards and sub-bottom profiling equipment have lower source levels and higher frequencies than airgun arrays or even a single airgun. It is possible that the shallow hazards sources may disturb some marine mammals occurring in the area, but the radius of disturbance is expected to be significantly less than when an airgun array is used.

Whales that are approached by the survey vessels may react to the vessels. Reactions may include temporary interruption of previous activities and localized displacement (Richardson et al., 1985; Richardson and Malme, 1993). However, the reaction to the survey vessels should be reduced because the vessels will be traveling at relatively slow speed.

Permanent hearing damage is not expected to occur during the project. It is not positively known whether the hearing systems of marine mammals very close to a shallow hazards acoustic source would be at risk of temporary or permanent hearing impairment, but temporary threshold shift is a theoretical possibility for animals within a few meters of the source, depending on the species, the equipment being used, and the marine mammal species involved (Richardson *et al.*, 1995). For that reason, monitoring the acoustic sources is warranted.

Planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the shallow hazards sources, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment. Moreover, as bowhead whales are known to avoid an area many kilometers in radius around ongoing seismic operations (Miller *et al.*, 1998, 1999), bowheads will probably also avoid the planned shallow hazards operation, although not at such long range given the much lower level of the emitted sounds. Thus, at least in the case of baleen whales, the animals themselves are expected to remain far enough from a shallow hazards survey operation to avoid any possibility of hearing damage.

Masking effects on marine mammal calls and other natural sounds are expected to be limited in the case of bowhead and gray whales exposed to shallow hazards pulses. Although pulse repetition rates will be high during shallow-hazards surveys, the source

levels of those pulses will be considerably lower than during seismic surveys, and there will be little overlap in frequency with the predominant frequencies in bowhead calls. This will considerably reduce the potential for masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986; Greene, 1997; Greene et al., 1999). Bowheads are likely to continue calling in the presence of shallow hazard source pulses as well. In the case of bowhead whales, masking by shallow hazards sources will be limited because of the intermittent nature of shallow hazards survey pulses, their higher frequencies as compared with frequencies of bowhead calls, and their relatively low source levels. Masking effects are more likely to occur in the case of beluga whales, given that sounds important to them are predominantly at higher frequencies, including frequencies produced by some of the shallow hazards sources. However, the offshore distribution of beluga whales in the survey area and the rapid absorption of high-frequency sound in seawater will limit the exposure of belugas to shallow hazards pulses and thereby limit the likelihood of masking.

Behavioral Reactions of Cetaceans to Disturbance

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening. However, the actual radius of effect of noise on cetaceans is considerably smaller than the radius of detectability (Richardson *et al.*, 1995).

Reactions of cetaceans to a minisparker have not been reported. The source levels of this device is lower than the source level of a single airgun whose volume exceeds 10 in3, but the frequency range is broader. Both baleen and toothed whales sometimes move away from medium-frequency sonars and similar sources (Richardson *et al.*, 1995). If these avoidance effects do occur, the avoidance distances are expected to be substantially less (at least for bowhead and gray whales) than avoidance distances around an airgun array as used during seismic surveys. For example, sounds from an airgun array typically are above 160 dB (re 1 uPa (rms)) at distances out to a few kilometers. In contrast, sounds from a mini-sparker and sub-bottom profiler, as measured in the Beaufort Sea during 1997 and 2000, diminished below 160 dB within ranges of 155 m (508.5 ft), and less than 77 m (252.6 ft), respectively (Balla-Holden *et al.*, 1998; Burgess and Lawson, 2000). Those studies indicate that, at a range of 2 km (1.2 mi), the received levels would be around 135 dB (re 1 uPa (rms)) for the minisparker and below 120 dB (re 1 uPa (rms)) for the sub-bottom profiler. If migrating bowhead whales are as sensitive to these mid-frequency sources as they are to LF pulses from an airgun array, then avoidance might be evident at distances as much as 2 km (1.2 mi), at least at times when the minisparker is in use.

The side-scan, single-beam, and multi-beam sonars to be used in the shallow hazard survey will operate between 100 kHz and 390 kHz. These sounds are at frequencies above the expected hearing range of bowhead and gray whales. The 100-kHz side-scan sonar sounds (but not the 390 kHz sounds) would be within the hearing range of belugas (White *et al.*, 1978; Johnson *et al.*, 1989). Thus with the possible exception of the few belugas that might be exposed to the 100-kHz side-scan, these high-frequency pulses will be inaudible to cetaceans. The probability that belugas will be exposed to the side-scan sonar is low because belugas are infrequent in nearshore waters of the study area. Also, side-scan sonar sounds at 100 kHz will be rapidly absorbed by seawater and will not be detectable at long range. At 100 kHz, there are absorption losses of 36 dB/km (36 dB/0.62 mi) in addition to the usual spreading loss (Richardson *et al.*, 1995).

Behavioral Reactions of Pinnipeds to Disturbance

Reactions of arctic seals to a minisparker and/or sub-bottom profiler are not known in any detail. Ringed seals have been noted to react ''vigorously'' to survey vessels when shallow hazard sources were silent, and no seals were seen at distances closer than 70 m (229.6 ft) when sources were on during an earlier shallow hazards survey in the Beaufort Sea. However, it is believed that the seals were reacting more to the small airgun used in that survey, than to the GeoPulse bubble pulser (which is not being used in this activity).

The sounds emitted by the side-scan sonar will be largely or entirely inaudible to pinnipeds, as the frequencies (100 and 390 kHz) are well above the effective hearing range of pinnipeds.

Numbers of Marine Mammals Expected to be Taken

Incidental takes of marine mammals by harassment could potentially occur for the duration of the proposed activity (potentially July through September, 2001) during times when the shallow-hazard acoustic sources would be in operation. Seals are in the area throughout the period; few whales are likely to be in the Alaskan Beaufort Sea before late August.

Based on an analysis provided in its application, BP/EM/PAI estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Population Size	Harassment Takes in 2001	
		Possible	Probable
Bowhead	8,200	.....	.....
160 dB criterion	.....	42	3
2 km criterion	.....	1,601	285
Gray whale	26,000	<10	0
Beluga	39,258	250	<150
Ringed seal*	1-1.5 million	93	10
Spotted seal*	>200,000	<10	<2

Species	Population Size	Harassment Takes in 2001	
		Possible	Probable
Bearded seal*	>300,000	15	<15

* Some individual seals may be harassed more than once

Effects of Anthropogenic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from shallow hazards activities are the principal concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise. The hunters are concerned about both displacement and skittish whales.

Nuiqsut and Kaktovik are the communities that are closest to the area of the proposed activity. Hunters from both villages harvest bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take two to four whales each season, while Kaktovik typically take 3 bowheads, with 4 bowheads taken when an ''unused strike'' is allocated from another village. Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principal field camp location for Nuiqsut whalers, is located immediately south of the potential pipeline route. Thus, the possibility and timing of potential shallow hazards activities in the Cross Island area requires BP/EM/PAI to provide NMFS with either a Plan of Cooperation with North Slope Borough residents or measures that have been or will be taken to avoid any unmitigable adverse impact on subsistence needs. BP/EM/PAI's application has identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of shallow hazards activities have been addressed in a CAA with the Nuiqsut and Kaktovik whalers and the AEWC. The CAA is described in the BP/EM/PAI application.

The location of the proposed activity is south of the center of the westward migration route of bowhead whales, but there is some overlap. Localized disturbance to bowheads by shallow hazards sources and the vessels that deploy them could occur if the shallow hazards operations continue into the bowhead migration season. The proposed timing of the shallow hazards survey is not expected to overlap with the bowhead hunt at either Kaktovik or Cross Island. However, if the shallow hazards survey does continue into the bowhead migration season, as discussed previously in this document, the radius of potential disturbance will be much smaller than would be the case during a seismic survey, given the much reduced source levels of the sounds used for shallow hazards surveys. Shallow hazards operations are expected to begin in July and be completed by September, depending upon ice conditions. If possible, BP/EM/PAI expects the work to be completed by the end of August. Few bowheads approach the project area before the end of August, and whaling does not normally begin until after September 1. However, the mitigation measure adopted in previous years to restrict operations to areas west of Cross Island during the bowhead hunting season is not possible for this project because nearly all of this survey is located east of Cross Island.

Many Nuiqsut hunters hunt seals intermittently year round. During recent years, most seal hunting has been during the early summer in open water. In summer, boat crews hunt ringed, spotted, and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island. This area does not overlap with the planned shallow hazards survey area and, therefore, is not expected to influence the seal hunt by Nuiqsut residents.

At Kaktovik, the planned shallow hazards survey during the summer has some potential to influence seal hunting activities, but any effects are expected to be negligible (BP/EM/PAI, 2001). During the open water season, both ringed and bearded seals are taken, along with an occasional spotted seal. Given the lower source levels of the shallow hazard sources, their radius of influence on seals is expected to be less than that of an airgun array even after allowing for the potentially greater sensitivity of seals to mid-frequency sounds. Therefore, it is unlikely that the shallow hazards survey would have more than a negligible impact on seals or subsistence hunting of seals.

Mitigation

The timing of the shallow hazards survey has been planned by BP/EM/PAI so that most or all of the survey will occur while there are few bowhead whales in the Alaskan Beaufort Sea, and thus would avoid or minimize overlap with bowhead hunting. BP/EM/PAI proposes to complete all three survey segments (centerline, north offset, and south offset) near Cross Island at the beginning of the survey period (July), well in advance of 1 September, 2001.

Safety zones will be established around each of the sources (except the multi-beam source because it is above the hearing frequencies of marine mammals) and monitored by marine mammal observers. Whenever a marine mammal is about to enter the safety zone appropriate for the species, the observer will ensure that each of the sources will be shut-down until the mammal leaves its safety zone. The safety zones proposed for this activity are as follows:

SOURCE	TOW DEPTH (m/ft)	WATER DEPTH (m/ft)	RMS RADII (in m/ft)	
			190 dB (Seals)	180 dB (Whales)
Minisparker	0.3/1	~6/20	6/20	18/59
Sub-bottom profiler	3/10	~13/43	3/10	8/26

Within the first 10 days of the survey's start, BP/EM/PAI will measure and analyze the sounds from the various sources, and, after consultation with NMFS, adjust the proposed safety radii, provided here, as necessary.

During night-time, floodlights may be employed to illuminate the safety zone, and night vision equipment will be available to facilitate observation. It should be noted that marine mammal monitoring will not be required for the multi-beam source vessel, only for the sub-bottom source vessel, since the sonar equipment that the multi-beam vessel will operate will emit sounds outside the frequency range at which those species of seals and whales expected in the area can hear well. Also, consistent with previous shallow hazards surveys, because of the lower-powered sources employed, no ramp-up procedure is proposed to be used for this activity.

Monitoring

The BP/EM/PAI will sponsor marine mammal and acoustical monitoring of its 2001 shallow hazards program. This monitoring will be similar to monitoring conducted in association with the 1997 and 2000 shallow hazards operations in the Beaufort Sea. BP/EM/PAI will not conduct an aerial monitoring program because the zones of acoustical influence are likely to be significantly smaller than those found for seismic airgun array operations in the Beaufort Sea.

The monitoring plan submitted to NMFS on March 20, 2001, was reviewed at a peer-review workshop held in Seattle, WA, on June 5, 2001. The monitoring plan was revised in accordance with that meeting and was submitted to NMFS on July 2, 2001. A copy of this monitoring plan is available upon request (see **ADDRESSES**). The monitoring plan has two components.

Vessel Monitoring

BP/EM/PAI will have a marine mammal observer aboard the sub-bottom source vessel to search for and observe marine mammals whenever the shallow hazards operations are in progress, and for at least 30 minutes prior to the planned start of operations. A total of 3 observers will be employed, consisting of two qualified biologists and an Inupiat Observer/Communicator with experience in this type of work. They will work in shifts usually no longer than 4 hours each to minimize observer fatigue. All marine mammal observations and shutdowns will be recorded in a standardized format, as done in previous acoustical surveys.

When mammals are detected within, or about to enter, the safety zone designated to prevent injury to the animals (see Mitigation), the survey crew leader will be notified so that shutdown procedures can be implemented immediately.

Acoustical Monitoring

Acoustical measurements of sounds emitted by the shallow hazards sources will be obtained by vessel-based hydrophones. A vessel-based acoustical measurement program is proposed to be conducted for a few days early in the program. The main objective will be to measure the levels and other characteristics of the horizontally propagating sound from the minisparker, and sub-bottom profiler. The sources will be measured at various distances and directions from the source. Routine vessel sounds, made by BP/EM/PAI vessels, will also be recorded for any vessels whose sounds have not been recorded previously.

Reporting

BP/EM/PAI will provide an initial report on the 2001 shallow hazards activity to NMFS within 90 days of the completion of the shallow hazards program. This report will provide dates and locations of shallow hazards operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final draft technical report will be provided by BP/EM/PAI within 20 working days of receipt of the document from the contractor, but no later than April 30, 2002. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks and will reflect suggestions and recommendations made during peer review.

Consultation

Under section 7 of the ESA, NMFS completed consultation with MMS on the oil and gas exploration and associated activities in the Alaskan Beaufort Sea on May 25, 2001. This consultation includes a review of seismic and related noise sources used by the oil and gas industry. The finding of that consultation was that oil and gas activities in the Alaskan Beaufort Sea, and the issuance by NMFS of a small take authorization for oil and gas activities, are not likely to jeopardize the continued existence of the bowhead whale. In formulating this opinion, NMFS used the best available information, including information provided by MMS, recent research on the effects of oil and gas activities on the bowhead whale, and the traditional knowledge of Native hunters and the Inupiat along Alaska's North Slope. A copy of the Biological Opinion issued as a result of this consultation is available upon request (see **ADDRESSES**).

NEPA

In conjunction with the 1996 notice of proposed authorization (61 FR 26501, May 28, 1996) for open water seismic operations in the Beaufort Sea, NMFS released an Environmental Assessment (EA) that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. No comments were received on that document and, on July 18, 1996, NMFS concluded that neither implementation of the proposed authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Alaskan Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an environmental impact statement on this action is not required by section 102(2) of NEPA or its implementing regulations.

In 1999, NMFS determined that a new EA was warranted based on the proposed construction of the Northstar project, the collection of data from 1996 through 1998 on Beaufort Sea marine mammals and the impacts of seismic activities on these mammals, and the analysis of scientific data indicating that bowheads avoid nearshore seismic operations by up to about 20 km (12.4 mi). Accordingly, a review of the impacts expected from the issuance of an IHA has been assessed in the EA, and NMFS determined in 1999, that there would be no more than a negligible impact on marine mammals from the issuance of the harassment authorization that year and that there will not be any unmitigable impacts to subsistence communities, provided the mitigation measures required under the authorization were implemented. As a result, NMFS determined in 1999 that neither implementation of the authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. Since this proposed action falls into a category of actions that do not individually or cumulatively have a significant impact

on the human environment as determined through the 1999 EA, this action is categorically excluded from further NEPA analysis (NOAA NAO 216-6).

Determinations

Based on the evidence provided in the application, the EA, and this document, and taking into consideration the comments submitted on the application and proposed authorization notice, NMFS has determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization to BP/EM/PAI and that there will not be any unmitigable adverse impacts to subsistence communities. NMFS has determined that the short-term impact of conducting shallow hazards surveys in the Alaskan Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of shallow hazard survey operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed shallow hazards activity in waters generally too shallow and distant for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries or mating grounds are known to occur within or near the planned area of operations during the season of operations. However, there may be some overlap with areas of concentrated feeding as mentioned previously in this document.

Because bowhead whales are east of the activity area in the Canadian Beaufort Sea until late August/early September, shallow hazard survey activities in the Alaskan Beaufort Sea are not expected to impact subsistence hunting of bowhead whales prior to that date. Using the expected density of whale abundance that could be subject to acoustic harassment from this work, the intensity and frequency of the sound source, and the equivalent received sound levels for this equipment when compared to a seismic array, a maximum of 1,601 bowhead whales could be incidentally harassed between the effective date of this authorization and September 30, 2001. This represents the estimated number of whales which would occur within 2 km of the source. The actual duration of the survey and the proximity of these operations to the bowhead fall migration corridor are likely to reduce this estimate substantially. Additionally, this estimate considered the distribution of the 1997 fall bowhead migration; a year in which the axis of the migration corridor was close to shore. The AGPPT estimates the most probable level of take as 285 bowhead whales. However, NMFS acknowledges that, should weather conditions delay survey work into September and survey work occur in deeper waters (e.g. over the 60 foot isobath rather than the 40 foot contour as expected), the higher estimate could be approached. Therefore, NMFS believes an appropriate estimate of take for this work may be established as the average between these estimates, or 943 animals. NMFS believes that no bowheads will be killed or seriously injured by BP/EM/PAI's activity and accordingly has not authorized takings by injury or mortality.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs have been the subject of consultation between BP/EM/PAI and subsistence users. This CAA, which consists of three main components: (1) Communications, (2) conflict avoidance, and (3) dispute resolution, has been concluded for the 2001 open-water seismic season.

Also, while shallow hazard surveys in the Alaskan Beaufort Sea have the potential to influence seal hunting activities by residents of Kaktovik, because the zone of influence on seals by shallow hazard survey sources is expected to be small (less than a few hundred meters in diameter), and because the village of Nuiqsut conducts its major sealing during the summer months off the Colville Delta, west of the proposed survey area, NMFS believes that BP/EM/PAI's shallow hazards survey will not have an unmitigable adverse impact on the availability of ringed, bearded and spotted seals needed for subsistence.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of bowhead whales, gray whales, beluga whales, and ringed, spotted and bearded seals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to BP/EM/PAI for the herein described shallow hazards survey during the 2001 open water season in the Alaskan Beaufort Sea provided the mitigation, monitoring, and reporting requirements described in this document and in the IHA are undertaken.

Dated: July 23, 2001.

Wanda L. Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–19618 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072701G]

Marine Mammals; File No. 1012–1647

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Robert B. Griffin, Ph.D., Center for Marine Mammal and Sea Turtle Research, Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236, has applied in due form for a permit to take Atlantic spotted dolphins (Stenella frontalis) and bottlenose dolphins (Tursiops truncatus) for purposes of scientific research over a five year period.

DATES: Written or telefaxed comments must be received on or before September 5, 2001.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin or Lynne Barre, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant is requesting to take Atlantic spotted dolphins and bottlenose dolphins on the west Florida continental shelf, using the tools of radio-telemetry, biopsy sampling, photography, and passive acoustic recording. For Atlantic spotted dolphins, the proposed annual takes are: 50 for biopsy sampling, 5,000 for photo-identification, and 10 for suction cup telemetry tags. For bottlenose dolphins, the proposed annual takes are: 220 for biopsy sampling, 17,300 for photo-identification, and 10 for suction cup telemetry tags. The research objectives include: (1) study of the feasibility of using suction-cup radio-telemetry tags on the Atlantic spotted dolphin and bottlenose dolphin; (2) radio telemetry of these species to answer questions of movement and foraging patterns; (3) photography of these species for contributions to existing photo-ID catalogues maintained at Mote Marine Laboratory; (4) further study of anthropogenic contaminant loads in these species; and (5) contribute to the National Marine Fisheries Service stock analysis database. The research will be conducted in the Gulf of Mexico, offshore of the west coast of Florida between Tampa Bay and Charlotte Harbor, and near Panama City in Choctawhatchee Bay and St. Andrews Bay.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 30, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–19510 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Forms, and OMB Number: Commissary Customer Service Survey; DeCA Form 60–28; OMB Number 0704–0380.

Type of Request: Revision.

Number of Respondents: 7,500.

Responses Per Respondent: 1.

Annual Responses: 7,500.

Average Burden Per Response: 4 minutes.

Annual Burden Hours: 500.

Needs and Uses: The DoD Commissary Agency has developed the ''Commissary Customer Service Survey'' (CCSS) as a management tool to evaluate customer satisfaction in each commissary worldwide. This management tool, ''Commissary Customer Service Survey,'' DeCA Form 60–28, is designed to query commissary patrons on perceived customer satisfaction.

The results will be distributed to each commissary for guidance to effectively serve patrons' needs and also to operate a more efficient and cost-effective system.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 30, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–19586 Filed 8–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 1400 Tuesday, September 11, 2001.

ADDRESSES: The meeting will be held Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and

memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 30, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–19587 Filed 8–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, September 13, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc. 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. Sec. 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 30, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–19588 Filed 8–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, September 6, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App Sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 30, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–19589 Filed 8–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, September 11, 2001.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the arena of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. Sec. 10(d)), it has been

determined that this Advisor Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: July 30, 2001.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–19590 Filed 8–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD) as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Social Security Administration (SSA) and the DoD that their records are being matched by computer.

The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by recipients of SSI payments and beneficiaries of SVB benefits. The SSI and SVB recipient/beneficiary provides information about eligibility/entitlement factors and other relevant information. SSA obtains additional information as necessary before making any determinations of eligibility/payment or entitlement/benefit amounts or adjustments thereto. With respect to military retirement payments to SSI recipients and SVB beneficiaries who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DoD.

DATES: This proposed action will become effective September 5, 2001, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Defense Manpower Data Center (DMDC) and SSA have concluded an agreement to conduct a computer matching program.

The parties to this agreement have determined that a computer matching program is the efficient, expeditious, and effective means of obtaining and processing the information needed by the SSA under the Social Security Act to verify the eligibility/entitlement of, and to verify payment and benefit amounts for, certain SSI and SVB recipients/beneficiaries. Computer matching also will produce the required data to calculate and make any necessary adjustments of SSI payments and SVB benefits. The principal alternative to using a computer matching program would be to conduct a manual comparison of DoD payment records with a list of SSI and SVB recipients/beneficiaries. Conducting such a manual match would clearly impose a considerable administrative burden, constitute a greater intrusion on the individual's privacy, and would result in additional delay in the eventual SSI payment and SVB benefit or recovery of unauthorized or erroneous payments/benefits. Using the computer matching program, the information exchange between the parties can be accomplished within 30 days.

A copy of the computer matching agreement between SSA and DoD is available upon request. Requests should be submitted to the address caption above or to the Information Exchange and Matching Staff, Office of Disclosure Policy, Office of Program Support, Office of Disability and Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 2518.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on July 26, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 30, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE SOCIAL SECURITY ADMINISTRATION AND THE DEPARTMENT OF DEFENSE FOR VERIFICATION OF SOCIAL SECURITY SUPPLEMENTAL SECURITY INCOME PAYMENTS AND SPECIAL VETERANS BENEFITS

A. PARTICIPATING AGENCIES:

Partipants in this computer matching program are the Social Security Administration (SSA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SSA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. PURPOSE OF THE MATCH:

The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by recipients of SSI payments and beneficiaries of SVB benefits. The SSI and SVB recipient/beneficiaries provides information about eligibility/entitlement factors and other relevant information. SSA obtains additional information as necessary before making any determinations of eligibility/payment or entitlement/benefit amounts or adjustments thereto. With respect to military retirement payments to SSI recipients and SVB beneficiaries who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DOD.

C. AUTHORITY FOR CONDUCTING THE MATCH:

The legal authority for the matching program is contained in sections 1631(e)(1)(B) and (f) of the Social Security Act (42 U.S.C. 1383(e)(1)(B) and (f)) and 42 U.S.C. 1001–1013.

D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for the purpose of this computer match are as follows:

1. The SSA will use 60–0103, entitled 'Supplemental Security Income Record and Special Veterans Benefits', last published on February 21, 2001 at 66 FR 11080.

2. The DMDC will use S322.10 DMDC, entitled 'Defense Manpower Data Center Data Base', last published on May 31, 2001 at 66 FR 29552.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

SSA, as the source agency, will provide DMDC with an electronic file which contains the data elements. Upon receipt of the electronic file, DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the SSI/SVB file against a DMDC database which contains the data elements. The DMDC database consists of extracts of personnel and pay records of retired members of the uniformed services or their survivors. The ''hits'' or matches will be furnished to SSA. SSA is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the SSA source file and resolving any discrepancies or inconsistencies on an individual basis. SSA will also be responsible for making final determinations as to eligibility for /entitlement to, or amount of payments/ benefits, their continuation or needed adjustments, or any recovery of overpayments as a result of the match. The DMDC database consists of extracts of personnel and pay records of retired members of the uniformed services or their survivors.

1. The electronic SSA query file contains approximately 6.5 million records extracted from the Supplemental Security Income Record.

2. The electronic DMDC database contains records on approximately 2.15 million retired uniformed service members or their survivors.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM:

This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress. The Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on a quarterly basis, shifting to a monthly basis when and if the computer system work can be completed to effectuate the increased frequency. By agreement between SSA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 01–19591 Filed 8–3–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Optimizing Current and Future Operations, Training and Maintenance at the Beaches of Naval Amphibious Base (NAB) Coronado and Naval Radio Receiving Facility (NRRF) Imperial Beach and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of current and future operations, training and maintenance at the beaches of Naval Amphibious Base Coronado, ''NAB'', Naval Radio Receiving Facility Imperial Beach, ''NRRF'', and within the fenced compound at NRRF.

DATES AND ADDRESSES: Public scoping open houses will be held to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. Public scoping open houses will be held from 7:00 to 8:30 p.m. the following dates and locations: Tuesday, August 28, 2001 at the Coronado Public Library (Winn Room), 640 Orange Avenue, Coronado, CA; Wednesday, August 29, 2001 at Bayside Elementary School, 490 Emory Street, Imperial Beach, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Jenny Boyd, South Bay Area Focus Team, Southwest Division, Naval Facilities Engineering Command, 2585 Callagan Highway, Building 99, San Diego, CA 92136–5198, telephone (619) 556–8589.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of current and future operations, training and maintenance at the beaches of Naval Amphibious Base Coronado, ''NAB'', Naval Radio Receiving Facility Imperial Beach, ''NRRF'', and within the fenced compound at NRRF.

NAB Coronado is the only Navy amphibious base on the West Coast. It includes 5,500 yards of Pacific Ocean and bayside beachfront that is used for training. This area, along with 2,000 yards of Pacific Ocean beachfront at NRRF, provide operators with 7,500 yards of expansive beaches, unique topography, and on-base facilities that encompass a critical area for amphibious and clandestine training in support of littoral, unconventional, and special warfare operations.

The proposed action is to allocate operations and training between NAB and NRRF in a manner that optimizes use of those facilities while protecting threatened and endangered species. Operationally realistic training at NAB and NRRF is critical to military mission readiness requirements. However, due to the Navy's on-going, successful resource management program, threatened and endangered biological resources are thriving on the beaches at NAB Coronado. This poses a problem for scheduling required training because the increase in least tern and snowy plover populations is decreasing the size of beachfront available for crucial training and the time during which it is available.

NAB has reviewed its current and future operations, training and maintenance requirements as well as the training needs of tenant commands and other commands in Southern California that use the training facilities at NAB. The EIS will address three alternatives (including the No Action Alternative) for optimizing training at NAB and NRRF based on that internal review.

The No Action Alternative would continue current levels of operations at NAB and NRRF and utilize natural resource management strategies identified in NAB's natural resource management plan. While most operations and training currently are conducted at NAB, a limited number of amphibious training operations are conducted at NRRF. Specific operations are delineated for each location. Current operations delineated for NAB include Warfare Training (amphibious assaults and combat training, clandestine shore assaults, mine countermeasures,

navigation/surf handling training, SCUBA training, ship surveillance) and Strategic Sealift Training (Elevated Causeway System Training) on the Pacific Ocean beachfront. Current bayside operations also include Warfare Training (amphibious assaults and clandestine shore assaults) and Strategic Sealift Training (ELCAS, amphibious assault bulk fuel/water systems). NAB also supports several training area users that have unique training requirements. One of the larger users is the Marine Corp's Expeditionary Warfare Training Group, Pacific. Their primary mission is to conduct warfare training courses for expeditionary and amphibious operations with emphasis on landing force operations using amphibious platforms. Current operations delineated for NRRF include inflatable landing craft, practice assault beaching and underwater navigation techniques. Current resource management strategies will continue with the habitat maintenance practice of predator control, decoy placement, beach maintenance, and coning off Western snowy plover nests on the beaches at NAB. It will also continue using the formal scheduling process for training operations.

Alternative One proposes a more integrated use of NAB and NRRF for current operations as well as the addition of new types of operations at NAB and NRRF. Under Alternative One, all 7,500 yards of beach area at NAB and NRRF would be available to support current operations. This alternative recognizes the dynamic that exists between operational uses and protection of natural resources. As the most significant natural resource issues at NAB involve nesting and foraging, location and timing of operations are critical considerations. Training operations often conflict with nesting season of growing least tern and snowy plover populations. Alternative One would provide operators with the option of training at NAB or NRRF during nesting season and would address the complete range of impacts of training at both NAB and NRRF.

Rather than a rigid matrix that pairs specific operations with a specific location, Alternative One proposes that decisions on the location of operations be based upon the ability of the location to handle a given type and level of operations at a given time of year. This would allow greater flexibility for year round use of NAB and NRRF. The following operations are included under Alternative One: Warfare Training, Strategic Sealift Training, and landing force operations currently conducted at NAB; inflatable landing craft, practice assault beaching, and underwater navigation techniques currently conducted at NRRF; and new operations consisting of mine disabling training in San Diego Bay along the NAB shoreline; new operations consisting of ordnance disposal training and land reconnaissance exercises on the beach and within the fenced compound at NRRF.

In addition to the current habitat maintenance practice of predator control, decoy placement, beach maintenance, coning off Western snowy plover nests and using a formal scheduling procedure, Alternative One proposes to incorporate coning off California least tern nests and clearly delineating beach-crossing lanes.

Alternative Two proposes to relocate the majority of current Warfare Training, Strategic Sealift Training, and landing force operations from NAB to NRRF during nesting season. Current operations involving inflatable landing craft, practice assault beaching, and underwater navigation techniques would continue at NRRF. Alternative Two also includes: the addition of mine disabling training in San Diego Bay along the NAB shoreline, new ordnance disposal training, and land reconnaissance exercises on the beach and within the fenced compound at NRRF. Alternative Two also proposes the additional habitat maintenance practices of coning off California least tern nests and clearly delineating beach-crossing lanes, as proposed in Alternative One at NAB.

In addition to analyzing impacts on the full range of natural, biological, and cultural resources, the EIS will examine aesthetic and socioeconomic issues, management practices for California least tern and Western snowy plover nesting habitat avoidance, and management practices for the salt marsh bird's beak.

To facilitate preparation of its EIS, the Navy has initiated this scoping process. The purpose of the scoping process is to identify community concerns and local issues that should be addressed. Federal, state, and local agencies, elected officials, non-governmental organizations, and interested persons are encouraged to attend scheduled scoping meetings and provide comments on the scope of issues to be addressed in the EIS. Scoping comments that clearly describe specific issues or topics are particularly helpful.

All comments not received at the scheduled public meetings must be in writing and must be postmarked by September 14, 2001. Comments should be mailed or faxed to: Southwest Division, Naval Facilities Engineering Command, Attn: Ms. Jenny Boyd, South Bay Area Focus Team, 2585 Callagan Highway, Building 99, San Diego, CA 92136–5198, fax (619) 556–8929.

Dated: July 30, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–19613 Filed 8–3–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Emerging Technology Deployment

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation No. DE–PS07–01ID14181.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is soliciting the submission of proposals for field testing of technologies to reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts, specifically in the Industries of the Future (IOF) industrial sectors. The objective of the solicitation is to find ways to mitigate the risk to industries of accepting and using emerging technologies developed by the IOF program. It is not the intent of DOE–ID to solicit research and development projects. At least a 50% cost share will be required.

This solicitation is commissioned on behalf of the DOE's Office of Industrial Technology (OIT) BestPractices Program, which has been established to provide integrated delivery of energy-saving products, services, and technologies to the nine IOF sectors. Additional information about the BestPractices Program can be found on the website (*http://www.oit.doe.gov/bestpractices*). The IOF industry-specific vision documents and technology roadmaps are available at *http://www.oit.doe.gov/* under individual IOF program areas.

DATES: The deadline for receipt of applications is October 19, 2001. Awards are expected to be made on or about January 15, 2002.

ADDRESSES: The solicitation in its full text is available on the Internet at the following URL address: *http://e-center.doe.gov.* All applications must be submitted through the DOE e-center site.

FOR FURTHER INFORMATION CONTACT: T. Wade Hillebrant, Contract Specialist, hillebtw@id.doe gov.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (P.L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on July 24, 2001.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 01–19576 Filed 8–3–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–014]

Open Access Same-Time Information System and Standards of Conduct

Issued July 26, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Adopting Minor Revisions to OASIS Standards And Communication Protocols Document, Version 1.4 (S&CP Document) and announcement of availability.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) adopts minor technical revisions to the Data Element Dictionary of the S&CP Document. This document is available at (See **ADDRESSES** Below).

EFFECTIVE DATE: The revisions to the Data Element Dictionary adopted in this order are to become effective on October 1, 2001.

ADDRESSES: Copies of the revisions are available at the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. E-Mail address: ''comment.rm@ferc.fed.us''.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission 888, First Street, NE., Washington, DC 20426 (202) 208–1283

Paul Robb (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2702

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION:

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

Order Adopting Minor Revisions to OASIS Standards and Communication Protocols Document, Version 1.4

In this Order, the Commission adopts minor technical revisions to the OASIS Standards and Communication Protocols Document, Version 1.4 (S&CP Document) recommended by the OASIS Standards Collaborative Group (OSC).[1]

Background

On March 23, 2001, OSC submitted a list of recommended revisions to the OASIS Data Dictionary (''Appendix ''A'') of the S&CP Document.[2] OSC states that the revisions merely correct minor errors in the data dictionary.

Notice of the filing was published in the **Federal Register**,[3] with comments due on or before May 18, 2001. The notice stated that the Commission contemplated adopting the recommended revisions after consideration of any comments filed. None was filed.

Discussion

The OSC recommends that the Commission make the following revisions to the Data Element Dictionary of the S&CP Document:

- The attributes CAPACITY_SCHEDULED, OLD_DATA, VALUE, and VALUE_UNITS are no longer used and should be deleted from the Data Dictionary.
- The FACILITY_NAME needs to be increased from 25 to 100 characters to accommodate the full length of the PATH_NAME data element and allow for more detailed naming standards in the future.
- The definitions for INITIATING_PARTY and RESPONSIBLE_PARTY should be changed to avoid confusion in interpretation. These elements identify a Control Area, Security Coordinator, etc., by their four character registered codes and do not identify a person.
- OTHER_CURTAILMENT_PRIORITY should be changed to a designation of ''{registered}'' to reflect the requirement to register any alternative curtailment priority attributes adopted by the Transmission Provider as called for under Standard 2.4 of the Business Practice Standards for OASIS Transactions Version 1.1.
- The attributes PROCEDURE_NAME and PROCEDURE_LEVEL should be defined either to be the NERC Transmission Loading Relief (TLR) or WSCC Un-Scheduled Flow (USF) transmission security procedures and their corresponding curtailment levels, or names and associated levels registered at tsin.com identifying local transmission security procedures implemented by the Transmission Provider.
- Identify the maximum length of the SECURITY_TYPE element and the restricted values of ''OUTAGE'' and ''LIMIT.''
- Correct the REQUEST_TYPE value for REDIRECT requests.
- The data attribute TRANSACTION_ID needs to be increased from 20 to 30 characters to accommodate the 23 character string length of the NERC Tag ID.

We agree with OSC that each of the recommended revisions to the S&CP Document's Data Element Dictionary should be made. Each of these revisions constitutes a minor technical revision and none is controversial (as shown by the complete absence of comments on the OSC proposal). To avoid confusion, we will refer to the revised Data Element Dictionary we are adopting in this order as Version 1.41.

IV. Effective Date and Congressional Notification

While the revisions to the data dictionary are minor, several of them require transmission providers to modify their computer software. To provide sufficient time for transmission providers to make the modifications, and to insure that the changes are not implemented during the summer peak period, we will make these changes effective on October 1, 2001.

The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this order does not constitute a ''major rule'' within the meaning of section 351 of the Small Business Regulatory Enforcement Act of 1996. The Commission will submit this order to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register**.

The Commission orders: The Data Element Dictionary of the S&CP Document is hereby revised, as shown on Attachment A to this order, for use by Transmission Providers, effective on October 1, 2001, as discussed in the

[1] The OSC states that it formerly was known as the OASIS How Working Group.

[2] A summary of prior revisions to the S&CP Document is found in Open Access Same-Time Information System and Standards of Conduct, FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,106 at 31,710 (2000).

[3] 66 FR 21,135 (2001).

body of this order. The revised Data Element Dictionary shall be referred to as Version 1.41.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 01–19398 Filed 8–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Interim Approval

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary of Energy, confirmed and approved, on an interim basis, Rate Schedules VA–1, VA–2, VA–3, VA–4, CP&L–1, CP&L–2, CP&L–3, CP&L–4, AP–1, AP–2, AP–3, AP–4, and NC–1. The rates were approved on an interim basis through September 30, 2006, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–4578, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued February 13, 1997, in Docket No. EF96–3041–000, confirmed and approved Wholesale Power Rate Schedules KP–1–D, JHK–2–B, JHK–3–B, and PH–1–B through September 30, 2001. This order replaces these rate schedules.

Dated: July 27, 2001.

Francis S. Blake,

Deputy Secretary.

Department of Energy Deputy Secretary

In the Matter of: Southeastern Power Administration—Kerr-Philpott System Power Rates; Rate Order No. SEPA–40.

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 Fed. Reg. 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate is issued by the Secretary pursuant to said notice.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules KP–1–D, JHK–2–B, JHK–3–B, and PH–1–B. These rate schedules were approved by the FERC on February 13, 1997, for a period ending September 30, 2001 (78 FERC 62112).

Public Notice and Comment

Southeastern prepared a Power Repayment Study, dated February 2001 for the Kerr-Philpott System, which showed that revenues at current rates were not adequate to meet repayment criteria. On March 15, 2001, (66 FR 15116) Southeastern proposed to replace the current Rate Schedules with new rate schedules VA–1, VA–2, VA–3, VA–4, CP&L–1, CP&L–2, CP&L–3, CP&L–4, AP–1, AP–2, AP–3, AP–4, and NC–1. The Notice also announced a Public Information and Comment Forum to be held April 17, 2001, in Raleigh, North Carolina, with a deadline for written comments on June 13, 2001. Southeastern received eight comments from one party, the Southeastern Federal Power Customers, Inc. (SeFPC). The following is a discussion of these comments.

Comment 1: SeFPC states that, until SEPA takes steps to address cost of service under the settlement agreement in *Virginia Electric and Power Company* (Virginia Power), Docket No. ER99–417–000, SEPA has not fulfilled the statutory obligation to ensure that the charges to the customers are the ''lowest possible'' and ''consistent with sound business principles.''

Response 1: The cost of service filing under the settlement agreement reached by Southeastern, SeFPC and other Kerr-Philpott customers in Docket No. ER99–417–000 stipulated that it be filed on the ''earliest of (1) January 1, 2001, (2) the effective date of a change of any *rates* of the rates for transmission service or ancillary services under Virginia Power's Open Access Transmission Tariff (OATT) or, (3) The effective date of Virginia Power's participation in a Regional Transmission Organization (RTO) OATT tariff.'' Page 2 of settlement agreement dated in July 15, 1999, in Docket No. ER99–417–000. The following year, Southeastern, SeFPC and other Kerr-Philpott customers agreed to amend the settlement agreement and extend the term from January 1, 2001, to January 1, 2002. See *Virginia Electric and Power Company*, Docket No. ER00–3785. Both were approved by the Federal Energy Regulatory Commission (FERC). These agreements have resulted in savings of approximately $2.8 million to all the Kerr-Philpott customers. Southeastern will not pass any increased costs until that cost of service study is filed. Southeastern has developed a rate schedule that allows Southeastern to pass on to the preference customers any costs that are allowed by FERC at the time they are allowed by FERC.

Comment 2: In resolving that case (Virginia Power Docket ER99–417–000), SEPA only raised the question of whether the Kerr-Henderson line is integrated with the entire Virginia Power system and whether the average-system pricing of the service is just and reasonable under these circumstances. 85 FERC at 62,668. Ultimately, until additional steps are taken, the rates will not meet the standard for the lowest possible consistent with sound business principles.

Response 2: Southeastern raised other issues in Virginia Power Docket ER99–417–000 than just whether Virginia Power should be allowed to charge Southeastern a point-to-point transmission rate under Virginia Power's OATT. Some of Southeastern's arguments are summarized and rejected in the dissenting opinion of Chairman Hoecher and Commissioner Hebert at 85 FERC 62669–62670. Others appear in Southeastern's Motion to Intervene and accompanying affidavit filed in the docket. The settlement agreements that Southeastern, SeFPC and the other customers signed allows for paying the point-to-point rate after Virginia Power files a cost of service study. When FERC approves such a rate that Southeastern must pay Virginia Power, Southeastern will pass that rate on to the preference customers.

Comment 3: The Alliance RTO will make a cost of service filing late this year. The Customers believe that SEPA has an obligation to examine and challenge in all appropriate forums the underlying cost of service filing.

Response 3: Southeastern has always sought the lowest possible costs in dealing with transmission providers as is demonstrated here. It will continue to make every effort to examine, evaluate, and, if necessary, challenge the relevant cost of service filings in appropriate forums.

Comment 4: SeFPC members believe that opportunity exists for SEPA to participate in Alliance and GridSouth meetings, as appropriate, to encourage appropriate reciprocity of transmission service. Until SEPA documents how it has participated in these meetings to encourage reciprocal rates for transmission service, thereby ensuring the lowest possible rates, the proposed rate increase for transmission service does not appear to provide the lowest possible cost.

Response 4: Southeastern is an intervenor in the GridSouth and Alliance filings and has attended many meetings on the creation of GridSouth and has discussed ''seams'' issues with GridSouth. It believes that the ''seams'' issues will be filed with FERC giving the preference customers as well as Southeastern the opportunity to intervene and have an input.

Comment 5: The members of the SeFPC understand that the development of reciprocal service between the GridSouth and Alliance RTO could eliminate a substantial portion of the tandem transmission charge as set forth in the proposed rate increase. Notably, the Alliance RTO will be holding meetings in the near future that will address this topic. Until SEPA documents how it has participated in these meetings to encourage reciprocal rates for transmission service, thereby ensuring the lowest possible rates, the proposed rate increase for transmission service does not appear to provide the lowest possible cost.

Response 5: Southeastern will continue to be directly involved in discussions on this matter and others with GridSouth and the Alliance and will continue to discuss our positions on RTO issues with the preference customers.

Comment 6: The recovery of CSRS benefits appears to be an expense for which the Customers pay twice, once as electric customers of the U.S. Government, and a second time as U.S. Taxpayers. While FERC has declined to disagree with the Department of Energy's previous decision to recover these costs in previous cases, the members of the SeFPC ask that policy makers in the current Administration examine the merits of this policy which double collects from electric consumers in the Southeast.

Response 6: The Department of Energy has determined that Southeastern will recover the cost of CSRS and pension health benefits funded by the Office of Personnel Management. The Customers have challenged this determination to the Department of Energy and to FERC in the Georgia-Alabama-South Carolina rate filing in 1998 and the Cumberland Basin System filing in 1999.

In the Georgia-Alabama-South Carolina System, FERC issued an order confirming and approving new rate schedules on a final basis on February 26, 1999, (86 FERC 61,195). On April 23, 1999, in docket no. EF98–3011–001, FERC issued an order granting rehearing of the order. This rehearing is pending.

In the Cumberland Basin System, FERC issued an order confirming and approving new rate schedules on a final basis on March 17, 2000, (90 FERC 61,266). On May 12, 2000, in docket no. EF99–3021–001, FERC issued an order granting rehearing of the order. On June 15, 2000, FERC issued an order denying rehearing on this docket (91 FERC 61,272).

CSRS benefits were included in the Jim Woodruff System new rate schedules submitted to the FERC in 2000. While the customers opposed the inclusion of these costs in their comments to Southeastern, they chose not to oppose them before FERC. FERC issued an order confirming and approving rate schedules for the Jim Woodruff System on November 9, 2000, (93 FERC 62,100).

Comment 7: The members of the SeFPC believe that SEPA must establish how the costs for the CSRS benefits are derived. In particular, the customers note that SEPA has recovered costs for CSRS benefits from customers served by the GA-AL-SC System of Projects and Cumberland System of Projects without any sufficient documentation as to how the costs for CSRS benefits are proportioned among all the customers relative to SEPA's actual costs for CSRS benefits. In this regard, the Customers believe that SEPA must demonstrate that the costs for CSRS benefits are proportional for the Kerr-Philpott System of Projects so that the customers served by these projects do not bear a disproportionate share of the cost for CSRS benefits.

Response 7: In computing CSRS costs, the Department of Energy follows the guidelines provided annually by the Office of Personnel Management (OPM). A copy of the most recent guidelines is attached. OPM follows the requirements of the Statement of Federal Financial Standards No. 5 (SFFAS–5)—Liabilities of the Federal Government.

The service cost included in Southeastern's financial statements represents an estimate of the amount of funds which, if accumulated annually and invested over the careers of covered employees, will be enough to pay their future benefits. For most ''regular'' CSRS covered employees, the service cost is 24.2 percent of basic pay. This exceeds the 14 percent of basic pay that is contributed by and for covered employees. Employing agencies must recognize the difference between the service cost and the contributions by and for their employees as an imputed financing source.

Southeastern's CSRS costs are then allocated to each of Southeastern's four systems using the same allocation factors as all other Southeastern marketing expenses.

The Corps of Engineers computes CSRS costs using the same guidelines. These costs are computed for each project and reported to Southeastern.

Comment 8: The projected increase in the repayment study of $205,000 appears to be consistent with the revenue requirements for the rehabilitation [of the John H. Kerr Project].

Response 8: The comment refers to the portion of the rate increase that is attributed to the rehabilitation of the John H. Kerr Project currently underway. The customers do not appear to be opposed to this portion of the rate adjustment.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in May 2001, for the Kerr-Philpott System shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635, and in the Power Marketing Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2001, attached Wholesale Power Rate Schedules VA–1, VA–2, VA–3, VA–4, CP&L–1, CP&L–2, CP&L–3, CP&L–4, AP–1, AP–2, AP–3, AP–4, and NC–1. The Rate Schedules shall remain in effect on an interim basis through September 30, 2006, unless such period is extended or until the FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: July 27, 2001.

Francis S. Blake,
Deputy Secretary.

Wholesale Power Rate Schedule VA–1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Virginia Electric and Power Company (hereinafter called the Company) and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.36 Per kilowatt of total contract demand per month as of February, 2001, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Virginia Electric and Power Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Virginia Electric and Power Company's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Virginia Electric and Power Company under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–2

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to contracts between the Government and Virginia Electric and Power Company (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling

arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.36 Per kilowatt of total contract demand per month as of February, 2001, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Virginia Electric and Power Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Virginia Electric and Power Company's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Virginia Electric and Power Company under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–3

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be scheduled pursuant to contracts between the Government and Virginia Electric and Power Company (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Virginia Electric and Power Company's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule VA–4

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina served through the transmission facilities of Virginia Electric and Power Company (hereinafter called the Company). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Virginia Electric and Power Company's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.044 Per kilowatt of total contract demand per month as of February, 2001, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–2

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.044 Per kilowatt of total contract demand per month as of February, 2001, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The rate is subject to periodic adjustment and will be computed in accordance with the terms of the Government-Company contract.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power

Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–3

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Carolina Power & Light Company (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule CP&L–4

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Carolina Power & Light Company (hereinafter called the Company). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the terms of the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission, in accordance with the Government-Company contract, is six (6) per cent. This loss factor will be governed by the terms of the Government-Company contract.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and American Electric Power Service Corporation (hereinafter called the Company) and the Customer. This rate schedule is applicable to customers receiving power from the Government on an arrangement where the Company schedules the power and provides the Customer a credit on their bill for Government power. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.66 Per kilowatt of total contract demand per month as of February, 2001, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving American Electric Power Service Corporation's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving American Electric Power Service Corporation's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by American Electric Power Service Corporation under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–2

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be transmitted pursuant to contracts between the Government and American Electric Power Service Corporation (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government. The Government is responsible for arranging transmission with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.66 Per kilowatt of total contract demand per month as of February, 2001, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving American Electric Power Service Corporation's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving American Electric Power Service Corporation's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by American Electric Power Service Corporation under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–3

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be scheduled pursuant to contracts between the Government and American Electric Power Service Corporation (hereinafter called the Company) and the Customer. The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving American Electric Power Service Corporation's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by American Electric Power Service Corporation under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule AP–4

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia to whom power may be scheduled pursuant to contracts between the Government and American Electric Power Service Corporation (hereinafter called the Company). The Customer has chosen to self-schedule and does not receive Government power under an arrangement where the Company schedules the power and provides a credit on the Customer's bill for Government power. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border

of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving American Electric Power Service Corporation's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by American Electric Power Service Corporation under section 205 of the Federal Power Act or Southeastern Power Administration under section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule NC–1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be transmitted pursuant to a contract between the Government and Virginia Electric and Power Company (hereinafter called the Virginia Power), scheduled pursuant to a contract between the Government and Carolina Power & Light Company (hereinafter called CP&L), and billed pursuant to contracts between the Government and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Virginia Power's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$1.96 Per kilowatt of total contract demand per month.

Energy Charge

8.25 Mills per kilowatt-hour.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Virginia Power and CP&L. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of Virginia Power's or CP&L's rate.

Transmission

$1.36 Per kilowatt of total contract demand per month as of February, 2001, is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the transmission and distribution charges paid by the Government. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Virginia Electric and Power Company's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Tandem Transmission Charge

$0.61 Per kilowatt of total contract demand per month, as an estimated cost as of January, 2002.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Virginia Electric and Power Company's or Carolina Power & Light Company's Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Virginia Electric and Power Company under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

[FR Doc. 01–19574 Filed 8–3–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

[Rate Order No. SWPA–45]

Integrated System Power Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of extension.

SUMMARY: Pursuant to Delegation Order No. 0204–172, November 24, 1999, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(a)(3), the Deputy Secretary of Energy has approved and placed into effect on an interim basis Rate Order No. SWPA–45 which extends the existing power rates for the Integrated System. This is an interim rate action effective October 1, 2001, extending for a period of one year through September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, OK 74103, (918) 595–6696, *reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: The current rate schedules for the Integrated System were confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) on April 29, 1998, for the period January 1, 1998, through September 30, 2001.

Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' (Part 903) have been followed in connection with the proposed extension of the rate schedules. An opportunity for customers and other interested members of the public to review and comment on the proposed extension was announced by notice published in the **Federal Register** (66 FR 24131), May 11, 2001, with written comments due on or before June 11, 2001. In addition, Southwestern held informal meetings with numerous customers in which proposed changes were discussed. No written comments were received.

Information regarding extension of these rate schedules, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, Suite 1400, One West Third Street, Tulsa, Oklahoma 74103. 10 CFR 903.22(h) and 903.23(a)(3) provide implementation authority for such extension to the Deputy Secretary.

Dated: July 26, 2001.

Francis S. Blake,

Deputy Secretary.

Order Approving Extension of Power Rates on an Interim Basis

Pursuant to Sections 301(b) and 302(a) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place power and transmission rates into effect on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, the Secretary of Energy re-delegated to the Deputy Secretary of Energy, the authority to confirm, approve and place power and transmission rates of the Power Marketing Administrations into effect on an interim basis. By notice, dated April 15, 1999, the Secretary of Energy rescinded the authority of the Deputy Secretary of Energy under Delegation Order No. 0204–108. By Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy again provided interim rate approval authority to the Deputy Secretary of Energy.

This is an interim rate extension. 10 CFR 903.22(h) and 903.23(a)(3) provide implementation authority for such extension to the Deputy Secretary of Energy.

Background

Southwestern Power Administration (Southwestern) currently has marketing responsibility for 2.2 million kilowatts of power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers, generally in all or portions of the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas. The Integrated System, comprised of 22 of the projects, is interconnected through a transmission system presently consisting of 138-kV and 161-kV high-voltage transmission lines, 69-kV transmission lines, and numerous bulk power substations and switching stations. In addition, contractual transmission arrangements provide for integration of other projects into the system.

The remaining two projects, Sam Rayburn Dam and Robert Douglas Willis, are isolated hydrologically and electrically from the Southwestern transmission system, and their power is marketed under separate contracts through which the customer purchases the entire power output of the project at the dam. A separate Power Repayment Study (PRS) is prepared for each isolated project.

The current rate schedules for the Integrated System were confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) on April 29, 1998, for the period January 1, 1998, through September 30, 2001. Since initial FERC approval, specific provisions within rate schedules P–98A and NFTS–98 have been revised to address issues that have arisen from restructuring of the electric industry. Rate Schedules were designated 98B, 98C, and 98D with each revision. All subsequent revisions of the Integrated System rate schedules through 98C have been approved by FERC. Rate schedules P–98D and NFTS–98D are currently

under FERC review for final approval. These revisions had no impacts on the initially established revenue requirements for Southwestern's Integrated System. In addition, no change was made to the expiration date, September 30, 2001. Consequently, the net result of the revenue requirements projected in the FY 1997 Integrated System Power Repayment Studies which provided the basis for the existing rate schedules, is not changed. The FY 2001 Integrated System PRS indicates the need for a rate adjustment of $1,938,809 annually, or 1.8 percent.

Pursuant to 10 CFR 903, the Administrator, Southwestern, published notice in the **Federal Register** on May 11, 2001, 66 FR 24132, announcing a 30-day period for public review and comment concerning the proposed interim rate extension. In addition, an informal meeting was held with customer representatives in April 2001 in which the proposed extension was discussed. Written comments were accepted through June 11, 2001. No written comments were received.

Discussion

The existing Integrated System rates are based on the FY 1997 PRS. PRSs have been completed on the Integrated System each year since approval of the existing rates. Rate changes identified by the PRSs since that period have indicated the need for minimal rate increases or decreases. Since the revenue changes reflected by the PRSs were within the plus-or-minus two percent Rate Adjustment Threshold established by Southwestern's Administrator on June 23, 1987, these rate adjustments were deferred in the best interest of the government and provided for the next year's PRS to determine the appropriate level of revenues needed for the next rate period.

The FY 2001 PRS indicates the need for an annual revenue increase of $1,968,809 (1.8 percent). As has been the case since the existing rates were approved, the FY 2001 rate adjustment falls within Southwestern's plus-or-minus two percent Rate Adjustment Threshold and would normally be deferred with no rate filing necessary. However, the existing rates expire on September 30, 2001. Consequently, Southwestern proposes to extend the existing rates for a one-year period ending September 30, 2002, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 903.23(a)(3).

Southwestern continues to make significant progress toward repayment of the Federal investment in the Integrated System. Through FY 2000, cumulative amortization for the Integrated System was $465,190,979, which represents approximately 43 percent of the $1,083,643,907 Federal investment in the Integrated System.

Comments and Responses

Southwestern has received no formal written comments regarding the extension of the Integrated System rate schedules.

Information regarding this rate extension, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Administrator's Certification

The revised rate schedules will repay all costs of the Integrated System including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended November 10, 1993, 58 FR 59717, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the existing Integrated System Rate Schedules are the lowest possible rates consistent with sound business principles, and their extension is consistent with applicable law.

Environment

No additional evaluation of the environmental impact of the extension of the existing rate schedules was conducted since no change has been made to the currently-approved Integrated System rates which were determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment pursuant to the procedural provisions of the National Environmental Policy Act, 10 CFR 1021.

Order

In view of the foregoing and pursuant to the authority delegated to me in 10 CFR 903, I hereby extend on an interim basis, for the period of one year, effective October 1, 2001, the current Integrated System wholesale rates for Hydro Peaking Power, Non-Federal Transmission/Interconnection Facilities Service and Excess Energy.

Dated: July 26, 2001.

Francis S. Blake,

Deputy Secretary.

[FR Doc. 01–19575 Filed 8–3–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7022–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Tax-Exempt (Dyed) Highway Diesel Fuel; Requirements for Transferors and Transferees

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tax-exempt (Dyed) Highway Diesel Fuel; Requirements for Transferors and Transferees (40 CFR 80.29(c)), (Former Title: Fuel Quality Regs for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; Interim Final Rule) (EPA ICR No. 1718.03, OMB Control No. 2060–0308, expiration date: July 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1718.03 and OMB Control No. 2060–0308, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–4901, by E-mail at Auby.susan@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1718.03. For technical questions about the ICR contact James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, caldwell.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

Tax-exempt (Dyed) Highway Diesel Fuel; Requirements for Transferors and Transferees, EPA ICR No. 1718.03, OMB Control No. 2060–0308, expiring July 31, 2001. This is a request for extension of a currently approved collection.

Abstract: Diesel fuel for use in motor vehicles, also known as highway diesel fuel, is subject to compositional restrictions, per 40 CFR part 80, in order to reduce emissions. Diesel fuel not intended for use in motor vehicles, also known as off-road diesel fuel, has no such restrictions. It is required to be dyed red in order to distinguish it from highway diesel fuel, and thus deter its use in motor vehicles. The Internal Revenue Service requires that highway diesel fuel which is tax-exempt contain the same red dye in order to distinguish it from taxed highway diesel fuel, and thus deter its use in vehicles which do not qualify for tax-exempt fuel. In order to distinguish off-road diesel fuel from tax-exempt highway diesel fuel, the product transfer document (PTD) for tax-exempt highway diesel fuel must indicate that the diesel fuel meets the requirements for highway diesel fuel. Typically, a code is used on the PTD to so indicate. The PTD is a necessary document produced in the normal course of business for reasons other than this requirement. The computers which generate the PTDs were programmed in 1993 to display the code for tax-exempt highway diesel fuel. Thus, there is only a very small burden because the display of the code is automatic. Transferors and transferees of tax-exempt highway diesel fuel are required to retain the PTDs for five years, which is a customary business practice. See 40 CFR 80.29(c). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 19, 2001 (66 FR 15422). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average two seconds 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: Transferors and transferees of tax-exempt (dyed) highway diesel fuel.

Estimated Number of Respondents: 20,000.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 222 hours.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1718.03 and OMB Control Number 2060–0308 in any correspondence.

Dated: July 25, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–19568 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7022–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium, 40 CFR Part 61, Subpart C; OMB Control Number 2060–0092; EPA ICR Number 0193.07; expiration date is September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 5, 2001.

ADDRESSES: Send comments, referencing EPA ICR Number 0193.07, and OMB Control Number 2060–0092, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR Number 0193.07. For technical questions about the ICR contact Maria Malavé at (202) 564–7027 or via E-mail to *Malave.Maria@EPAMAIL.EPA.Gov.*

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium, 40 CFR Part 61, Subpart C; OMB Control Number 2060–0092; EPA ICR Number 0193.07. This is a request for an extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Beryllium were proposed on December 7, 1971 (36 FR 23939) and promulgated on April 6, 1973 (38 FR 8826). This standard applies to all extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium-containing waste. The standard also applies to machine shops which process beryllium, beryllium oxides, or any alloy when such alloy contains more than five percent beryllium by weight. All sources known to have caused, or to have the potential to cause, dangerous levels of beryllium in the ambient air are covered by the Beryllium NESHAP. This information is being collected to assure compliance with 40 CFR part 61, subpart C.

There are approximately 236 existing sources subject to this rule. Of the total number of existing sources, we have assumed that approximately 10 sources (i.e., respondents) have elected to comply with an alternative ambient air quality limit by operating a continuous monitor in the vicinity of the affected

facility. The monitoring requirements for these facilities provide information on ambient air quality and ensure that locally, the airborne beryllium concentration does not exceed 0.01 micrograms/m^3. These sources meeting the rule requirements by means of ambient monitoring are required to submit a monthly report of all measured concentrations to the Administrator. The remaining 226 sources have elected to comply with the rule by conducting a one-time only stack test to determine beryllium emission levels. We have assumed that 10 percent of the 226 sources (or 23 respondents) complying with the emission limit standard will engage in an operational change at their facilities that could potentially increase beryllium emissions, and would be required to repeat the stack test to determine the beryllium emission limits. Consequently these sources will have recordkeeping and reporting requirements associated with the stack test. The owners or operators subject to the provisions of this part are required to maintain a file of all measurements, and retain the file for at least two years following the date of such measurements and records. We have assumed that no additional sources are expected to become subject to the standard in the next three years. Therefore, there are 33 respondents for the purpose of determining the recordkeeping and reporting burden associated with this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 1, 2001. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 13.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for profit.

Estimated Number of Respondents: 33.

Frequency of Response: monthly and as needed basis (potentially yearly), depending on the applicable requirement.

Estimated Total Annual Hour Burden: 2,232 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $35,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR Number 0193.07 and OMB Control Number 2060–0092 in any correspondence.

Dated: July 25, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–19569 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7023–1]

Preliminary Draft Staff Paper for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: On June 15, 2001, the Office of Air Quality Planning and Standards (OAQPS)of EPA announced in a **Federal Register** document (66 FR 32621) the availability for public review and comment of a preliminary draft document, Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (Preliminary Draft Staff Paper), and a draft EPA document entitled Particulate Matter NAAQS Risk Analysis Scoping Plan. In response to requests from several commenters, EPA is extending the comment period for the preliminary draft Staff Paper beyond the original date of July 12, 2001.

DATES: Comments on the preliminary draft Staff Paper should be submitted on or before September 28, 2001.

ADDRESSES: Comments on the preliminary draft Staff Paper should be submitted to Dr. Mary Ross, Office of Air Quality Planning and Standards (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *ross.mary@epa.gov;* telephone: (919) 541–5170; fax: (919) 541–0237.

Availability of Related Information

Single copies of the preliminary draft Staff Paper may be obtained without charge by contacting Mary Ross at the address or telephone number listed above. Please include name, address, telephone number, e-mail if available, and delivery preference (mail or e-mail delivery).

Electronic Availability

The preliminary draft Staff Paper can also be obtained online at the Agency's OAQPS Technology Transfer Network (TTN) under the technical area of Office of Air and Radiation Policy and Guidance (OAR P&G) at the following internet web site: http//www.epa.gov/ttn/oarpg/ramain.html. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ross at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related document, Air Quality Criteria for Particulate Matter (Criteria Document), required under sections 108 and 109 of the Clean Air Act (CAA) for use in the periodic review of the national ambient air quality standards (NAAQS) for particulate matter (PM). This preliminary draft Staff Paper includes preliminary assessments of the scientific and technical information contained in the second external review draft of the Criteria Document (66 FR 18929, April 12, 2001) and discusses proposed analyses to be conducted for inclusion in a subsequent draft Staff Paper. Staff conclusions and recommendations on the PM NAAQS are not included in this preliminary draft but will be included in a subsequent draft to be made available for further review and comment as indicated below.

The preliminary draft Staff Paper and draft Risk Analysis Scoping Plan (along with the second external review draft of the Criteria Document) are being reviewed at a public meeting of the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science

Advisory Board on July 23–24, 2001. For the purposes of that meeting, OAQPS staff has reviewed comments on these documents submitted by July 12, 2001. OAQPS staff will now prepare a revised draft Staff Paper, taking into account CASAC comments and public comments received by September 28, 2001, as well as any revisions made to the draft Criteria Document in light of CASAC and public comments on that document. The revised draft Staff Paper will then be made available for review and comment by CASAC and the public.

In conjunction with preparation of a revised draft Staff Paper, OAQPS staff will also prepare a more detailed technical methodological report on the risk analysis for PM, taking into account CASAC and public comments on the draft Scoping Plan. The technical methodological report will also be made available for public and CASAC comment prior to the preparation of a risk assessment, the results of which will be included in the revised draft Staff Paper. Thus, parties interested in providing further comments on the PM risk assessment methodology can do so in conjunction with review of the more detailed technical methodological report that is targeted for release this Fall.

Dated: July 25, 2001.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 01–19570 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7023–7]

Proposed CERCLA Administrative Cost Recovery Settlement; In Re: Kogut's Nursery Superfund Site, Suffield, CT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Kogut's Nursery Superfund Site in Suffield, Connecticut, with the following settling party: Kogut Enterprises, Inc. The settlement requires the settling party to pay $165,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection with the Regional Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA 01–2001–0055).

DATES: Comments must be submitted on or before September 5, 2001.

ADDRESSES: The proposed settlement is available for public inspection with the Regional Docket Clerk, One Congress Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from Ronald Gonzalez, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1786. Comments should reference the Kogut's Nursery Superfund Site, Suffield, Connecticut and EPA Docket No. 01–2001–0055 and should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214.

FOR FURTHER INFORMATION CONTACT: Ronald Gonzalez, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1786.

Dated: July 16, 2001.

Larry Brill,

Acting Director, Office of Site Remediation and Restoration.

[FR Doc. 01–19565 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7024–2]

Sole Source Aquifer Determination for the Castle Valley Aquifer System, Castle Valley, UT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator of the U.S. Environmental Protection Agency (EPA) in Region VIII has determined that the Castle Valley Aquifer System, at Castle Valley, Utah and the immediately adjacent recharge area is the sole or principal source of drinking water for the region. The Castle Valley Aquifer System consists of undifferentiated Quaternary valley-fill deposits and the underlying Cutler Formation. The aquifer is located in southeastern Utah extending from the Town of Castle Valley, Utah southeast to the La Sal Mountains and northwest to the Colorado River encompassing approximately 24,000 acres in parts of Township 24 South, Ranges 22, 23, and 24 East and parts of Township 25 South, Ranges 22, 23, and 24 East SLB&M. The area is irregularly shaped with maximum dimensions of about 16 miles from southeast to northwest and approximately 3 miles from northeast to southwest. The entire area is within Grand County, Utah. No reasonable alternative sources of drinking water with sufficient supply exist to meet the needs of this area because of the complexity and limitations of water rights in southeastern Utah. A significant hazard to public health would occur if this aquifer becomes contaminated.

The boundaries of the designated area have been reviewed and approved by EPA. As a result of this action, federal financially assisted projects constructed in the approximately 50 square mile area mentioned above will be subject to EPA review to ensure that these projects are designed and constructed in a manner which does not create a significant hazard to public health. For the purposes of this designation the Aquifer Service Area and the Project Review Area are the same as the Designated Area.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Mountain Standard Time on August 6, 2001.

ADDRESSES: The data upon which these findings are based, and a map of the designated area are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: William J. Monheiser, Regional Sole Source Aquifer Coordinator, Ground Water Program, 8P–W–GW, USEPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Phone:

303.312.6271, Fax: 303.312.7084, e-mail: monheiser.william@epa.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300f, 300h–3(e), Public Law 93–523 as amended, the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region VIII has determined that the Castle Valley Aquifer System is the sole or principal source of drinking water for the Castle Valley area of southeast Utah described above. Pursuant to section 1424(e), federal financially assisted projects constructed anywhere in the designated area described above will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On August 7, 2000, EPA received a petition from the Town of Castle Valley, HC 64 Box 2812, Castle Valley, Utah 84532–9608, requesting that EPA designate the ground water resources of the Castle Valley Aquifer System near the Town of Castle Valley as a Sole Source Aquifer. In response to this petition, EPA published a Public Notice of Intent to Designate and invited any citizen to request a public meeting or to comment in writing or by telephone. This notice was published in the Moab Times-Independent, a newspaper of general circulation in the Castle Valley area on November 30, 2000. EPA also sent copies of the notice with descriptive information to all postal patrons in the Castle Valley area. This notice announced receipt of the petition and requested public comment for a 30 day comment period. Comments received in writing, by telephone, fax and e-mail were accepted. The public comment period extended from November 7, 2000 to December 15, 2000.

Subsequently, EPA determined that the petition was both administratively and technically complete and adequate for the purposes of Sole Source Aquifer determination.

II. Basis for Determination

Among the factors considered by the Regional Administrator for designation of a Sole Source Aquifer under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, (2) if the designated area has been adequately delineated and, (3) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to EPA, the Regional Administrator has made the following findings of fact, which are the basis for this determination:

1. The Castle Valley Aquifer System serves as the ''sole source'' of drinking water for approximately 300 permanent residents within the review area. There is no existing alternative drinking water source or combination of sources which could provide fifty percent or more of the drinking water to the designated area, nor is there any projected alternative source capable of supplying the area's drinking water needs at an economical cost.

2. The boundaries of the aquifer were determined by hydrogeologic mapping. The boundaries were delineated by a geological consultant with special expertise in drinking water source protection and confirmed by EPA professional staff.

3. The Castle Valley Aquifer System supplies water of varying quality depending on the impacts of the underlying Cutler Formation and is used as a drinking water source with softening. This constitutes a resource isolated in this immediate area that if contaminated would create a significant hazard to public health. Potential sources of contamination include: (a) Petroleum, mineral exploration, and geophysical drilling, (b) accidental spills along roadways, (c) abandoned but unplugged petroleum, mineral and geophysical wells, and tunnels (d) non-sustainable agricultural and forestry practices and (e) upward migration of lower quality water from bedrock aquifers through man-made conduits.

III. Description of the Petitioned Aquifer

The designated area of the Castle Valley Aquifer System encompasses about 24,000 acres in an irregularly shaped area approximately 16 miles long by approximately 3 miles wide. Drinking water production is from individual domestic wells, most tapping Quaternary alluvium while some of the wells derive at least part of their drinking water from the underlying Cutler Formation. Most wells are between 40 and 300 feet deep. The boundaries of the aquifer were determined by hydrogeologic mapping of the surface area, which is interpreted to contribute water to the alluvium. The boundaries were delineated by a geological consultant with special expertise in drinking water source protection and confirmed by EPA professional staff.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition from the Town of Castle Valley, review of available literature, and a published ground water investigation conducted by the Utah Geological Survey. These data are available to the public and may be inspected during normal business hours at EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

V. Project Review

EPA, Region VIII, will work with any federal agencies that may, in the future, provide financial assistance to projects in the designated area. Interagency procedures will be negotiated by which EPA will be notified of proposed commitments by federal agencies for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, soliciting public comments where appropriate. Should EPA determine that a project may contaminate the aquifer, so as to create a significant hazard to public health, no commitment for federal assistance may be entered into. However, a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process of section 1424 (e) cannot be delegated to state or local agencies, the EPA will rely upon any existing or future state and local control mechanisms to the maximum extent possible in protecting the ground water quality of the aquifer. Included in the review of any federal financially assisted project will be coordination with local agencies. Their comments will be given full consideration, and the federal review process will attempt to complement and

support state and local ground water quality protection mechanisms.

VI. Summary and Discussion of Public Comments

In response to the Public Notice, EPA received 6 comments endorsing Sole Source Aquifer designation. No additional questions were raised during the comment period. No comments objecting to designation were received during any portion of public participation process.

During the public comment period no data were presented to EPA regarding aquifer characteristics, boundary delineation or potential errors of fact presented in the petition.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, ''small entity'' shall have the same meaning as given in section 601 of the RFA. This action is only applicable to projects with the potential to impact the Castle Valley Aquifer System Sole Source Aquifer as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative adverse impact on the aquifer is anticipated or brought to the Agencies attention; accordingly, the number of affected small entities will be minimal.

For those small entities that are subject to review, the impact of today's action will not be significant. Many projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with sole source aquifer review will allow EPA and other federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effects on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Castle Valley Aquifer System in Grand County, Utah. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

Dated: July 26, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 01–19566 Filed 8–3–01; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007]

Submission for OMB Review; Comment Request Entitled Contractor's Qualifications and Financial Information

AGENCY: Office of the Chief Financial Officer (B), GSA.

ACTION: Notice of request for pubic comments regarding extension of a currently approved OMB clearance (3090–0007).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Contractor's Qualifications and Financial Information.

DATES: Comment Due Date: October 5, 2001.

FOR FURTHER INFORMATION CONTACT: Michael J. Kosar, Office of the Chief Financial Officer, GSA (202) 501–2029.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB , Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street NW., Room 4035 Washington, DC 20405

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to extend information collection, 3090–0007, concerning Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation (FAR) and the General Services Administration Acquisition Regulation (GSAR).

B. Annual Reporting Burden

Respondents: *2,306.*
Annual responses: *2,767.*
Average hours per response: *2.5.*
Burden hours: *6,917.*

Copy of Proposal: A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0007, Contractor's Qualifications and Financial Information, in all correspondence.

Dated: July 27, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–19516 Filed 8–3–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0317]

Mylan Pharmaceuticals, Inc., et al.; Withdrawal of Approval of 66 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 66 abbreviated new drug applications (ANDAs). The holders of the applications notified the agency in

writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective September 5, 2001.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA No.	Drug	Applicant
61–755	Ampicillin Capsules USP, 250 milligrams (mg) and 500 mg.	Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504.
62–090	Amoxicillin for Oral Suspension USP, 125 mg/5 milliliters (mL) and 250 mg/5 mL..	Do.
62–928	Clindamycin Phosphate Injection USP, 150 mg/mL.	AstraZeneca, 725 Chesterbrook Blvd., Wayne, PA 19087–5677.
63–167	Amikacin Sulfate Injection USP, 50 mg (base)/mL.	Do.
63–169	Amikacin Sulfate Injection USP, 250 mg (base)/mL.	Do.
70–095	Furosemide Injection USP, 10 mg/mL.	Do.
70–096	Furosemide Injection USP, 10 mg/mL.	Do.
70–529	Indomethacin Capsules USP, 25 mg.	Watson Laboratories, Inc., 311 Bonnie Circle, Corona, CA 92880.
70–530	Indomethacin Capsules USP, 50 mg.	Do.
70–645	Metoclopramide Tablets, 10 mg.	Do.
71–920	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/15 mg..	Do.
71–921	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/25 mg..	Do.
71–922	Methyldopa and Hydrochlorothiazide Tablets USP,500 mg/30 mg..	Do.
71–923	Methyldopa and Hydrochlorothiazide Tablets USP, 500 mg/50 mg..	Do.
72–023	Metaproterenol Sulfate Syrup USP, 10 mg/5 mL.	Muro Pharmaceuticals, Inc., 890 East St., Tewksbury, MA 01876.
72–081	Naloxone Hydrochloride (HCl) Injection USP, 0.02 mg/mL.	AstraZeneca.
72–086	Naloxone HCl Injection USP, 0.4 mg/mL.	Do.
72–091	Naloxone HCl Injection USP, 1 mg/mL.	Do.
72–165	Fenoprofen Tablets USP, 600 mg.	Watson Laboratories, Inc.
72–293	Fenoprofen Capsules USP, 300 mg.	Do.
72–294	Fenoprofen Capsules USP, 200 mg.	Do.
72–372	Duphalac (Lactulose Solution USP), 10 grams/15 mL.	Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062.
73–062	Loperamide HCl Oral Solution, 1 mg/5 mL.	Watson Laboratories, Inc.
73–106	Acetaminophen Suppositories USP, 120 mg.	Able Laboratories, Inc.,6 Hollywood Ct., South Plainfield, NJ 07080.
73–107	Acetaminophen Suppositories USP, 325 mg.	Do.
73–108	Acetaminophen Suppositories USP, 650 mg.	Do.
73–120	Albuterol Tablets USP, 2 mg.	Medeva Pharmaceuticals, Inc., 3501 West Garry Ave., Santa Ana, CA 92704.
73–121	Albuterol Tablets USP, 4 mg.	Do.
73–165	Albuterol Sulfate Syrup, 2 mg/5 mL.	Watson Laboratories, Inc.
73–381	Carbidopa and Levodopa Tablets USP, 10 mg/100 mg.	Do.
73–382	Carbidopa and Levodopa Tablets USP, 25 mg/100 mg.	Do.
73–383	Carbidopa and Levodopa Tablets USP, 25 mg/250 mg.	Do.
73–651	Piroxicam Capsules USP,10 mg and 20 mg.	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216.
74–156	Gemfibrozil Tablets USP, 600 mg.	Watson Laboratories, Inc.
74–199	Alprazolam Tablets USP, 0.25 mg, 0.5 mg, and 1 mg.	Roxane Laboratories, Inc.
74–319	Naproxen Sodium Tablets USP.	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
74–570	Acyclovir Capsules USP, 200 mg.	Roxane Laboratories, Inc.
74–897	Acyclovir Sodium for Injection, USP.	Apothecon, Inc., P.O. Box 4500,Princeton, NJ 08543.
74–972	Cimetidine Tablets USP, 100 mg.	L. Perrigo Co.,515 Eastern Ave., Allegan, MI 49010.
80–109	Sulfisoxazole Tablets USP, 500 mg.	Impax Laboratories, Inc., 30831 Huntwood Ave., Hayward, CA 94544.
80–782	Prednisone Tablets USP, 5 mg.	Do.
83–080	Aquasol A (Vitamin A Capsules USP).	AstraZeneca.
83–857	Estratab Esterified Estrogens Tablets USP, 2.5 mg.	Solvay Pharmaceuticals, Inc.
84–574	Aminophylline Tablets, 100 mg.	Impax Laboratories, Inc.
84–576	Aminophylline Tablets, 200 mg.	Do.
84–922	Hydralazine HCl Tablets USP, 25 mg.	Do.
85–171	Glutethimide Tablets USP, 500 mg.	Medeva Pharmaceuticals, Inc.
85–264	Bronkodyl (Theophylline Capsules USP), 100 mg and 200 mg..	Sanofi-Synthelabo, Inc., 90 Park Ave., 6th Fl., New York, NY 10016.
85–376	Dexamethasone Tablets USP, 0.75 mg.	Impax Laboratories, Inc.

ANDA No.	Drug	Applicant
85–544	Diethylpropion HCl Tablets USP, 25 mg.	Medeva Pharmaceuticals, Inc.
85–864	Amitriptyline HCl Tablets USP, 10 mg.	Do.
85–935	Amitriptyline HCl Tablets USP, 25 mg.	Do.
85–936	Amitriptyline HCl Tablets USP, 50 mg.	Do.
86–335	Amitriptyline HCl Tablets USP, 150 mg.	Do.
86–336	Amitriptyline HCl Tablets USP, 100 mg.	Do.
86–337	Amitriptyline HCl Tablets USP, 75 mg.	Do.
87–156	Fluonid (Fluocinolone Acetonide) Cream, 0.025%.	Allergan, 2525 Dupont Dr., P.O. Box 19534, Irvine, CA 92623.
87–157	Fluonid (Fluocinolone Acetonide) Ointment, 0.025%.	Do.
88–075	Amitriptyline HCl Tablets, 10 mg.	Purepac Pharmaceutical Co.
88–076	Amitriptyline HCl Tablets, 25 mg.	Do.
88–077	Amitriptyline HCl Tablets, 50 mg.	Do.
88–078	Amitriptyline HCl Tablets, 75 mg.	Do.
88–079	Amitriptyline HCl Tablets, 100 mg.	Do.
88–215	Penecort (Hydrocortisone) Gel, 1%.	Allergan
88–217	Penecort (Hydrocortisone) Ointment, 2.5%.	Do.
89–495	Hydrocortisone Lotion USP, 1%.	Beta Dermaceuticals, Inc., P.O. Box 691106, San Antonio, TX 78269.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 5, 2001.

Dated: July 24, 2001.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 01–19509 Filed 8–3–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–EM, WYW153943]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Triton Coal Company, LLC on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 52 N., R. 72 W., 6th P.M., Wyoming

Sec. 8: Lots 1–12;

Sec. 9: Lots 3–6 and 11–14.

Containing 811.81 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain overburden geochemistry, structural information, and coal quality data on the Anderson and Canyon coal seams.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management (BLM). Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW153943): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in The News-Record of Gillette, WY, once each week for two consecutive weeks, beginning the week of Aug. 6, 2001, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Triton Coal Company, LLC, no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Triton Coal Company, LLC, Attn: Steve Salonek, P.O. Box 3027, Gillette, WY 82717–3027, and the BLM, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003–1828.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: July 20, 2001.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 01–19212 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW146744]

Federal Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a Final Environmental Impact Statement on the North Jacobs Ranch Federal Coal Lease Application in the Decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of a Final Environmental Impact Statement (FEIS) for the North Jacobs Ranch Coal Lease Application, BLM serial number WYW146744, in the Wyoming Powder River Basin. The FEIS analyzes the impacts of issuing a Federal coal lease for the proposed North Jacobs Ranch Federal coal tract. The North Jacobs Ranch tract is being considered for sale as a result of a coal lease application received from Jacobs Ranch Coal Company (JRCC) on October 2, 1998. JRCC is a subsidiary of Kennecott Energy Company. The tract as applied for includes about 4,821.19 acres containing approximately 533

million tons of in-place Federal coal reserves in Campbell County, Wyoming.

DATES: Written comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their notice of availability of the FEIS in the **Federal Register**. The BLM will notify all parties on this project's mailing list of the dates when comments will be accepted.

ADDRESSES: Please address questions, comments or requests for copies of the FEIS to the Casper Field Office, Bureau of Land Management, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, Wyoming 8260; or you may e-mail them to the attention of Nancy Doelger at casper_wymail@blm.gov; or fax them to (307) 261–7587.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: The application for the North Jacobs Ranch tract was filed as a maintenance tract coal lease-by-application (LBA) under the provisions of 43 CFR 3425.1

On October 2, 1998, JRCC filed coal lease application WYW146744 for the North Jacobs Ranch Federal coal tract with the BLM for the following lands:

Sixth Principal Meridian

T. 44N., R. 70 W.,
Sec 26, lots 9 and 10;
Sec 27, lots 1 to 16, inclusive;
Sec 28, lots 1 to 16, inclusive;
Sec 29, lots 1 to 16, inclusive;
Sec 30, lots 5 to 20, inclusive;
Sec 31, lots 5 to 20, inclusive;
Sec 32, lots 1 to 16, inclusive;
Sec 33, lots 4, 5, 12, and 13.

Sixth Principal Meridian

T. 44 N., R. 71 W.,
sec 25, lots 1 to 16, inclusive.

Total surface area applied for: 4,821.19 acres.

The Powder River Regional Coal Team (RCT) reviewed this competitive lease application at public meetings held on February 23, 1999, in Billings, Montana; October 27, 1999, in Gillette, Wyoming; and October 25, 2000, in Cheyenne, Wyoming. At the most recent meeting, the RCT recommended that BLM continue to process this LBA.

The Draft Environmental Impact Statement (DEIS) was mailed to the public in December, 2000. The EPA and the BLM each published a Notice of Availability in the **Federal Register** on December 15, 2000. A formal public hearing on this application was held, pursuant to 43 Code of Federal Regulations (CFR) 3425.4, at 7:00 P.M. MDT, on January 17, 2000 at the Clarion Western Plaza Motel, 2009 S. Douglas Highway, Gillette, Wyoming. The purpose of the hearing was to solicit public comments on the DEIS, the fair market value, the maximum economic recovery, and the proposed competitive sale of the coal included in the proposed North Jacobs Ranch Federal coal tract. The 60-day comment period on the DEIS ended on February 13, 2001.

The Jacobs Ranch Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality to mine up to 38 million tons of coal per year through 2001, and 50 million tons of coal per year to be mined in 2002 through 2004. According to the application filed for the North Jacobs Ranch tract, the maintenance tract would be mined to extend the life of the existing mine. JRCC estimates that, under the current mine plan, the existing recoverable reserves at the Jacobs Ranch Mine will be mined out in about 7 years at an average production rate of 24.5 million tons per year. The Black Thunder Mine is also contiguous to the lease application area.

JRCC previously acquired a maintenance coal lease (serial number WYW117924, issued effective 10/1/92) containing approximately 1,709 acres adjacent to the Jacobs Ranch Mine using the LBA process.

The FEIS analyzes four alternatives. The Proposed Action is to lease the North Jacobs Ranch tract as applied for to the successful bidder at a competitive sealed bid sale. Alternative 1, is the No Action Alternative, which assumes that the application for the North Jacobs Ranch tract is rejected. Alternative 3, the BLM's preferred alternative, evaluates issuing a lease for the tract as modified by the BLM to avoid a potential bypass situation. Under Alternative 3, approximately 160 acres would be added to the east of the tract as applied for. Alternative 4 evaluates issuing a lease for a smaller tract that would be modified to reduce multiple mineral development conflicts with existing oil and gas development.

The Office of Surface Mining Reclamation and Enforcement is a cooperating agency in the preparation of this EIS because it is the Federal agency that would recommend approval or disapproval of the mining plan for the North Jacobs Ranch LBA tract to the Secretary of the Interior, if a lease is issued for the tract.

Fourteen written comments were received during the comment period on the Draft EIS, and four oral comments were recorded at the public hearing. The issues that were identified in the comment letters and at the hearing included potential conflicts with existing conventional oil and gas and coalbed methane development; potential cumulative impacts of increasing mineral development in the Powder River Basin; validity and currency of resource data; public access; potential impacts to threatened and endangered species and other species of concern; potential cumulative air quality impacts; potential impacts of nitrogen oxide emissions resulting from blasting of coal and overburden; and cumulative impacts of reasonably foreseeable actions such as the construction and operation of the DM&E railroad in the cumulative analysis.

Comments, including names and street addresses of respondents, will be available for public review at the Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: July 3, 2001.

Alan R. Pierson,

State Director.

[FR Doc. 01–19548 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–01–1610–DU]

Notice of Availability of the Draft Planning Analysis for Arkansas and Louisiana

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) has prepared a Draft

Planning Analysis and Environmental Assessment (PA/EA) for public domain lands in Arkansas and Louisiana. The PA/EA describes and analyzes alternatives for future management of approximately 575 acres in Arkansas and 378 acres in Louisiana. These public lands are isolated tracts in seven counties in Arkansas and four parishes in Louisiana. The affected counties in Arkansas are: Baxter, Cleburne, Crawford, Fulton, Pike, Searcy and Van Buren. The affected parishes in Louisiana are: Desoto, Natchitoches, Rapides and St. Martin. Split-estate minerals are not included in this PA/EA. These documents were prepared to fulfill the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA).

DATES: Written comments on the Draft PA/EA must be submitted or postmarked no later than September 5, 2001. Comments may also be presented at a public meeting to be held at 7 p.m. on Thursday, August 23, 2001 at the Civic Center Gymnasium in Marshall, Arkansas. Copies of the draft PA/EA may be obtained from the Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206. Copies will be available for review at the public library in the seat of government in each county or parish with lands included in the PA/EA. Also, the document may be reviewed on the Internet at *www.es.blm.gov/jfo/pages/lupj.html.*

ADDRESSES: Written comments should be addressed to Attn: PA/EA Team, Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: Duane Winters, phone (601) 977–5400.

SUPPLEMENTARY INFORMATION: The issues addressed in the Draft PA/EA are: (1) Land Ownership Adjustments and (2) Special Management Areas. All of the BLM-administered public domain tracts in Arkansas and Louisiana are small and isolated, and, therefore, might be considered suitable for disposal. On the other hand, these tracts may have resources of value that should be retained in public ownership and managed by BLM or other agencies. These resources would include sites eligible for listing on the National Register of Historic Places, endangered species, threatened habitats, minerals, or potential for recreational use. The Draft PA/EA presents alternatives with different answers to the following questions: What tracts should be retained in public ownership? What tracts should BLM dispose through sale, exchange, or other means? What tracts should be identified for special management to protect or enhance specific resources? And how should the resources be managed? The alternatives being considered can be summarized as: (1) No Action or Custodial Management, (2) Disposal, and (3) Management through Partnerships. Under the Custodial Management alternative, the BLM would retain the tracts, but would not pro-actively manage them. There would be no actions taken to manage habitats or other resources. When presented to BLM, applications for use would be evaluated on a case-by-case basis. Because this alternative would essentially be a continuation of the current management approach, it is also referred to as the No Action alternative. With the Disposal alternative, BLM would pursue transfer of the tracts out of Federal ownership through various means including sale, exchange or conveyance under the Recreation and Public Purposes Act. In a sale or exchange, priority would be given to transferring the tracts to adjacent land owners. Disposal of tracts with high resource values would be allowed, but only with restrictive easements to protect the resources. In the Partnership alternative, resource management objectives are developed for each tract. These objectives include the desired conditions, such as type of habitat and recreational opportunity. BLM would actively seek partners, and with their cooperation, develop site specific implementation plans to identify needed management actions. Transfer to other Federal agencies, or conveyance under the Recreation and Public Purposes Act would be allowed, but only for uses primarily directed to attaining the management objectives. In the Draft PA/EA the preferred alternative for three of the tracts in Arkansas is (2) Disposal. The preferred alternative for all other tracts in Arkansas and all four tracts in Louisiana is (3) Management Through Partnerships.

Dated: July 19, 2001.

Gayle F. Gordon,

State Director, Eastern States.

[FR Doc. 01–19660 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–910–02–1430–HN–LRTN]

Notice of Availability and Protest Period for the Proposed Planning Analysis To Acquire Land in Fairfax County, Virginia by the Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and protest period.

SUMMARY: The Bureau of Land Management (BLM), Eastern States, has prepared a Proposed Planning Analysis (Proposed Plan), an Environmental Assessment (EA), and a Finding of No Significant Impact (FONSI) that address acquiring approximately 805 acres of land known as Meadowood Farm, located on Mason Neck in Fairfax County, Virginia. These documents were prepared to fulfill the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA).

DATES: The Proposed Plan, EA, and FONSI can be reviewed Mondays through Fridays, from 8 a.m. to 4 p.m., at the BLM's Eastern States Office, 7450 Boston Boulevard in Springfield, Virginia 22153, or by visiting the website at *www.es.blm.gov.* Protests to the Proposed Plan must be postmarked on or before August 27, 2001.

ADDRESSES: All protests must be filed only with the Director of the BLM and submitted by mail or overnight mail as follows: The address for regular mail is: Director, Bureau of Land Management, Att: Ms. Brenda Williams, Protest Coordinator, WO 210/LS–1075, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240; The address for overnight mail is: Director, Bureau of Land Management, Att: Ms. Brenda Williams, Protest Coordinator (WO 210); 1620 L Street, NW., Room 1075, Washington, DC 20036. Phone: (202) 452–5110.

FOR FURTHER INFORMATION CONTACT: Charles Bush, BLM Eastern States, (703) 440–1745 or Horace Traylor at (703) 440–1509.

SUPPLEMENTARY INFORMATION: The Proposed Plan, EA, and FONSI address acquiring approximately 805 acres of land known as Meadowood Farm, located on Mason Neck in Fairfax County, Virginia. This acquisition is provided for through PL 106–522, the DC Appropriations Act, 2001

(November 22, 2000). In accordance with the Act, the property would be managed by the BLM for public use and recreation purposes.

The Proposed Plan calls for acquisition of Meadowood Farm and continued interim use of the facility for boarding horses. The EA considered the following alternatives: The Proposed Action is for the BLM to acquire Meadowood Farm, and the No Action alternative is for the BLM not to acquire Meadowood Farm. The selected alternative, which is the Proposed Plan, would result in the BLM's acquiring Meadowood Farm. The planning process consisted of a public scoping period initiated by **Federal Register** Notice, publication in regional newspapers, and two public meetings.

The BLM planning process offers an opportunity for administrative review (43 CFR 1610.5–2). Any participant in the planning process who has an interest that is or may be adversely affected by the proposed decisions may file a protest in writing with the BLM Director. (See **DATES** and **ADDRESSES** sections above for the nonextendable deadline and specific addresses for filing protests on this Proposed Plan.) Only those persons or organizations that participated in the planning and analysis process may protest the proposed decisions in the Proposed Plan. Protests may raise only the issues that were previously submitted for the record during the planning and environmental analysis process by the protestor or another participant in the process.

To be considered complete, a protest must include, at a minimum, the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the part or parts of the plan and the issues being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, or maps included within the Proposed Plan and EA.

3. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

4. A concise statement explaining why the protestor believes the proposed decision(s) is wrong. All relevant facts need to be included in the statement of reasons.

At the end of the 30-day protest period, a decision document can be issued and, excluding any portions under protest, the Proposed Plan will become final. Approval will be withheld on any portion of the Proposed Plan under protest until final action has been completed on that protest.

Dated: July 13, 2001.

Gayle F. Gordon,

State Director, Eastern States.

[FR Doc. 01–19549 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0058).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled ''30 CFR 250, Subpart I, Platforms and Structures.'' We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by September 5, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0058), 725 17th Street, N.W., Washington, D.C. 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the e-mail address is: rules.comments@mms.gov. Reference ''Information Collection 1010–0058'' in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain at no cost a copy of our submission to OMB, which includes the regulations that require this information to be collected.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart I, Platforms and Structures.

OMB Control Number: 1010–0058.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on offshore resources in the OCS; and preserve and maintain free enterprise competition. Specifically, the OCS Lands Act (43 U.S.C. 1356) requires the issuance of ''* * * regulations which require that any vessel, rig, platform, or other vehicle or structure—* * * (2) which is used for activities pursuant to this subchapter, comply, * * * with such minimum standards of design, construction, alteration, and repair as the Secretary * * * establishes; * * *.'' The OCS Lands Act (43 U.S.C. 1332(6)) also states, ''operations in the [O]uter Continental Shelf should be conducted in a safe manner * * * to prevent or minimize the likelihood of * * * physical obstruction to other users of the water or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' These authorities and responsibilities are among those delegated to MMS under which we issue regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR 250, subpart I, Platforms and Structures, and the associated supplementary notices to

lessees and operators intended to provide clarification, description, or explanation of these regulations.

The MMS OCS Regions use the information submitted under subpart I to determine the structural integrity of all offshore structures and ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and pollution prevention. The information is also necessary to assure that abandonment and site clearance are properly performed. More specifically, we use the information to:

- Review information concerning damage to a platform to assess the adequacy of proposed repairs.
- Review plans for platform construction (construction is divided into three phases—design, fabrication, and installation) to ensure the structural integrity of the platform.
- Review verification plans and reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the design, fabrication, and installation phases of platform construction.
- Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved plans.
- Review inspection reports to ensure that platform integrity is maintained for the life of the platform.
- Ensure that any object (wellheads, platforms, etc.) installed on the OCS is properly removed and the site cleared so as not to conflict with or harm other users of the OCS.

Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

Frequency: The frequency varies by section, but is generally ''on occasion'' or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The following chart details the components of the hour burden for the information collection requirements in subpart I—an estimated total of 30,824 burden hours. In estimating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart I	Reporting or recordkeeping requirement	Hour burden per requirement
Reporting Requirements		
900(b), (g); 901; 902; 909(b)(4)(iii)	Submit application and plans for new platform or major modifications and notice to MMS.	24 hours.
900(e)	Request approval for major repairs of damage to platform and notice to MMS	16 hours.
900(f)	Request approval for reuse or conversion of use of existing fixed or mobile platforms.	24 hours.
901(e)	Notify MMS before transporting platform to installation site	10 minutes.
903(a), (b)	Submit nominations for Certified Verification Agent (CVA)	16 hours.
903(a)(1), (2), (3)	Submit interim and final CVA reports.	200 hours.
912(a)	Request inspection interval that exceeds 5 years	16 hours.
912(b)	Submit annual report of platforms inspected and summary of testing results.	45 hours.
913(a), (b), Related NTLs	Submit plan for platform and structure removal and site clearance and exception requests.	8 hours.
913(c), Related NTLs	Submit results of location clearance survey.	12 hours.
900–914	General departure and alternative compliance requests not specifically covered elsewhere in subpart I regulations.	8 hours.
Recordkeeping Requirements		
909, 911, 912, 914	Maintain records on as-built structural drawings, design assumptions and analyses, summary of nondestructive examination records, inspection results, etc., for the functional life of the platform.	50 hours.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 8, 2001, we published a **Federal Register** notice (66 FR 13959) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 displays the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms; specifies that the public may comment at anytime on these collections of information; and provides the address to which they should send comments. We have received no comments in response to these efforts. We also consulted with several respondents and the foregoing chart reflects adjustments for some of the requirement hour burdens as a result of those consultations.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 5, 2001. The PRA provides that 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.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 23, 2001.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 01–19611 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0106).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled ''30 CFR Part 253, Oil Spill Financial Responsibility.'' We are also soliciting comments from the public on this ICR.

DATES: Submit written comments by September 5, 2001.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0106), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the e-mail address is: rules.comments@mms.gov. Reference ''Information Collection 1010–0106'' in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous 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 inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 253, Oil Spill Financial Responsibility.

OMB Control Number: 1010–0106.

Abstract: Title I of the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), as amended by the Coast Guard Authorization Act of 1996 (Pub.L. 104–324), provides at section 1016 that oil spill financial responsibility (OSFR) for offshore facilities be established and maintained according to methods determined acceptable to the President. Section 1016 of OPA supersedes the offshore facility OSFR provisions of the Outer Continental Shelf Lands Act Amendments of 1978. These authorities and responsibilities are among those delegated to MMS under which we issue regulations governing oil and gas and sulphur operations in the OCS. The information collection discussed in this notice that we are submitting to OMB addresses the regulations at 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities, forms MMS–1016 through MMS–1022, and any associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

The MMS uses the information collected under 30 CFR part 253 to verify compliance with section 1016 of OPA. The information is necessary to confirm that applicants can pay for cleanup and damages from oil-spill discharges from covered offshore facilities (COFs). Routinely, the information will be used: (a) To establish eligibility of applicants for an OSFR Certification; and (b) as a reference source for clean-up and damage claims associated with oil-spill discharges from COFs; the names, addresses, and telephone numbers of owners, operators, and guarantors; designated U.S. agents for service of process; and persons to contact. To collect most of the information, MMS developed standard forms. The forms and their purposes are:

Form MMS–1016, Designated Applicant Information

The designated applicant uses this form to provide identifying information (company legal name, address, contact name and title, telephone numbers) and to summarize the OSFR evidence. This form is required for each new OSFR Certification application.

Form MMS–1017, Designation of Applicant

When there is more than one responsible party for a COF, they must select a designated applicant. Each responsible party, as defined in the regulations, must use this form to notify MMS of the designated applicant. This form is also used to designate the U.S. agent for service of process for the responsible party(ies) should claims from an oil-spill discharge exceed the amount evidenced by the designated applicant; identifies and provides pertinent information about the responsible party(ies); and lists the covered offshore facilities for which the designated applicant is responsible for OSFR certification. The form identifies each COF by State or OCS region; lease, permit, right of use and easement, or pipeline number; aliquot section; area name; and block number. This form must be submitted with each new OSFRC application in which there is at least one responsible party who is not the designated applicant for a COF.

Form MMS–1018, Self-Insurance or Indemnity Information

This form is used if the designated applicant is self-insuring or using an indemnity as OSFR evidence. As appropriate, either the designated applicant or the designated applicant's indemnitor completes the form to indicate the amount of OSFR coverage and effective and expiration dates. The form also provides pertinent information about the self-insurer or indemnitor and is used to designate a U.S. agent for service of process for claims up to the evidenced amount. This form must be submitted each time

new evidence of OSFR is submitted using either self-insurance or an indemnity.

Form MMS–1019, Insurance Certificate

The designated applicant (representing himself as a direct purchaser of insurance) or his insurance agent or broker and the named insurers complete this form to provide OSFR evidence using insurance. The number of forms to be submitted will depend upon the amount of OSFR required and the number of layers of insurance to evidence the total amount of OSFR required. One form is required for each layer of insurance. The form provides pertinent information about the insurer(s) and designates a U.S. agent for service of process. This form must be submitted at the beginning of the term of the insurance coverage for the designated applicant's COFs.

Form MMS–1020, Surety Bond

Each bonding company that issues a surety bond for the designated applicant must complete this form indicating the amount of surety and effective dates. The form provides pertinent information about the bonding company and designates a U.S. agent for service of process for the amount evidenced by the surety bond. This form must be submitted at the beginning of the term of the surety bond for the named designated applicant.

Form MMS–1021, Covered Offshore Facilities

The designated applicant submits this form to identify the COFs to which the OSFR evidence applies. The form identifies each COF by State or OCS region; lease, permit, right of use and easement, or pipeline number; aliquot section; area name; block number; and potential worst case oil-spill discharge. This form is required to be submitted with each new OSFR Certification application which includes COFs.

Form MMS–1022, Covered Offshore Facility Changes

During the term of the issued OSFR Certification, the designated applicant submits changes to the current COF listings on this form, including changes to the worst case oil-spill discharge for a COF. This form must be submitted when identified changes occur during the term of an OSFR Certification.

Responses are mandatory. No questions of a ''sensitive'' nature are asked. Respondents are not required to submit confidential or proprietary information. All public requests for information about an applicant's OSFR Certification will be processed according to the Freedom of Information Act (5 U.S.C. 552) procedures.

Frequency: The frequency of submission will vary, but most will respond at least once per year.

Estimated Number and Description of Respondents: We estimate there are approximately 600 respondents. Some will be holders of leases, permits, and rights of use and easement in the OCS and in State coastal waters who will appoint approximately 200 designated applicants. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and indemnitors. There are no recordkeeping requirements associated with this collection.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The following chart details the components of the hour burden for the information collection requirements in Part 253 — an estimated annual total of 19,504 burden hours. In estimating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 253	Reporting requirement	Hour burden per response
Subpart B: 11(a)(1); Subpart D: 40; 41	Form MMS–1016, Designated Applicant Information	1
Subpart B: 11(a)(1); Subpart D: 40; 41	Form MMS–1017, Designation of Applicant	9
Subpart C: 21, 22, 23, 24, 26, 27, 30; Subpart D: 40, 41	Form MMS–1018, Self-insurance or Indemnity Information	1
Subpart C: 29; Subpart D: 40, 41	Form MMS–1019, Insurance Certificate	120
Subpart C: 31; Subpart D: 40, 41	Form MMS–1020, Surety Bond	24
Subpart D: 40, 41	Form MMS–1021, Covered Offshore Facilities	3
Subpart D: 40, 41, 42	Form MMS–1022, Covered Offshore Facilities Changes	1
Subpart B: 12	Request for determination of OSFR applicability	2
Subpart B: 15(e)	Notify MMS of change in ability to comply	1
Subpart B: 15(f)	Provide claimant written explanation of denial	1
Subpart C: 32	Proposal for alternative method to evidence OSFR. No proposals anticipated, but regs provide the opportunity.	120
Subpart F	Claims: MMS will not be involved in the claims process; assessment of the burden is the responsibility of the U.S. Coast Guard as part of its rulemaking on claims against the Oil Spill Liability Trust Fund (30 CFR parts 135, 136, 137).	
Subpart F: 60	Claimant request to determine whether a guarantor may be liable for a claim.	2

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 8, 2001, we published a **Federal Register** notice (66 FR 13953) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In

addition, § 253.5 displays the OMB control number for the information collection requirements imposed by the 30 CFR part 253 regulations and forms; specifies that the public may comment at anytime on the collection of information; and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 5, 2001. The PRA provides that 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.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 31, 2001.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 01–19612 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on April 27, 2001. The March 5, 2001, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2001. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

BON Basis of Negotiation
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
D&MC Drainage and Minor Construction
FR **Federal Register**
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NEPA National Environmental Policy Act
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act

R&B—Rehabilitation and Betterment
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act
WCUA—Water Conservation and Utilization Act
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

New contract actions:

21. Wenatchee Heights Reclamation District, Washington: Deferment contract for the deferment of the District's annual installments due in 2001 and 2002 under a Drought Act loan contract.

22. Individual irrigation water users, Rogue River Basin Project, Oregon: Water service contract to provide 1,029 acre-feet of stored water from Lost Creek Reservoir (a Corps of Engineers project) for the purpose of irrigation.

Completed contracts actions:

9. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam under the SOD program. Contract executed on April 4, 2001.

15. Ochoco ID, Crooked River Project, Oregon: Contract for the deferment the District's annual installment due December 31, 2000 and 2001, under the Ochoco Dam, SOD repayment contract. Contract executed on April 12, 2001.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract action:

49. Contra Costa WD, CVP, California: Amend water service contract No. I75r 3401A to extend the date for renegotiation of the provisions of contract Article 12, ''Water Shortage and Apportionment.''

Discontinued contract actions:

16. Madera and Lindsay-Strathmore IDs, and Delta Lands Reclamation District No. 770, CVP, California: Execution of 2- to 3-year Warren Act contracts for conveyance of non-Project water in the Friant-Kern and/or Madera Canals when excess capacity exists.

18. Centerville Community Services District, CVP, California: A long-term supplemental repayment contract for reimbursement to the United States for conveyance costs associated with CVP water conveyed to Centerville.

24. City of Folsom, CVP, California: Contract to amend their water rights settlement contract's point of diversion.

Completed contract action:

40. Clear Creek Community Services District, CVP, California: Contract to transfer title of distribution system to the District. Contract was executed May 29, 2001.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

62. Robson Communities, Southern Arizona Water Rights Settlement Act, Arizona: United States contract with Robson Communities for the sale of 1,618 acre-feet of long-term water storage credits accrued in Tucson during calendar year 2000.

63. Cites of Chandler and Mesa, CAP, Arizona: Amendments to the CAP M&I water service subcontracts of the cities of Chandler and Mesa to remove the language stating that direct effluent exchange agreements with Indian Communities are subject to the ''pooling concept.''

Completed contract actions:

33. ASARCO Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract to December 31, 2001.

34. BHP Copper, Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract to December 31, 2001.

35. Cyprus Miami Mining Corporation, CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract to December 31, 2001.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147, telephone 801–524–3691.

The Upper Colorado Region has no updates to report for this quarter. Please refer to the March 5 and April 27, 2001, publications of this notice for current contract actions.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730. New contract actions:

44. Clark Canyon Water Supply Company, East Bench Unit, Montana: Initiating renewal of contract No. 14–06–600–3592 which expires December 31, 2005.

45. East Bench ID, East Bench Unit, Montana: Initiating renewal of contract No. 14–06–600–3593 which expires December 31, 2005.

46. Pueblo Board of Water Works, Fryingpan-Arkansas Project, Colorado: Water conveyance contract expires in October of 2002. Initiating negotiation for renewal of a water conveyance contract for annual conveyance of up to 750 acre-feet of non-project water through the Nast and Boustead Tunnel System.

47. City of Dickinson, P–SMBP, North Dakota: In accordance with Public Law 106–566, a BON has been prepared to amend contract No. 9–07–60–W0384 which will allow the City to pay a lump-sum payment in lieu of its remaining repayment obligation for construction costs associated with the bascule gate.

Modified contract actions:

5. City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for storage capacity in Pactola Reservoir. A temporary (1 year not to exceed 10,000 AF) water service contract will be executed with the City of Rapid City, Rapid Valley Unit, for use of water from Pactola Reservoir. A long-term storage contract is being negotiated for water stored in Pactola Reservoir.

34. Glendo Unit, P–SMBP, Wyoming: Contract renewal for long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

35. Glendo Unit, P–SMBP, Nebraska: Contract renewal for long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

37. Belle Fourche ID, Belle Fourche Project, South Dakota: Belle Fourche ID has requested a $25,000 reduction in construction repayment. Negotiations are pending resolution of contract language.

40. Louis F. Polk, Jr. (Individual), Shoshone Project, Buffalo Bill Dam, Wyoming: Renewal of exchange water service contract not to exceed 500 acre-feet of water to service 249 acres.

Completed contract actions:

7. Northern Cheyenne Indian Reservation, Yellowtail Unit, Lower Bighorn Division, P–SMBP, Montana: The Northern Cheyenne Reserved Water Rights Settlement Act of 1992 allocates to the Tribe, 30,000 acre-feet of water per year stored at Bighorn Reservoir, Montana. In accordance with section 9 of the Act, Reclamation and the Tribe must negotiate an agreement for the water. The Tribe is to pay the United States both capital and O&M costs for water the Tribe uses or sells from this storage for M&I purposes. Reclamation and the Tribe are continuing to negotiate the terms of the Agreement. The agreement has been sent to the Tribe for signature. A date for execution has not been scheduled. Storage agreement was signed June 12, 2001, at the Tribal Headquarters in Lame Deer, Montana.

17. Nueces River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a 5-year deferment of payments. Received approval of the BON from the Commissioner and a public notice has been printed in the Corpus Christi Caller-Times. Contract amendment for deferment and extension of repayment obligation has been executed.

25. Green Mountain Project, Colorado: Historic user pool surplus water for municipal recreation. This agreement is with the City of Grand Junction, City of Fruita, and the Town of Palisade. Contract has been executed.

32. Virginia L. and Earl K. Sauerwein (Individual), Shoshone Project, Buffalo Bill Dam, Wyoming: Exchange water service contract not to exceed 100 acre-feet of water to service 126 acres. Contract has been executed.

36. Tom Green County and Improvement District No. 1, San Angelo Project, Texas: The District has requested a deferment of its 2001 construction payment. Received approval of the BON and delegation of authority to execute an amendment for deferment of the 2001 construction charge installment from the Commissioner. A public notice has been printed in the San Angelo Times. Contract amendment for deferment of the 2001 repayment obligation has been executed.

Dated: July 31, 2001.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 01–19556 Filed 8–3–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–448]

Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') in the above-captioned investigation terminating the investigation as to respondent Rain Bird Manufacturing Corporation (''Rain Bird'') on the basis of a settlement agreement reached between complainant L.R. Nelson Corp. (''Nelson'') and Rain Bird.

FOR FURTHER INFORMATION CONTACT: Laurent de Winter, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–708–5452. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-Line) at http://dockets.usitc.gov/eol.public. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain oscillating sprinklers, sprinkler components, and nozzles, on February 9, 2001. 66 FR 9721. On June 26, 2001, Nelson moved, pursuant to 19 U.S.C. 1337(c) and Commission rule 210.21(a), to terminate the investigation with respect to Rain Bird, asserting that it had reached a settlement agreement with Rain Bird regarding the alleged infringement of the patent in controversy, U.S. Letters Patent 6,036,117.

On July 9, 2001, the presiding ALJ issued an ID (Order No. 11) terminating the investigation as to Rain Bird on the basis of the settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission rule 210.42 (19 CFR 210.42).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

Issued: July 31, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–19592 Filed 8–3–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of Rosalind A. Cropper, M.D.; Grant of Application

On June 15, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rosalind A. Cropper, M.D. (Respondent), proposing to deny her pending application for a DEA Certificate of Registration in the State of Tennessee, pursuant to 21 U.S.C. 823(f), and revoke her DEA Certificate of Registration (BC0747381, as a practitioner in the State of Louisiana, under 21 U.S.C. 823(f), 824(a)(1) and 824(a)(4), on the grounds that her registration would be inconsistent with the public interest. The Order to Show Cause alleged, in substance that:

(1) Between September 1991 and May 1992, Respondent dispensed methadone, a Schedule II controlled substance, to drug-dependent persons for detoxification or maintenance treatment without being registered as a narcotic treatment program as required pursuant to 21 U.S.C. 823(g).

(2) Respondent entered into a Memorandum of Agreement (MOA) with DEA, effective between July 11, 1995, and July 10, 1998, in which she agreed to maintain a log of all methadone that she prescribed, dispensed, or administered and to send a copy of such log to the DEA New Orleans Field Division quarterly. In this MOA Respondent also agreed to notify DEA quarterly if she did not prescribe, dispense, or administer any methadone. While and after this MOA was in effect, Respondent failed to send any copies of any log or to otherwise notify DEA of any activity pertaining to her handling or not handling methadone.

(3) On April 22, 1992, the State of Louisiana Methadone Authority, Division of Alcohol and Drug Abuse, Office of Human Services, Department of Health and Hospitals (Methadone Authority) denied Respondent's application of September 12, 1991, to operate a Methadone Treatment Program.

(4) Respondent knew or should have know that DEA, effective May 10, 1995, denied her application, dated September 6, 1991, to be registered as a Narcotic Treatment Program pursuant to a final order issued by the DEA Deputy Administrator, 60 FR 18143 (1995).

(5) Respondent materially falsified an application for a DEA Certificate of Registration dated February 2, 1998, by indicating that she never had a Federal

controlled substance registration denied or restricted and that she never had a State professional license denied, based upon the actions taken by the Methadone Authority and DEA as set forth above.

Respondent filed a timely request for a hearing on the issues raised in the Order to Show Cause. Following pre-hearing procedures, a hearing was held before Administrative Law Judge Mary Ellen Bittner in Memphis, Tennessee, on January 11 and 12, 2000. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On May 24, 2000, Judge Bittner issued her Opinion and Recommended Ruling, recommending that Respondent's application for DEA registration be granted. On June 13, 2000, the Government filed Exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge. On July 11, 2000, counsel for Respondent filed a Motion for Leave to Withdraw that was granted by Judge Bittner by a Ruling dated July 24, 2000. On July 17, 2000, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Acting Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Administrator adopts in full, the Recommended Ruling and Findings of Fact of the Administrative Law Judge. The Acting Administrator adopts the Conclusions of Law set forth by the Administrator Law Judge, except with regard to the evidentiary ruling set forth below. His adoption is in no manner diminished by any recitation of facts, issues, and conclusions herein; or of any failure to mention a matter of fact or of law.

The first issue that will be addressed is the evidentiary ruling. At the hearing, the Government introduced testimony that two patients from a narcotic treatment program were transferred to Respondent for the treatment of narcotic addiction. Respondent's counsel objected to this testimony on the basis of the ''best evidence rule,'' as codified by Rules 1002, 1003, and 1004 of the Federal Rules of Evidence, arguing that the best evidence of this purported transfer would be the records of the narcotic treatment program. The Acting Administrator finds that Judge Bittner correctly admitted the testimony, but reaches this conclusion for different reasons.

In her analysis regarding the admissibility of this testimony, Judge Bittner found that ''[t]he Federal Rules of Evidence (with the exception of those pertaining to hearsay) generally apply to these proceedings.'' The Acting Administrator disagrees, and finds instead that the Federal Rules of Evidence (FRE) do not apply directly to these proceedings, based on the following analysis.

In *Klinestiver* v. *Drug Enforcement Administration,* 606 F.2d 1128 (D.C. Cir. 1979), the court addressed *inter alia* issues concerning the admissibility of evidence in DEA's administrative proceedings. In the context of petitioner's argument that DEA's decision was improperly based exclusively on hearsay testimony, the court found with regard to 21 CFR 1316.59(a), governing the admission of evidence in these proceedings, that ''[t]he history of this regulation convinces us that DEA never intended to bind itself to a higher standard of admissibility than that prescribed by the Administrative Procedure Act, 5 U.S.C. 556(d), which permits the introduction of 'any oral or documentary evidence.' '' The *Klinestiver* court then held ''that nothing in 21 CFR 1316.59(a) requires DEA to limit admissible testimony to that which would be acceptable in a jury trial or under the Federal Rules of Evidence.'' 606 F.2d at 1130. *See also Richardson* v. *Perales,* 402 U.S. 389, 409 (1971); *Calhoun* v. *Bailar,* 626 F.2d 145, 148 (9th Cir. 1980), *cert. denied,* 452 U.S. 906 (1981); *Sinatra* v. *Heckler,* 566 F. Supp, 1354, 1358 (E.D.N.Y. 1983). Thus, unless modified by agency rules, evidence is admitted in administrative proceedings in accordance with 5 U.S.C. 556(d) of the APA, which provides that ''[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.'' 5 U.S.C. 556(d) (2000). *Anderson* v. *United States,* 799 F. Supp. 1198, 1202 (Ct. Int'l Trade 1992). *See, e.g., Puckett* v. *Chater,* 100 F.3d 730, 734 (10th Cir. 1996); *Director of the Office of Thrift Supervision* v. *Lopez,* 960 F.2d 958, 964, n.11 (11th Cir. 1992). The sections governing these proceedings found in 21 Code of Federal Regulations contain no references to the FRE; and 21 CFR 1316.59, governing the submission and receipt of evidence in these proceedings, requires only that admitted evidence be ''competent, relevant, material, and not unduly repetitious.'' The FRE themselves bolster the conclusion that they are inapplicable. FRE Rule 1101, regarding the applicability of the FRE, does not state that the Rules are applicable to proceedings pursuant to the APA. The Acting Administrator therefore finds that the FRE do not apply directly to these proceedings, but may be used for guidance, where they do not conflict with agency regulations. *See Sinatra* v. *Heckler,* 566 F. Supp. 1354, 1358 (E.D.N.Y. 1983).

The Acting Administrator finds as follows. Respondent is a physician. She graduated from MeHarry Medical College (MeHarry) in 1977, completed an internship at a United States Public Health Service Hospital in New Orleans, Louisiana, and then served in the National Health Service Corps for two years. She then returned to New Orleans and completed a residency at the same hospital where she had interned. Following a fellowship at the National Institutes of Health she returned to MeHarry to teach and then studied health policy at Brandeis University. Respondent returned to New Orleans to enter the private practice of internal medicine in 1986, and obtained a DEA registration as a practitioner on December 29, 1986. While in private practice, Respondent was also medical director of Desire Narcotic Rehabilitation Center (Desire), a DEA-registered narcotic treatment program in New Orleans.

Respondent testified that in 1987 or 1988 she became aware of the association between intravenous drug use and HIV/AIDS. At some point, Respondent asked the Desire administration for permission to write a grant application to obtain funding for primary care of HIV-positive substance abusers. Respondent testified that Desire received the funding, but that management decided to spend the money on counseling and other services instead of primary care. As a result, according to Respondent, addicts came to her private practice for medical treatment. Respondent further testified that many of the medical problems these patients presented were associated with HIV/AIDS rather than substance abuse. When Respondent first started treating this population she had 125 patients who were HIV positive; of these, seventy-two had AIDS.

Respondent testified that narcotic treatment centers did not want to become involved in the medical management of patients with HIV. Respondent further testified that there was a reaction between methadone and other medications, and that when she recommended to the management of the center where she worked that HIV-positive patients receive a lower dosage of methadone, ''we began to differ on

how things should be done.'' Consequently, according to Respondent, in 1989 she resigned as medical director, but HIV-positive patients continued to come to her private practice and she needed to treat both their medical conditions and their substance abuse, including withdrawal symptoms. Respondent further testified that she had used methadone as an analagesic to treat patients who were not addicted.

Respondent testified that DEA informed her that it had received anonymous calls from persons who said that she was treating addicts. DEA also informed Respondent that if she was treating these patients she needed to obtain a DEA registration as a narcotic treatment program. Respondent further testified that she no intention of treating addiction, but was willing to obtain the additional license if it was necessary to treat medical patients who were withdrawn.

Respondent also testified that someone from a state agency informed her that she needed to be part of an organization or a corporation in order to become a narcotic treatment program, that she hired an attorney to form a corporation, and that the attorney told her he had formed the corporation Rosalind A. Cropper, Inc. On September 6, 1991, Rosalind A. Cropper, Inc. filed an application for DEA registration as a narcotic treatment program.

A DEA Diversion Investigator (D/I) of DEA's New Orleans Field Division described narcotic treatment programs as facilities that provide methadone or levo-alphacetylmethadol (LAAM) (both of which are Schedule II controlled substances) to persons who are addicted to heroin or morphine-like drugs. The D/I testified that most narcotic treatment programs provide the medications for patients to take home, but that the programs may also administer the medications, i.e. provide them to patients to take while at the clinic.

The D/I testified that DEA coordinates matters concerning narcotic treatment programs with various state agencies because DEA cannot issue a registration without prior state approval. In Louisiana, according to the D/I, DEA coordinates narcotic treatment program registrations with the Department of Health and Hospitals, the State Methadone Authority, and the Division of Narcotics and Dangerous Drugs.

The D/I testified that DEA also works with the federal Food and Drug Administration (FDA), which issues a separate license to narcotic treatment programs; both the FDA license and the state licenses are required for DEA registration. The FDA has also promulgated regulations governing the medical treatment of patients of Narcotic treatment programs with respect to the dosages dispensed to them and the number of ''take home'' doses they are permitted to have. According to the D/I, the only controlled substances that narcotic treatment programs are permitted to use in treating narcotic addiction are methadone and LAAM, and the programs may not dispense these medications by prescription. Methadone is used primarily by narcotic treatment programs to treat narcotic addiction. It is less commonly used to treat severe pain.

The D/I testified that in order to operate as a narcotic treatment program in Louisiana, a physician must have a state medical license, a state controlled dangerous substance number issued by the Department of Health and Hospitals, a separate state controlled dangerous substance number for the narcotic treatment program, and a DEA Registration as a narcotic treatment program. The D/I further testified that the first license required is issued by the Louisiana State Methadone Authority (Methadone Authority), which determines whether it is a need for a narcotic treatment program in the proposed location. According to the D/I, if the Methadone Authority gives its approval, the applicant applies for state controlled substance registration and, after obtaining it, applies to DEA and FDA.

Practitioners who are not registered as narcotic treatment programs may treat addicted patients with methadone only as permitted by 21 CFR 1306.07(b). This provision, known as the ''three-day rule,'' is as follows:

> Nothing in this section shall prohibit a physician who is not specifically registered to conduct a narcotic treatment program from administering (but not prescribing) narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment. Not more than one day's medication may be administered to the person or for the person's use at one time. Such emergency treatment may be carried out for not more than three days and may not be renewed or extended.

Registrants must use official DEA order forms, known as DEA form 222s, to transfer Schedule II or narcotic Schedule III controlled substances to another registrant. A registrant seeking to purchase or otherwise receive these substances must obtain the forms, which are preprinted with that registrant's name, DEA number, and address, from a DEA office. The forms are in triplicate; the receiving registrant fills out the form, send the first two copies to the registrant who is supplying the drugs, and keeps the third copy. When the goods are received, the receiving registrant fills out receipt information on that copy. The supplier lists additional information on the first two copies, keeps the top copy, and send the second one to DEA.

The D/I testified that on August 27, 1991, an anonymous person telephoned the DEA New Orleans office and told her that Respondent was treating him for HIV. The caller also said that Respondent was a drug counselor at the Desire Narcotics Rehabilitation Center, and that Respondent was prescribing medication for Medicaid patients and having the patients fill the prescriptions and then return the medication to her for her to distribute among all her patients. The D/I testified that such a practice would contravene DEA regulations because a prescription may only be authorized for the end user; physicians may not issue prescriptions for general office use.

The D/I testified that the anonymous caller also told her that the prescriptions at issue were being filled at Egle's Pharmacy in New Orleans, gave the name of the pharmacist filling them, and that Respondent had said that the prescriptions must be filled at this pharmacy.

The D/I testified that on September 6, 1991, she received a telephone call from the clinical administrator of the Metropolitan Treatment Center (Metropolitan), a DEA-registered narcotic treatment program in New Orleans. This individual told the D/I that one of the Metropolitan's patients had received a prescription for methadone from Respondent. The D/I testified that patients in narcotic treatment programs are released from the program if they receive methadone from an outside source. That same day the D/I faxed the pharmacist at Egle's Pharmacy a copy of 21 CFR 1306.07, quoted above.

Also on September 6, 1991, as noted above, Respondent executed an application for registration as a narcotic treatment program in the name of Rosalind A. Cropper, Inc. The application requires the applicant to list its FDA approval number; respondent wrote ''pending.'' The applicant also requires the applicant to list the ''Current State License Number for the State in which you are applying for Registration;'' Respondent listed her Louisiana practitioner's controlled substance license number.

On September 20, 1991, two DEA D/I's visited Egle's Pharmacy and spoke to the previously identified pharmacist.

The pharmacist told the investigators that Respondent had faxed him a methadone prescription but that he did not fill it because he had learned that Respondent was not registered to operate a methadone treatment program. The pharmacist also said that Respondent had given him a list of ten patients she intended to treat for narcotic addiction and told him that she believed she could write methadone prescriptions for this purpose.

On October 3, 1991, a D/I sent Respondent a copy of DEA's regulations pertaining to registration of practitioners, security, narcotic treatment programs, recordkeeping, and order forms. On October 28, 1991, Respondent telephoned the D/I and said that her security system had been installed and she was ready for DEA to inspect her office. However, on November 7, 1991, the FDA informed the D/I that neither it nor the Methadone Authority had received an application from Respondent.

On November 12, 1991, Respondent left a message for the D/I asking the status of her DEA application. The D/I returned the call the next day and told Respondent that the FDA and the Methadone Authority did not have applications from her. On November 19, 1991, Respondent called the D/I again and said that she did not need a state license to operate a narcotic treatment program because she was already licensed by the state as a practitioner. The D/I testified that she advised Respondent that her state license as a practitioner could not be used to operate a narcotic treatment program and that she needed a separate state license for that purpose.

The D/I testified that on January 15, 1992, Respondent again called her and said that someone at the Louisiana Department of Health and Hospitals had advised her that she did not need to obtain a state license. The next day, the D/I called both the FDA and the Methadone Authority. According to the D/I, the person she talked to at the FDA told her that it had received an application from Respondent, but that the application was incomplete. The FDA also sent the D/I a copy of a letter that the FDA had sent to Respondent on December 6, 1991, advising her of the omissions in her application. The D/I also spoke with the head of the Methadone Authority, who said that his agency had not received an application from Respondent.

On March 31, 1992, Respondent called the D/I to advise that she had received a state license, a copy of which she faxed to the D/I. This license, in evidence as a Government exhibit, was issued by the State of Louisiana Department of Health and Hospitals to Rosalind Cropper, Inc., ''to operate substance abuse treatment,'' and was effective from March 28, 1992, until March 31, 1993. The D/I testified that this license applied to general substance abuse programs, but that only the Methadone Authority could license an applicant to operate a narcotic treatment program. On April 6, 1992, the D/I confirmed with the Methadone Authority that it had not issued any license to Respondent.

On April 10, 1992, Respondent again telephoned the D/I, who told Respondent that the Methadone Authority, had advised the D/I that it had not issued the March 28, 1992 license. Respondent then sent the D/I a letter dated March 30, 1992, and addressed to Respondent from the Director of the Department of Health and Hospitals. In that letter, the Director advised Respondent that ''our records indicate that you provide the following services: Methadone treatment.''

The D/I contacted the Methadone Authority again on April 20, 1992. In that conversation, the head of the Methadone Authority stated that the March 28, 1992, license had been ''pulled,'' and that he had telephoned Respondent and left a message for her, but she had not returned his call. Also on April 20, the D/I contacted the FDA and advised that Respondent had not received a license from the Methadone Authority and that DEA would therefore not process her application.

By letter dated April 22, 1992, the Assistant Special Agent in Charge of DEA's New Orleans Field Division advised Respondent that the application for registration of Rosalind Cropper, Inc., ''cannot be processed due to your failure to obtain state registration.'' The letter noted that, ''According to the Louisiana Department of Health and Hospital's Office of Mental Health, Alcohol and Drug Abuse, now new narcotic treatment programs will be approved due to the fact that several treatment programs are open in the New Orleans area and these programs are not filled to capacity.'' The letter further requested Respondent to withdraw the application for DEA registration.

On April 22, 1992, the head of the Methadone Authority wrote to both the Director of the Department of Health and Hospitals and to the Program Manager of the Controlled Dangerous Substances section within the Department of Health and Hospitals, that he understood that their office had issued Respondent a license to operate a methadone treatment facility. The head of the Methadone Authority stated that the Standards Manual for Licensing Alcohol and Drug Abuse Programs required Respondent to file an application ''simultaneously and in triplicate to the Food and Drug Administration and to the designated State Methadone Authority,'' but that his office had not received the necessary paperwork. Consequently, the head of the Methadone Authority asked the Department of Health and Hospitals to revoke the license that department had issued.

Also on April 22, the Program Manager wrote to the head of the Methadone Authority advising that he had not issued Respondent a license to operate a methadone clinic. The Program Manager stated that his office had completed its on-site inspection and credential verification procedures, but that ''we were holding [Respondent's] application as pending until we received verification of the required Jurisdictional Approvals.'' He attached a copy of a letter he had written to Respondent, explaining that he was returning her application because her facility was required to be ''Licensed and in good standing with Jurisdictional approvals from all Agencies/Authorities concerned,'' and that she could reapply when she had obtained the necessary approvals.

On April 29, 1992, Respondent called DEA's New Orleans Office and spoke to the D/I and her supervisor. Respondent said she did not want to withdraw her application and so the order to show cause process was explained to her. The D/I's supervisor also explained that DEA sought to deny Respondent's application because she did not have the requisite state licensure. Respondent replied that she would welcome a hearing so that she could publicize the problems of HIV-positive patients who were taking methadone. According to the D/I, Respondent acknowledged in that conversation that she was using methadone to treat narcotic addicts who were suffering from AIDS, and also admitted that she did not have a license to do so. Respondent further admitted that the D/I had advised her not to use the ''three-day rule'' to operate a narcotic treatment program without a license.

On May 4, 1992, the D/I, her supervisor, and the Assistant Special Agent in Charge met with Respondent and Respondent's partner. Respondent and her partner expressed concern about the process Respondent was required to undergo to obtain registration as a narcotic treatment program and about whether DEA was being pressured by outside sources to deny her application. The D/I's

supervisor explained that in order to operate a narcotic treatment program in Louisiana four licenses were required: From the Methadone Authority, the Division of Narcotic and Dangerous Drugs (the agency that issued a state controlled substance registration number), the DEA, and FDA, respectively. The D/I explained that all applicants for registration as a narcotic treatment program would be subject to the same requirements. The Assistant Special Agent in Charge agreed to allow Respondent more time to comply with the various state requirements, and Respondent said that she would not order methadone again until she was authorized to operate a narcotic treatment program.

On May 15, 1992, the D/I served an administrative subpoena on the pharmacist in charge at Eagle's Pharmacy, seeking documents, including order forms, prescriptions, and invoices, reflecting Respondent's transactions involving controlled substances with the pharmacy. The pharmacist responded to the subpoena three days later, providing five order forms for methadone tablets and/or liquid that Respondent executed between November 5, 1991, and January 1992. A sixth form is dated May 5, 1992, and shows that same date as the date shipped.

On June 28, 1992, the D/I again called the Methadone Authority and asked if an application from Respondent had been received; the response was negative.

On September 8, 1992, the D/I was informed by two other DEA D/I's that two patients from the Oscar Carter Memorial Rehabilitation Center (Oscar Carter), a DEA-registered narcotic treatment program in New Orleans, had been transferred to Respondent for treatment of narcotic addiction. The investigators advised that these patients had been transferred on September 6 and October 16, 1991, respectively.

Subsequently, on October 15, 1992, Respondent wrote to the Assistant Special Agent in Charge, enclosing a copy of an application dated September 12, 1991, to operate a methadone clinic. The application is on a preprinted form that states it is addressed to the ''Louisiana DHH, Division of Licensing and Certification, Controlled Dangerous Substances.'' In the letter, Respondent advised that the Department of Health and Hospitals had not responded to the application until October 12, 1992, and that she therefore asked the DEA New Orleans office to keep her DEA application active until the state had time to review her response.

Respondent testified that although she initially thought that the corporation would need a separate DEA number, DEA informed her that this was not the case, but ''that the physician's DEA number needed to be registered with the request to do narcotic treatment.'' Respondent further testified that DEA sent her another application form and that:

> It was not my understanding that the application was to file for a second DEA number. And, in fact, I remember specifically that [the D/I's supervisor] told me that a DEA number is issued for the person and not for the facility. And that a facility would not get a number, but it would be issued to the physician or the practitioner. And because as a practitioner I already had a number, I did not need a second number.

Consequently, Respondent listed her practitioner's number on the form she executed September 6, 1991. Respondent testified that she was told she needed a state controlled substance registration for the corporation and a dispensing license as a medical practitioner from the Medical Board, and that she applied for the dispensing license within a month after she submitted the DEA application. Respondent also testified that it was as not her understanding that the Methadone Authority ''would issue me a license. It was may understanding that they would clear me to get a controlled substance license.'' Respondent further testified that her application to state officials was never denied, but that she stopped pursuing her efforts to open a narcotic treatment program.

Respondent further testified that after she filed the September 1991 application with DEA, she continued to receive calls from DEA claiming that she was operating as a methadone treatment program without being registered to do so. Her response to DEA was that she had filed the application and was waiting to go through the requisite procedures. Respondent testified that later she was informed that she needed to apply to both the FDA and the state, that she filed an application with the FDA, and ''then [the FDA] said, well, everything looks good, but we haven't heard from the state. The state then received a copy of exactly what I sent to the FDA, and then everything went haywire.''

Respondent testified that she recalled receiving and responding to the December 6, 1991, letter from the FDA, and that in reply to her response, FDA told her she had satisfactorily addressed its concerns, but still needed approval from the Methadone Authority. Respondent testified that in consequence she met with the head of the Methadone Authority, two members of the city council, and other state personnel sometime in 1992. According to Respondent, state personnel insisted that ''they'' had not received her application, although the person at the Methadone Authority who took possession of the application confirmed he had in fact received it. Respondent further testified that the head of the Methadone Authority said he would get back to her, but never did. Respondent also testified that although she did not specifically recall receiving the Department of Health and Hospitals' April 22, 1992, letter, she did recall receiving the application back.

With respect to the May 4, 1992, meeting with DEA personnel, Respondent testified that her communication with the D/I had been poor, and Respondent's partner suggested that they meet with the D/I and her supervisor. Respondent testified that at the meeting the parties discussed her suing methadone to treat substance abusers with AIDS, and that she said she understood that unless she obtained a dispensing license she could treat these patients with methadone only for three days and only in her office. Respondent further testified that the D/I's supervisor agreed that there had been some confusion as to how the application should be handled, and that he suggested some additional steps Respondent should take. He also agreed to give Respondent more time to take those steps.

Respondent acknowledged that from November 1991 until perhaps March 1992 she used DEA order forms to obtain methadone from Egle's Pharmacy, testifying that she did so because she needed methadone to treat patients who came to her office needing emergency care. Respondent testified that she never provided methadone to a patient to take home, but that she did administer methadone to patients in her office, with the understanding that she could do so for no more than three days at a time. When asked whether methadone was ''something that you either prescribed or dispensed or administered to [patients] for either HIV and/or their opiate addiction,'' Respondent replied, ''If I did, it would be no more than for three days and under emergency situations in the office.''

Respondent further testified that she had a standing order to purchase methadone from Egle's Pharmacy: Her practice was to advise the pharmacist that she needed enough methadone to care for a specific number of patients and to give him signed forms in blank; when the pharmacist was able to obtain

the methadone, he filled in the form and ordered the methadone. Respondent denied requesting any methadone after the May 4 meeting with DEA personnel, and testified that she would given the order form dated May 5, 1992, to the pharmacist at least a week or two earlier.

On August 31, 1994, the Deputy Assistant Administrator of DEA's Office of Diversion Control issued an Order to Show Cause to Respondent and to Rosalind Cropper, Inc., seeking to revoke Respondent's DEA registration as a practitioner in Louisiana to deny Rosalind Cropper, Inc.'s application for registration as a narcotic treatment program.

On April 3, 1995, the then-Deputy Administrator of DEA issued a final order denying the application of Rosalind Cropper, Inc., on grounds that the applicant did not have authority from the FDA to dispense controlled substances. In the meantime, on December 6, 1994, the Methadone Authority recommended to FDA denial of Respondent's application for approval of a narcotic treatment program, and on December 16, 1994, the FDA wrote to Respondent advising that because the Methadone Authority had denied Rosalind Cropper, Inc.'s application, the FDA could not approve it. Respondent testified that she did not remember receiving this letter.

On July 11, 1995, Respondent and the DEA entered into a Memorandum of Agreement in lieu of further proceedings to revoke Respondent's DEA registration as a practitioner. The agreement provided that DEA would renew Respondent's registration subject to Respondent's agreement to, among other things: (1) Abide by all federal, state, and local statutes and regulations relating to controlled substances, with specific reference to 21 CFR 1306.07; (2) maintain a legible log of all methadone prescribed, dispensed, or administered, including information as to the date, the name and address of the patient, the name of the controlled substance, the strength and dosage, the form, the reason for prescribing, administering, or dispensing the methadone, and refills (if any); (3) send a copy of the log quarterly to the D/I or any of her successors at Diversion Section, New Orleans Field Office, Drug Enforcement Administration, 3838 North Causeway Blvd., Suite 1800, Three Lakeway Center, Metairie, Louisiana 70002; and (4) notify DEA if she did not prescribe, dispense or administer methadone during a particular quarter.

The Memorandum of Agreement also stated that it would remain in effect for three years after the last party to the agreement signed it and that Respondent understood that any violation of its terms could result in proceedings to revoke her DEA registration.

Respondent testified that when she received the 1994 Order to Show Cause she retained counsel, that she did not realize that the order applied to her practitioner registration as well as the application for a narcotic treatment program, and that with respect to the latter, ''in all actuality, after May of '92, because of the problems and situation, I kind of just didn't bother with it anymore.'' Respondent further testified that she was not aware of the final order denying Rosalind Cropper, Inc.'s application until her present counsel told her about in November 1999.

Respondent testified that she understood that because she had not completed all of the necessary applications for the narcotic treatment program, DEA ''closed the case and didn't process that application.'' Respondent testified that she also understood that if she agreed to no longer pursue registration as a narcotic treatment program, DEA ''would go ahead and issue * * * the renewal of my DEA number * * * And that if I had the need to * * * use methadone in any way within my practice, I would document and * * * send that information on or have it made available to [the D/I].''

In support of this testimony, Respondent introduced into evidence an affidavit from Kern Reese, the attorney who represented her in the 1994 show cause proceeding. Mr. Reese stated that he had no recollection of sending Respondent a copy of or discussing with her ''the decision in Docket No. 94–76, denying Rosalind A. Cropper, Inc.'s application for a DEA Certificate of Registration as an NTP.''

One of the issues in this proceeding is whether Respondent submitted the logs required by the 1995 Memorandum of Agreement. There are logs in evidence covering all the calendar quarters encompassed by the Memorandum of Agreement except the third quarter of 1995. As to that quarter, Respondent introduced into evidence a cover page, but testified that she could not find the actual log. The Government contends that DEA never received any of these logs.

The D/I's supervisor submitted an affidavit dated December 13, 1999, in evidence as a Government exhibit. The affidavit states that memoranda of agreement often included a requirement that registrants deliver reports to DEA's New Orleans Field Division. The affidavit further states that such reports were routinely given to the DEA diversion investigator to whom they were addressed or, if the addressee could not readily be determined from the envelope or the face of the report, the New Orleans Field Division's mail unit would open the letter or package and determine the section to which the document should be delivered. The affidavit also states that any correspondence pertaining to a case involving a registrant, whether the case was open or closed, would not be discarded or destroyed, although it might be archived after ten years from the date the case was opened. Finally, the affidavit states that the supervisor had never seen the methadone logs described above until he was asked to review them in the course of making the December 1999 affidavit.

The Diversion Group Supervisor at the New Orleans Field Division as of the date of the hearing also submitted an affidavit, dated December 10, 1999, and in evidence as a government exhibit. The current supervisor stated that he had reviewed files pertaining to Respondent and that these files did not contain any of the logs that Respondent was required to send. The current supervisor further states that he had never seen any of the logs described above.

Similarly, the D/I testified that she had never seen these logs until counsel for the Government faxed them to her on November 17, 1999. The D/I further testified that a review of the New Orleans Field Division's computer records did not disclose any report of the receipt of any of these logs, and that she also reviewed all the files in the office pertaining to Respondent and the logs were not in them.

The D/I testified that in her experience, memoranda of agreement generally required registrants to maintain logs at their offices and that DEA investigators inspected these logs on site, and that she had never before had a registrant mail reports or logs to her.

Respondent testified that she had a computerized reminder for when she was supposed to generate the logs, that she maintained and sent every log that was required, and that she mailed all of them herself. Respondent further testified that she established a system, had all of her prescriptions made in duplicate, and devised a format so that the log would reflect the information she was supposed to provide.

As noted above, some of the log cover sheets were undated. Respondent testified that she failed to date some of the cover sheets because during periods when she did not handle methadone she

did not pay is much attention to the log. Respondent acknowledged, however, that some of the undated cover sheets pertained to logs for periods when she did handle methadone.

Respondent further testified that she understood that if the New Orleans DEA office did not receive her logs, someone from that office would notify her.

Respondent testified that from 1995 through 1998 she was in private practice and saw approximately thirty to fifty patients daily. She had received a grant to do early intervention treatment of patients with HIV/AIDS and worked with a local hospice program and with the state health department on a tuberculosis prevention program. Respondent testified that she did not handle methadone at all after the second quarter of 1998.

In December 1997 Respondent moved to Memphis to work for the Memphis Health Center, a government-subsidized community health center that provides primary medical care to a predominantly poor population. Memphis Health Center operates four facilities, three in Memphis and one in Rossville, Fayette County, Tennessee, about thirty-five miles from Memphis. As of the date of the hearing, Respondent was employed as assistant medical director and director of special programs for the Memphis Health Center, and also practiced as a primary care physician at the Rossville facility.

The chief executive officer of the Memphis Health Center testified that the clinic in Rossville had been in existence for about twenty years and had been operated by Memphis Health Center for about nine years, and that at the time the Rossville clinic opened, Fayette County was one of the poorest counties in the United States. He further testified that Memphis Health Center pays physicians slightly below the market rate and that it is difficult to recruit physicians for clinics located in poor rural areas such as Rossville.

The chief executive officer testified that Memphis Health Center was able to recruit Respondent because she was interested in initiating an AIDS program. He testified that as of the hearing date Respondent's salary was abut $122,000. He further testified that Memphis Health Center is concerned about quality care, productivity, and revenue, that Respondent more than met the health center's productivity and quality standards, and that because Respondent attracted to the practice older people whose care was financed by Medicare, she had also contributed to enhanced revenue.

He testified that Fayette County had a very high incidence of sexually transmitted disease and that the incidence of AIDS was rising. Consequently, Memphis Health Center asked Respondent to help develop an AIDS program. As part of this program, Respondent sees patients in the county jail and also made some home visits. He testified that Respondent had decreased some of her activities in Rossville as a result of her increased responsibilities, but that ''the primary focus for her is Rossville.''

Respondent testified at the hearing that she moved to Memphis because:

> I kind of got tired of fighting. I was the center of almost any controversial issue around HIV/AIDS and substance abusers. The job was becoming very demanding. There was no money hardly because I was in private practice. And * * * a lot of the other programs were going after the grants. And I guess it was battle fatigue. I don't know. I made a decision just to try something else.

Respondent further testified that the Memphis Health Center was trying to develop an HIV/AIDS program and that she could work in that program and not have to manage administrative overhead.

Respondent testified that about twenty-five percent of her patients at the Rossville Health Center were geriatric patients with multiple diseases, that she had fifty-six patients who were in the last stage of HIV/AIDS, and that she worked in an HIV/AIDS intervention program at the Fayette County jail. With respect to the latter group, Respondent testified that since August 1999 she had identified five HIV-positive patients at the jail and had found an additional twelve individuals who were not inmates but became HIV positive from contact with those inmates. Respondent testified that she did not utilize methadone in her work because most of her HIV/AIDS patients derived the virus from sexual contact, not injectable drug use.

On February 2, 1998, Respondent executed an application for registration as a practitioner in Tennessee. Question four of the application form includes line on which the applicant is to list his or her state license number and state controlled substance number: as to both of these queries Respondent checked the box marked ''not applicable.'' Respondent explained at the hearing that she did not fill in a state controlled substance number because Tennessee does not require a separate controlled substance registration. Respondent further testified that she thought the reference to a state license number was to a dispensing license, which she did not need, and not to her medical license.

The application form also includes, among other things, the following questions, each followed by boxes labeled ''yes'' and ''no'' respectively: ''4.(c). Has the applicant ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted, or denied? 4.(d). Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?''

Respondent checked the ''no'' box for both of these questions. The application form also directs the applicant to explain any affirmative answer to these questions on the reverse of the form; Respondent did not do so.

Respondent testified that she had never surrendered a federal controlled substance registration or had one revoked, suspended, restricted or denied. Respondent testified that she did not consider that the denial of her 1991 application came under the purview of question 4.(c). because of ''[t]wo things. It didn't appear to me to be an application for a DEA number. And, secondly, it wasn't for Rosalind Cropper—me as a practitioner. It was for what I thought was permission to do a narcotic treatment on my DEA number, which was not restricted.''

Respondent further testified that as far as state action on that application was concerned, she understood:

> that I needed to resubmit that once I had gone through whatever the Methadone Authority wanted me to do * * * and if that was approved, then they would have no problem giving me an additional number for Rosalind Cropper, Inc. But it was on hold pending completion of some other steps that I later learned I needed to do.

On cross-examination, Respondent testified that she agreed to drop the proceedings on her application for Rosalind, Cropper, Inc., to be registered as a narcotic treatment program. Asked if she ever signed any written indication of that agreement, Respondent testified that she signed an agreement with Mr. Reese that he would act as her agent.

A registration technician in DEA's Atlanta, Georgia, Field Division, stated in an affidavit in evidence as a Government exhibit that on April 3, 1998, Respondent called her and asked the status of her application, and that during this conversation that registration technician was reviewing a databank that revealed derogatory information about Respondent. The registration technician stated that she asked Respondent whether she had had any problems in the past, and Respondent responded in the negative to both questions. Finally, the

registration technician stated that she told Respondent that she would send the application to the DEA Tennessee District Office and that she in fact did so on April 3, 1998.

Respondent testified that in this conversation the registration technician asked if she had any past problems with her DEA number, and that she responded in the negative. Respondent further testified that she did not consider her registration ''restricted'' by the 1995 memorandum of agreement and that she had asked Mr. Reese about the matter and he had said that the requirements to which she agreed were things that every doctor is supposed to do anyway. According to Respondent, she asked Mr. Reese, '''Does this mean that I'm being restricted, denied or should use my license in any different way?' And the answers were 'no.''' Respondent further testified, ''[a]nd that's the way I interpreted this. That this does not restrict me in any way from doing any other thing other than any other physician could do with a DEA number.''

A diversion group supervisor of DEA's Tennessee District Office testified that on April 6, 1998, Respondent telephoned him and said that the DEA registration clerk in Atlanta had referred her to him to ascertain the status of her DEA registration. The group supervisor told Respondent that applications were not normally forwarded to his office unless there was a problem, and asked her whether she had had any previous difficulties with her DEA registration; Respondent replied in the negative. A D/I of DEA's Tennessee District Office was assigned to investigate the application. The D/I telephoned Respondent on April 29, 1998, and advised her that the Tennessee District Office would recommend denial of her application because she had falsely answered question 4.(c) and thus materially falsified her application. The D/I testified that she explained to Respondent that she should have answered that question in the affirmative because her application for registration as a narcotic treatment program had been denied and because she had entered into a Memorandum of Agreement affecting her registration as a practitioner. According to the D/I, Respondent:

said that her application was not denied, and that it was a political protest in that the State was requiring here to show a substance abuse problem in the area and that she needed to provide a certificate of need. And she stated that she didn't—she just determined not to proceed with [efforts to obtain the state license for a narcotic treatment program].

Respondent did, however, acknowledge that she had entered into a Memorandum of Agreement with DEA. The D/I testified that she considered the Memorandum of Agreement a restriction on Respondent's registration because it required her to file records with DEA. The D/I acknowledged that she did not receive any information leading her to conclude that Respondent knew that DEA considered this requirement a restriction.

According to the chief executive officer of the Memphis Health Center, revocation of Respondent's DEA registration would have a ''devastating'' impact on Memphis Health Center and its patients. He testified that physicians who work at Memphis Health Center are required to have DEA registrations. Respondent testified that she could not continue her practice in Rossville if her application for DEA registration is denied because she would not be able to provide her patients the care they need.

Pursuant to 21 U.S.C. 824(a)(1) the Acting Administrator may revoke a DEA Certificate of Registration, ''upon a finding that the registrant * * * has materially falsified any application'' for a DEA registration. Pursuant to 21 U.S.C. 824(a)(4), the Acting Administrator may revoke a registration if he determines that the issuance of such registration would be ''inconsistent with the public interest'' as determined pursuant to 21 U.S.C. 823(f). Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

As a threshold matter, it should be noted that the factors specified in section 823(f) are to be considered in the disjunctive: The Acting Administrator may properly rely on any one or a combination of those factors, and give each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (DEA 1989).

It should be noted that the Acting Administrator may apply the bases of revoking a registration under § 824(a) to the denial of registrations under § 823(f). See Anthony D. Funches, 64 FR 14268 (DEA 1999).

As noted above, 21 CFR 1306.07(b) provides that a physician who is not specifically registered to conduct a narcotic treatment program may administer ''narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment.'' The regulation prohibits administering more than one days' medication at one time and prohibits treating such a person for more than three days.

Certain other regulatory provisions are also relevant in this case: 21 CFR 1306.07(a) generally prohibits registrants from administering or dispensing directly narcotic drugs to treat narcotic addicts unless the registrant is separately registered as a narcotic treatment program; and 21 CFR 1305.06(d) requires that an order form be dated by the person who signed it.

A number of findings in this case turn on credibility determinations: (1) Whether Respondent knew that Rosalind Cropper, Inc.'s application for registration as a narcotic treatment program had been denied; (2) whether Respondent sent methadone logs to DEA's New Orleans office as required by the Memorandum of Agreement; and (3) whether, if so, DEA investigators received those logs.

Based on their demeanor, Judge Bittner found, and the Acting Administrator concurs, that the DEA investigators who testified were credible witnesses. The Acting Administrator therefore concurs with Judge Bittner's finding that none of them received the methadone logs that Respondent purportedly submitted. The Acting Administrator further concurs with Judge Bittner's finding that there is no indication the former Diversion Group Supervisor had any reason to be less than honest in the statements in his affidavit, and that he also did not receive the logs in question.

Although the investigators who should have received the logs did not, the question remains whether Respondent sent them. Judge Bittner found the Respondent a difficult witness who frequently gave nonresponsive answers to questions. Having considered Respondent's demeanor, Judge Bittner found that she was credible. The Acting Administrator finds, however, that there is insufficient evidence in the record to determine whether or not Respondent sent the log

as she testified. Thus, the Acting Administrator finds insufficient evidence in the record to determine whether or not Respondent failed to comply with the terms of the Memorandum of Agreement.

Finally, on the issue of whether Respondent knew about the denial of Rosalind Cropper, Inc.'s application, the Acting Administrator concurs with Judge Bittner's finding that Respondent credibly testified she did not.

It is undisputed that Respondent answered ''no'' to the question on her 1998 application asking whether the ''applicant'' had ever had a Federal controlled substance registration revoked, suspended, restricted, or denied. Based on the record, the Acting Administrator concurs with Judge Bittner's finding that Respondent did not know that her application had been denied. Therefore, Respondent could not have intentionally falsified the application.

A DEA Certificate of Registration may be revoked or an application denied based upon an unintentional falsification of an application, but a lack of intent to deceive is a relevant consideration in determining whether a registrant or applicant should possess a DEA registration. See Anthony D. Funches, 64 FR 14267 (DEA 1999); Samuel Arnold, D.D.S., 63 FR 8687 (DEA 1998); Martha Hernandez, M.D., 62 FR 61145 (DEA 1997).

In this case, the Respondent consistently testified that she believed she had allowed her DEA narcotic treatment program application to lapse. Indeed, the testimony of one of the Government investigator's, regarding her conversation with Respondent April 29, 1998, corroborated Respondent's testimony in this respect. Judge Bittner specifically found credible Respondent's testimony that she unaware of the denial of the DEA application for a narcotic treatment program; and further found the DEA investigators who testified to be credible witnesses. The Acting Administrator concurs with Judge Bittner's finding that Respondent was unaware of the denial of her DEA narcotic treatment program application, and also concurs that, under the circumstances of this case, this misstatement does not disqualify Respondent from holding a DEA registration.

With regard to factor one of 21 U.S.C. 823(f), it is undisputed that Respondent is authorized by the State of Tennessee to handle controlled substances. Inasmuch as State licensure is a necessary but insufficient condition for a DEA registration, the Acting Administrator concurs with Judge Bittner's finding that this factor is not determinative.

With regard to factor two, the only evidence in the record on this factor pertains to Respondent's handling of methadone. Respondent conceded on cross-examination that between November 1991 and January 1992, she administered methadone to treat patients ''for either HIV and/or their opiate addiction'' in her office, although she insisted that she did so for no more than three days. The Acting Administrator concurs with Judge Bittner's finding that does not appear from the record that this treatment was solely in preparation for referring patients to a treatment program. Respondent also admitted that she issued a few prescriptions for methadone.

Respondent did not admit that she ordered methadone after telling DEA representatives that she would not. As discussed above, Respondent testified that the May 5, 1992, date appeared on an order form because the pharmacist filed in the date when he shipped the order, but that she actually provided the order form to him some time earlier. This practice would contravene the requirement in 21 CFR 1305.06(d) that the order form be dated by the person who signed it.

In light of the foregoing, the Acting Administrator concurs with Judge Bittner's finding that this factor weighs in favor of a finding that Respondent's registration would be inconsistent with the public interest. However, the Acting Administrator further concurs with Judge Bittner's finding relevant that there were very few order forms or prescriptions at issue, and that there was insufficient evidence to determine the number of patients Respondent treated with methadone. The Acting Administrator also notes that Respondent has held a DEA registration as a practitioner since 1986, and the record reflects no additional negative allegations or evidence concerning her dispensing or prescribing practices.

With regard to the third factor, there is no evidence that Respondent has been convicted of violating any laws relating to controlled substances.

With regard to the fourth factor, as discussed above under factor two, Respondent violated 21 CFR 1306.07(a), 1306.07(b), and 1305.06(d).

With regard to the fifth and final factor, the Acting Administrator finds the record contains insufficient information to make a finding whether or not Respondent violated the terms of the Memorandum of Agreement by failing to send in the required quarterly methadone logs. As previously mentioned, Judge Bittner specifically found credible both the DEA investigator's testimony that the logs were never received; and Respondent's testimony that the logs were sent.

The Acting Administrator concurs with Judge Bittner's finding that Respondent violated various regulatory provisions in her handling of methadone in 1991 and 1992. Respondent does not admit that she engaged in any misconduct, and as discussed above, Judge Bittner found her a less than responsive witness. Nonetheless, with some reservations, the Acting Administrator concurs with Judge Bittner's recommendation that Respondent's instant application be granted. It appears that Respondent does not handle methadone in her current position and that she has no need to do so. The Acting Administrator concurs with Judge Bittner's conclusion that Respondent has not shown a full understanding of all the responsibilities of a DEA registrant, as evidenced by the findings pursuant to factors two and four, above. The record shows, however, that, other than these noted violations, Respondent has shown herself to have been a responsible DEA registrant since 1986.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration as a practitioner in Tennessee submitted by Rosalind A. Cropper, M.D., be, and it hereby is, granted, contingent upon a satisfactory criminal history and records check conducted by the DEA Office of Diversion Control regarding possible CSA convictions and/or violations to ensure that Respondent's status with regard to her application has not changed since the date Respondent completed the application. The Acting Administrator hereby further orders that Respondent's DEA Certificate of Registration, BC0747381, be continued in accordance with applicable law and regulations. This order is effective September 5, 2001.

Dated: July 26, 2001.

William B. Simpkins,

Acting Administrator.

[FR Doc. 01–19514 Filed 8–3–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 207R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2001

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2001 aggregate production quotas.

SUMMARY: This notice proposes revised 2001 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before September 5, 2001.

ADDRESSES: Send comments or objections to the Acting Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations.

On December 19, 2000, DEA published a notice of established initial 2001 aggregate production quotas for certain controlled substances in Schedules I and II (65 FR 79428). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 2001 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2001 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2001 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2000 year-end inventories, 2000 disposition data submitted by quota applicants, estimates of the medical needs of the United States, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, the Acting Administrator hereby proposes the following revised 2001 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class	Prevously established initial 2001 quotas	Proposed revised 2001 quotas
Schedule I		
2,5-Dimethroxyamphetamine	15,501,000	15,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	14	14
3-Methylthiofentanyl	2	2
3,4-Methylendedioxyamphetamine (MDA)	25	30
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30	30
3,4-Methylenedioxymethamphetamine (MDMA)	10	15
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2–CB)	2	2
4-Methoxyamphetamine	201,000	201,000
4-Methylaminorex	2	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acethylmethadol	2	2
Allylprodine	2	2
Alphacetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	2	2
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	7	7
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	9	9
Codeine-N-oxide	2	2
Diethyltryptamine	2	2
Difenoxin	9,000	9,000

Basic class	Prevously established initial 2001 quotas	Proposed revised 2001 quotas
Dihydromorphine	771,000	771,000
Dimethyltryptamine	2	3
Gamma-hydroxybutyric acid	15,000,000	7
Heroin	2	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	37	63
Marihuana	350,000	350,000
Mescaline	7	7
Methaqualone	19	19
Methcathinone	11	11
Morphine-N-oxide	2	2
N,N-Dimethylamphetamine	7	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphanol	2	2
Normethadone	7	7
Normorphine	7	7
Para-fluorofenthanyl	2	2
Pholcodine	2	2
Propiram	415,000	415,000
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	131,000	131,000
Thiofentanyl	2	2
Trimeperidine	2	2
Schedule II		
1-Phenylcyclohexylamine	12	12
1-Piperidinocyclonhexanecarbonitrile (PCC)	10	10
Alfentanil	3,500	3,500
Alphaprodine	2	2
Amobarabital	12	12
Amphetamine	10,958,000	13,964,000
Cocaine	251,000	251,000
Codeine (for sale)	43,248,000	43,248,000
Codeine (for conversion)	59,051,000	59,051,000
Dextropropoxyphene	134,401,000	153,380,000
Dihydrocodeine	474,000	334,000
Diphenoxylate	401,000	401,000
Ecogonine	51,000	51,000
Ethylmorphine	12	12
Fentanyl	440,000	440,000
Glutethimide	2	2
Hydrocodone (for sale)	22,325,000	23,825,000
Hydrocodone (for conversion)	18,000,000	18,000,000
Hydromorphone	1,409,000	1,409,000
Isomethadone	12	12
Levo-alphacetylmethadol (LAAM)	41,000	41,000
Levomethorphan	2	2
Levorphanol	23,000	23,000
Meperidine	10,168,000	10,168,000
Metazocine	0	1
Methadone (for sale)	8,347,000	12,705,000
Methadone (for conversion)	60,000	60,000
Methadone Intermediate	9,503,000	18,004,000
Methamphetamine	3,187,000	3,211,000
[850,000 grams of levo-desoxy-ephedrine for use in a non-controlled, non-prescription product; 2,286,000 grams for meth-amphet-amine for conversion to a Schedule III product; and 75,000 grams for meth-amphet-amine (for sale)]		
Methylphenidate	14,957,000	15,946,000
Morphine (for sale)	14,706,000	15,202,000
Morphine (for conversion)	117,675,000	110,774,000
Nabilone	2	2

Basic class	Prevously established initial 2001 quotas	Proposed revised 2001 quotas
Noroxymorphone (for sale)	25,000	25,000
Noroxymorphone (for conversion)	4,000,000	4,500,000
Opium	630,000	630,000
Oxycodone (for sale)	46,680,000	46,680,000
Oxycodone (for conversion)	449,000	449,000
Oxymorphone	264,000	264,000
Pentobarbital	22,037,000	25,025,000
Phencyclidine	40	40
Phenmetrazine	2	2
Phenylacetone	10	10
Secobarbital	12	1,946,000
Sufentanil	1,700	1,700
Thebaine	65,596,000	67,446,000

The Acting Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Acting Administrator finds warrant a hearing, the Acting Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c) and 1303.32.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Acting Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7183.

Dated: July 31, 2001.

William B. Simpkins,

Acting Administrator.

[FR Doc. 01–19513 Filed 8–3–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 30, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before September 5, 2001.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Safety Defects: Examination, Correction, and Records—30 CFR 56/57.13015; 13030; 14100; and 56/57.18002.

OMB Number: 1219–0089.

Affected Public: Business or other for-profit.

Number of Respondents: 13,074.

Requirement	Annual responses	Average response time (hours)	Frequency	Burden hours
Inspection of compressed-air receivers and other unfired pressure vessels—30 CFR 56/57.13015:				
Inspection Time	2,074	.1333	Annually	276
Recordkeeping	2,074	.0333	Annually	69
Records of Inspection and Repairs—30 CFR 56/57.13030:				
Inspection Time	3,732	.1333	Annually	497
Recordkeeping	3,732	.0333	Annually	124
Safety defects; examination, correction, and records—30 CFR 56/57.14100:				
Inspection Time—Small mines	4,868,208	.05	Daily	243,410
Recordkeeping—Small mines	169,035	.0333	Daily	5,629
Inspection Time—Large mines	6,146,025	.05	Daily	307,301
Recordkeeping—Large mines	501,790	.0333	Daily	16,710
Examination of Workplaces—30 CFR 56/57.18002:				
Inspection Time—Small mines	2,434,104	.1666	Daily	405,522
Recordkeeping—Small mines	2,434,104	.0333	Daily	81,056
Inspection Time—Large mines	819,470	.1666	Daily	136,524
Recordkeeping—Large mines	819,470	.0333	Daily	27,288
Total	18,203,818			1,224,406

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 30 CFR 56/57.13015; 13030; 14100; and 56/57.18002 require equipment operators to inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Reports of uncorrected defects are required to be recorded by the mine operator and retained for MSHA review until the defect has been corrected.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 01–19610 Filed 8–3–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,833; O & E Machine, A Div. of paper Converting Machine Co., Green Bay, WI.

TA–W–39,112; DuCoa L.P., Verona, MO

TA–W–39,019; Opelika Foundry Co., Opelika, AL

TA–W–39,100; Paper Converting Machine Co., Green Bay, WI

TA–W–39,463; ABB Power T & D Co., Jefferson City, MO

TA–W–39,335; Acordis Cellulosic Fibers, Inc., Axis, AL

TA–W–39,123; Specialty Plasti Products of Tennessee, Inc., Louisville, TN

TA–W–39,443; Kurdziel Industrial Coatings, Wauseon, OH

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,611; HR Textron Cadillac Gage, David Brown Hydraulics, Greenville, OH

TA–W–39,249; Ashland Specialty Chemicals Co., Electronic Chemicals Div., Easton, PA

TA–W–39,120; Perfect Fit Industries, Richfield, NC

TA–W–39,125; BBA Nonwoveens-Simpsonville, Inc., Lewisburg, PA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–39,467; Erie County Technical School, Erie, PA

TA–W–39,503; Thomson Financial Research, Ft. Lauderdale, FL

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–39,254; Guerin Logging, Inc., Warm Springs, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–38,820; Stanley Fastening Systems, Hamlet, NC: March 1, 2000.

TA–W–39,508; Duo-Fast Corp., Cleveland, MS: June 5, 2000.

TA–W–39,507; Bess Manufacturing Co., Philadelphia, PA: June 12, 2000.

TA–W–38,817; Galvpro L.P., Jeffersonville, IN: February 21, 2000.

TA–W–39,436; Wiegand Appliance Div., Emerson Electric Co., Vernon, AL: June 1, 2000.

TA–W–39,331; Huntco Steel, Inc., Blytheville, AR: May 16, 2000.

TA–W–39,263; Hoskins Manufacturing Co., Charlevoix Manufacturing Facility, Charlevoix, MI: April 30, 2000.

TA–W–39,260; Allegheny Ludlum Steel, Leechburg, PA: April 26, 2000.

TA–W–39,615; Allegheny Ludlum Steel, Brackenridge, PA: July 16, 2000.

TA–W–39,615; Allegheny Ludlum Steel, Brackenridge, PA: July 16, 2000.

TA–W–39,089; Custom Machine of Great Bend, Inc., Breat Bend, PA: March 29, 2000.

TA–W–39,211; Burlington Industries, Inc., Mount Olive, NC: April 24, 2000.

TA–W–39,179 & A; Rockwell Collins, Passenger Systems, Irvine, CA and Rockwell Collins, Passenger Systems, Pomona, CA: April 19, 2000.

TA–W–38,827; Gina Fashions, Inc., Brooklyn NY: February 20, 2000.

TA–W–39,340; C&D Technologies, Inc., Power Electronics Div., Tucson, AZ: May 17, 2000.

TA–W–39,285; Namanco, Inc., Philadelphia, MS: May 3, 2000.

TA–W–39,134; Williamson-Dickie Manufacturing Co., Eagle Pass #19, Eagle Pass, TX: April 10, 2000.

TA–W–39,075 & A Irving Tanning Co., Hartland, ME and Irving Split Co., Hartland, ME: April 9, 2000.

TA–W–39,027 & A; Mar-Bar Shirt Co., Capital Mercury Apparel, Gassville, AR and Tri-County Shirt Co., Capital Mercury Apparel, Salem, AR: April 12, 2000.

TA–W–38,363 & A; United Technologies Corp., Pratt & Whitney Div., Compression Systems Module Center, Middletown, CT and United Technologies Corp., Pratt & Whitney Div., Turbine Module Center, North Haven, CT: November 3, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04993; Allegheny Ludlum Steel, Brackenridge, PA

NAFTA–TAA–04857; Garrin Logging Co., Warn Springs, OR

NAFTA–TAA–04975; ABB Power T & D Co., Jefferson City, MO

NAFTA–TAA–04896; Acordis Cellulosic Fibers, Inc., Axis, AL

NAFTA–TAA–04828; Hoskins Manufacturing Co., Charlevoix Manufacturing Facility, Charlevoix, MI

NAFTA–TAA–04928; Ark-Less Electronic Products Corp., Gloucester, MA

NAFTA–TAA–04778; Shasta View Produce, Inc., Malin, OR

NAFTA–TAA–04572; O & E Machine, A Div. of Paper Converting Machine Co., Green Bay, WI

NAFTA–TAA–04787; BBA Nonwovens-Simpsonville, Inc., Lewisburg, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not product an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–04970; Erie County Technical School, Erie, PA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04959; Coastcast Corp., Rancho Dominguez, CA: May 30, 2000.

NAFTA–TAA–05024; Visteon Systems LLC, Connersvile, IN: June 12, 2000.

NAFTA–TAA–04752; Mar-Bax Shirt Co., Capital Mercury Apparel LTD, Gassville, AR: April 12, 2000

NAFTA–TAA–04784; Williamson-Dickie Manufacturing Co., Eagle pass #19, Eagle Pass, TX: April 10, 2000.

NAFTA–TAA–04973; Imperial Home Decor Group, Finishing Department, Knoxville, TN: May 29, 2000.

NAFTA–TAA–04964 & A; Rockwell Collins, Passenger Systems, Irvine, CA and Rockwell Collins, Passenger Systems, Pomona, CA: May 11, 2000.

NAFTA–TAA–04859; Motion Control Industries, Carlisle Spring Brake Products, Nampa, ID: May 7, 2000.

NAFTA–TAA–04919; Johnson Electric Automotive, Inc., Johnson Electric Automotive Motors, Columbus, MS: May 22, 2000.

NAFTA–TAA–04872; C & D Technologies, Inc., Power

Electronics Div., Tucson, AZ: May 8, 2000.

NAFTA–TAA–04611; Stanley Fastening Systems, Single Wire Department, Hamlet, NC: March 1, 2000.

NAFTA–TAA–04876; Jackets USA, Magazine, AR: May 3, 2000.

I hereby certify that the aforementioned determinations were issued during the month of July, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 23, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–19608 Filed 8–3–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,461]

D'Clase Cutting Services, L.C.; Medley, FL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2001, in response to a petition filed by a company official on behalf of workers at D'Class Cutting Service. L.C., Medley, Florida.

The petition group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–39,239). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 23rd day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–19606 Filed 8–3–01; 8:45 am]

BILLING CODE 1510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

M. Fine & Sons Manufacturing Co., Inc., Greenhill Distribution Center, Killen, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 25, 2001, in response to a worker petition which was filed on behalf of workers at M. Fine & Sons Manufacturing Co., Greenhill Distribution Center, Killen, Alabama.

All workers of the subject firm are covered under an existing certification under TA–W–39,286B. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of July 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–19607 Filed 8–3–01; 8:45 am]

BILLING CODE 4510–30—M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–NAFTA–04834]

Admiral Marine Construction, Inc., Port Angeles, WA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 1, 2001 in response to a petition filed on behalf of workers at Admiral Marine Construction, Inc., Port Angeles, Washington.

The petitioner requested that he petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–19609 Filed 8–3–01; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 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) part 50, section 71(e)(4) to Facility Operating License Nos. DPR–44 and DPR–56, issued to Exelon Generation Company, LLC, (the licensee), for operation of the Peach Bottom Atomic Power Station (PBAPS), Unit Nos. 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from some requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Updated Final Safety Analysis Report (UFSAR). The proposed exemption would allow updates to the combined UFSAR for PBAPS, Unit Nos. 2 and 3, to be submitted within 6 months following completion of each PBAPS Unit 2 refueling outage, not to exceed 24 months from the previous submittal.

The proposed action is in accordance with the licensee's application for exemption dated May 30, 2001.

The Need for the Proposed Action

10 CFR 50.71(e)(4), requires licensees to submit updates to their UFSAR annually or within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Since Units 2 and 3 share a common UFSAR, the licensee must update the same document annually or within 6 months after a refueling outage for either unit. The last change to 10 CFR 50.71(e)(4) was published in the **Federal Register** (57 FR 39358) on August 31, 1992, and became effective on October 1, 1992. The underlying purpose of the rule change was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. However, as written, the burden reduction can only be realized by single-unit facilities, or multiple-unit facilities that maintain separate UFSARs for each unit. In the Summary and Analysis of Public Comments accompanying the 10 CFR 50.71(e)(4)

rule change published in the **Federal Register** (57 FR 39355, 1992), the NRC acknowledged that the final rule did not provide burden reduction to multiple-unit facilities sharing a common UFSAR. The NRC stated: ''With respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis.'' Granting this exemption would provide burden reduction to PBAPS while still assuring that revisions to the UFSAR are made at least every 24 months.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that it involves administrative activities unrelated to plant operation.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no 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 involve 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.

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

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for PBAPS.

Agencies and Persons Consulted

In accordance with its stated policy, on June 18, 2001, the NRC staff consulted with the Pennsylvania State official, Dennis Dyckman, of the Pennsylvania Department of Environmental Protection, Nuclear Safety Division, 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 May 30, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, http://www.nrc.gov/NRC/ADAMS/index.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 31st day of July, 2001.

For the Nuclear Regulatory Commission.

John P. Boska,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–19593 Filed 8–3–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comments Request for Review of an Expiring Information Collection: OPM Form 1203–AW, Qualifications & Availability Form C, OPM Form 1203–FX, Qualifications & Availability Form C, and OPM Form 1203–EFX, Qualifications and Availability Form EZ

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an expiring Form for information collection. The OPM Form 1203–AW, Qualifications & Availability Form C, is an optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create applicant records for an automated examining system. OPM uses the form to carry out its responsibility for open competitive examining for admission to the competitive service in accordance with 5 U.S.C. section 3304. The OPM Form 1203–FX, Qualifications & Availability Form C, and the OPM Form 1203–EFX, Qualifications and Availability Form EZ, are used to collect applicant information in a format suitable for automated processing, electronic transmission, and reproduction using a laser printer.

Approximately 500,000 of the OPM Form 1203 are completed annually. The public burden of information collection is estimated to vary from 20 minutes to 45 minutes to complete this form including time for reviewing instructions, gathering the data needed, and completing and reviewing entries. The average time to complete this form is 30 minutes. The annual estimated burden is 225,000 hours.

Comments on this proposed reinstatement are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection of information is accurate, and is based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202–606–8358 or e-mail at *mbtoomey@opm.gov.*

DATES: Comments on this proposal should be received on or before October 5, 2001.

ADDRESSES: Send or deliver comments to—U.S. Office of Personnel Management, Employment Service, ATTN: Tim Firlie, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–19551 Filed 8–3–01; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Expiring Information Collection; Forms INV 41, 42, 43 and 44

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of currently approved information collection forms INV 41, 42, 43 and 44. OPM uses these forms to request information by mail for use in OPM investigations. These investigations are conducted to determine suitability for Federal employment or the ability to hold a security clearance as prescribed in Executive Orders 10450, 12968, 10577 (5 CFR part V), and 5 U.S.C. 3301. INV Form 41, Investigative Request for Employment Data and Supervisor Information, is sent to employers and supervisors. INV Form 42, Investigative Request for Personal Information, is sent to references. INV Form 43, Investigative Request for Educational Registrar and Dean of Students Record Data, is sent to educational institutions. INV Form 44, Investigative Request for Law Enforcement Data, is sent to local law enforcement agencies.

Comments are particularly invited on:

—Whether this information is necessary for the proper performance of the functions of OPM, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Based on current usage, OPM estimates that 1,962,947 individuals will respond annually to the forms (1,037,947 to INV Form 41; 218,629 to INV Form 42; 165,314 to INV Form 43; and 541,057 to INV Form 44). We believe the forms require an average of 5 minutes to complete. The total estimated public burden is 163,579 hours.

To obtain copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, FAX: (202) 418–3251 or by E-mail: *mbtoomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received or or before October 5, 2001.

ADDRESSES: Send or deliver written comments to: Richard A. Ferris, Associate Director, Investigations Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5416, Washington, DC 20415–4000.

FOR FURTHER INFORMATION CONTACT: Rasheedah I. Ahmad, Voice: (202) 606–7983, FAX: (202) 606–2390, E-mail: *riahmad@opm.gov.*

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–19552 Filed 8–3–01; 8:45 am]

BILLING CODE 6325–40–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange (Lowe's Companies, Inc., Common Stock, $.50 Par Value) File No. 1–7898

July 31, 2001.

Lowe's Companies, Inc., a North Carolina corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.50 par value, (''Security''), from listing and registration on the Pacific Exchange (''PCX'').

The Issuer stated in its application that it has met the requirements of the PCX's rules governing an issuer's voluntary withdrawal of a security from listing and registration. In a letter dated July 23, 2001, the PCX approved the Issuer's request to be removed from listing and registration on the PCX.

The Issuer stated that it made the decision to withdraw the Security from listing on the Exchange because it no longer deemed it necessary for the benefit of its shareholders to list its share on the PCX. According to the Issuer, the expense of registration outweighed any value to its shareholders. The Issuer represents that the Security will continue to be listed and traded on the New York Stock, Inc. (''NYSE''). The application relates solely to the withdrawal of the Security from listing on the PCX and shall have no effect upon its listing on the NYSE or its registration under section 12(b) of the Act.[3]

Any interested person may, on or before August 17, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–19578 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44625; File No. 10–131]

The Nasdaq Stock Market, Inc; Extension of Comment Period for The Nasdaq Stock Market, Inc.'s Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934 From July 30, 2001 to August 29, 2001

July 31, 2001.

The Nasdaq Stock Market, Inc. (''Nasdaq'') completed its application for registration as a national securities exchange (''Form 1'') under Section 6 [1] of the Securities Exchange Act of 1934 and submitted it to the Securities and Exchange Commission (''Commission'') on March 15, 2001. Notice of Nasdaq's Form 1 application appeared in the **Federal Register** on June 13, 2001, and the deadline for public comment was July 30, 2001.[2]

[1] 15 U.S.C. 78(f).

[2] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

In response to requests by the public to extend the comment period in order to provide additional time to review Nasdaq's Form 1, the Commission is extending the comment period on Nasdaq's Form 1 to August 29, 2001.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–19522 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44614; File No. SR–CTA–2001–02]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of Seventh Charges Amendment to the Second Restatement of the CTA Plan

July 30, 2001.

Pursuant to Rule 11Aa3–2 [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on July 3, 2001, the Consolidated Tape Association Plan (''CTA Plan'') participants (''Participants'') [2] filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') an amendment to the Second Restatement of the CTA Plan. In the amendment, the Participants propose to establish a new fee that applies to a vendor's dissemination of a real-time Network A last sale price information ticker over broadcast, cable or satellite television.

The Participants submitted this notice of proposed amendment to the CTA Plan, which is an effective national market system plan,[3] pursuant to Rule 11Aa3–2(c)(1).[4] The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2 [5]

The amendment seeks to establish as a permanent part of the Network A rate schedule a fee applicable to vendors that disseminate a real-time Network A ticker over broadcast, cable or satellite television. The proposed fee is $2.00 per 1,000 households reached. Each vendor must pay a minimum fee of $2,000 per month.

The fee may be prorated where a vendor broadcasts the Network A ticker for only a portion of the trading day. The proration is determined by dividing the number of minutes that the vendor broadcasts the Network A ticket during the primary market's trading day into the total number of minutes in the primary market's trading day (excluding after-hours sessions). Currently, the primary market trades from 9:30 a.m. to 4 p.m. Eastern Standard Time (or for 390 minutes) on each trading day. So, if a vendor only broadcasts the Network A ticker for two hours during the trading day, it would calculate the Network A fee by (A) multiplying the number of households reached by ($2.00 divided by 1,000 households reached) and (B) multiplying that product by (120 minutes divided by 390 minutes).

Where a vendor owns more than one network and broadcasts the Network A ticker simultaneously over more than one of its networks to a household, the vendor only needs to count that household once in the calculation of the number of households reached.

The Network A Participants propose to quantify the number of households reached for billing purposes through the use of the monthly *Nielsen Cable National Audience Demographic Report* (the ''Nielsen Report''). For January through June of each year, the Network A Participants will base the bills upon the number of households reached as of the end of the preceding September, as published in the Nielsen Report. For July through December of each year, the Network A Participants will base the bills upon the number of households reached as at the end of the preceding March, as published in the Nielsen Report.

Where the Nielsen Report does not provide the number of households reached for a vendor as at the end of March or September, the Network A Participants will use the most recent figure that the Nielsen Report has published as at the end of any of the six months preceding that March or September. If the Nielsen Report does not provide the number of households reached during that period, then the Network A Participants will ask the vendor to report the number of households that its broadcasts reach as at the end of each September and March. The Network A Participants reserve the right to verify the accuracy of the vendor's report.

The new Network A ticker fee applies to any television broadcasts of the Network A ticker, whether through broadcast, cable or satellite television. The vendor's television ticker service may not enable the vendor's subscribers to customize or interrogate the ticker stream or to electronically capture and store the last sale price information included in the stream. The vendor must provide the same ticker to each of its subscribers.

The Network A Participants believe that the establishment of the proposed fee will contribute to the widespread distribution of real-time market data around the world because it will make it possible for individuals to view real-time Network A prices throughout the trading day through television.

As an administrative matter, the Network A Participants have also changed Schedule A–1's broker-dealer enterprise maximum monthly fee, and the description of that fee in Footnote 5 of Schedule A–1, to reflect the CTA plan's annual adjustment of the fee.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Network A Participants have conducted a pilot program that permits vendors to disseminate a Network A last sale price information ticker by means of broadcast, cable and/or satellite television. Given the success of that pilot program, the CTA Plan limitation on the duration of pilot programs and the approach of the pilot program termination dates set forth in the earliest contracts that pilot participants enter into, the Network A Participants believe that it is now appropriate to convert the real-time Network A ticker initiative from a pilot program to a permanent part of the Network A rate schedule. The proposed new fee is identical to that which applied during the pilot program. (The Network A Participants note that with the termination of the real-time Network A ticker pilot program, Network A will have no remaining pilot programs in effect.)

Because the amendment establishes a fee collected on the Network A Participants' behalf in connection with access to, or use of, the facilities contemplated by the Plans, the amendment becomes effective upon filing with the Commission.

As a result, the amendment will ''be implemented'' immediately, as the new Network A fee will supersede and replace the pilot program. As additional vendors undertake to transmit the Network A ticker over television, they will be subject to the new fee in

[1] 17 CFR 240.11Aa3–2.

[2] Each Participant of the Plan executed the amendments. The Participants are the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.

[3] The CTA Plan has been designated as an effective transaction reporting plan pursuant to Rule 11Aa3–1(b). 17 CFR 240.11Aa3–1(b).

[4] 17 CFR 240.11Aa3–2(c)(1).

[5] 17 CFR 240.11Aa3–2.

accordance with the guidelines set forth in this letter.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The amendment will impose no burden on competition.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan as a result of the amendment.

G. Approval by Sponsors in Accordance with Plan

Under Section IV(b) of the CTA Plan, each CTA Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The amendment is so executed.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

In determining the amount of the fee, the Network A Participants have carried over the same fee that has applied during the real-time Network A television ticker pilot program.

The pilot program fee was established through a process of discussion and negotiation with the first participants in the pilot program. In the view of the Network A Participants, using the number of households reached as the billing metric for the dissemination of last sale price information through television is a reasonable counterpart to metrics used in other contexts, such as counting devices or quote packets. The billing metric is the same as television advertisers use, a fact that serves to discipline accuracy of the households-reached count (since the television networks have incentives to maximize the number of households reached while the advertisers have incentives to minimize the number).

The Network A Participants believe that the level of the fee is fair and reasonable and allows the television vendors to contribute an appropriate amount for the market data services that they provide. It constitutes a reasonable allocation of the costs of running the Network A securities markets to the purveyors of television ticker services.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 [6]

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

The new fee will permit vendors to disseminate a ticker stream of Network A last sale price information to viewers of broadcast, cable or satellite television.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent of Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Report

The Network A Participants will require vendors of Network A television ticker services to enter into the standard form of vendor agreement. It is the same form that the CTA Plan Participants require all vendors to enter into.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The CTA has designated this proposal as establishing or changing fees and other charges collected on behalf of all of the sponsors and participants, which under Rule 11Aa3–2(c)(3)(i) [7] of the Act renders the proposal effective upon receipt of this filing by the Commission.

The Commission may summarily abrogate the amendment within sixty days of its filing and require refilling and approval of the amendments by Commission order pursuant to Rule 11Aa3–2(c)(3)(iii) [8] of the Act, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

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, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the amendment will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to File No. SR–CTA–2001–02 and should be submitted by August 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19525 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 240.11Aa3–1.

[7] 17 CFR 240.11Aa3–2(c)(3)(i).

[8] 17 CFR 11Aa(c)(3)(iii).

[9] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44615; File No. SR–CTA–2001–3]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of Third Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan

July 30, 2001.

Pursuant to Rule 11Aa3–2 [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on July 16, 2001, the Consolidated Tape Association (''CTA'') participants (''Participants'') [2] filed with the

[1] 17 CFR 240.11Aa3–2.

[2] Each Participant executed the amendment. The Participants are the American Stock Exchange LLC (''AMEX''), Boston Stock Exchange, Inc. (''BSE''), Chicago Board Options Exchange, Inc. (''CBOE''), Chicago Stock Exchange, Inc. (''CHX''), Cincinnati Stock Exchange, Inc. ''CSE''), National Association of Securities Dealers, Inc. (''NASD''), New York

Securities and Exchange Commission (''Commission'' or ''SEC'') amendments to the Restated CTA Plan. In the amendment, the Participants propose to modify the definitions of two CTA Plan terms that the Restated Consolidated Quote (''CQ'') Plan incorporates by reference. Thus, the CTA Plan amendment will also have the effect of causing the same modifications to the Restated CQ Plan. However, achieving that result does not require any change to the text of the Restated CQ Plan.

Pursuant to Rule 11A3–2(c)(3)(iii) under the Act,[3] the Participants designate the amendment as involving solely technical or ministerial matters of the CTA Plan. As a result, the amendment has become effective upon filing with the Commission.[4] The Participants submitted this notice of proposed amendment to the CTA Plan, which is an effective national market system plan,[5] pursuant to Rule 11Aa3–2(c).[6] The Commission is publishing notice to solicit comments from interested persons on the amendment.

1. Description and Purpose of the Amendment

A. Rule 11Aa3–2

The Participants propose to change the CTA Plan definitions of ''Network A Eligible Securities'' and ''Network B Eligible Securities.'' The changes would allow a security that is listed on AMEX or another natinal securities exchange to remain as a Network B Eligible Security in the event that NYSE determines to admit a security that is lited on AMEX to dealings on the basis of unlisted trading privileges (''UTP''). The changes to the definitions in the CTA Plan would also have the effect of changing in the same manner the meanings of ''CQ Network A quotation information'' and ''CQ Network B quotation information'' for the purposes of the Restated CQ Plan.

In addition, the Participants propose an amendment that would assure that a security that trades over the facilities of the NASDAQ Stock Market (other than an exchange-listed security) would not become a Network B Eligible Security if the NASDAQ Stock Market procures status as a national securities exchange.

Current, Section I(p) of the CTA Plan defines ''Network A Eligible Securities'' as ''Eligible Securities admitted to dealings on NYSE''. Section I(q) defines ''Network B Eligible Securities'' as ''Eligible Securities admitted to dealings on the AMEX, BSE, CBOE, CHX, CSE, PSE, PHLX or on any other exchange, but not also admitted to dealings on NYSE.'' As a result of these definitions, if NYSE were to commence to trade a security that is listed on AMEX or on another exchange on the basis of UTP, the security would convert from a Network B Eligible Security to a Network A Eligible Security under the CTA Plan.

The proposed change would amend those definitions to prevent that conversion. That is, it would cause a security to remain a ''Network B Eligible Security,'' and not to convert to a ''Network A Eligible Security,'' if NYSE determines to admit the security to dealing on NYSE pursuant to UTP. Accordingly, last sale price information relating to such a security would remain ''CTA Network B information'' (as Section I(c) of the CTA Plan defines that term). Because the Restated CQ Plan incorporates by reference the CTA Plan definitions of ''Network A Eligible Securities'' and ''Network B Eligible Securities,'' this also means that quotation information relating to such a security would remain ''CQ Network B quotation information'' (as Section I(e) of the Restated CQ Plan defines that term).

As a further result of the proposed change, the terms and conditions of Network B market data contracts would apply to NYSE in respect of market data that NYSE makes available regarding Network B Eligible Securities that it admits to dealings pursuant to UTP. Also, NYSE would commence to share in Network B market data revenues insofar as trades in the shares of any such securities take place on NYSE.

CTA is aware that the NASDAQ Stock Market has applied for status as national securities exchange under Section 6[7] of the Act. Under the CTA Plan's current definition of ''Network B Eligible Securities,'' all securities listed on the NASDAQ Stock Market would qualify as ''Network B Eligible Securities'' upon its registration as a national securities exchange. In order to avoid that unintended consequence, the proposed change provides that a security that is listed on a market other than NYSE or AMEX is not an ''Eligible Security'' if the listing exchange reports last sale information relating to the security pursuant to transaction reporting plan other than the CTA Plan (such as the transaction reporting plan through which the NASDAQ Stock Market currently reports trades in securities that are not listed on an exchange).

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Because the amendment involves solely technical or ministerial matters of the Plan, it has become effective upon filing with the Commission.[8] However, the amendment will not ''be implemented'' until the first instance in which NYSE admits to dealing on the basis of UTP a security that is listed on another exchange.

D. Development and Implementation Phases

The amendment requires no development or implementation phases.

E. Analysis of Impact on Completion

The amendment will impose no burden on competition.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, the Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan as a result of the amendment.

G. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan, each CTA Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The amendment has been so executed.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

1. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

The amendment makes no change in the method of determination and imposition, and amount of, fees and charges.

Stock Exchange, Inc. (''NYSE''), Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''PHLX'').

[3] 17 CFR 240 11Aa3–2(c)(3)(ii).

[4] The Participants initially filed the CTA Plan amendments on July 3, 2001, as concerned solely with the administration of the Plan, pursuant to Rule 11Aa3–2(c)(3)(ii) under the Act. The Participants amended the filing on July 16, 2001 to designate the filing as submitted pursuant to Rule 11Aa3–2(c)(iii) under the Act.

[5] The CTA Plan has been designated as an effective transaction reporting plan pursuant to Rule 11Aa3–1(b). 17 CFR 240.11Aa3–1(b).

[6] 17 CFR 240.11 Aa3–2(c)(1).

[7] 15 U.S.C. 78f.

[8] The Commission notes that the effective date of the filing is July 16, 2001, the date on which the Commission received the amendment to the proposal. *See supra* note 4.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

If NYSE were to exercise UTP in respect of securities listed on another exchange, the amendment would require NYSE to report last sale price information and quotation information relating to those securities through the facilities that the Participants use to process, sequence, and disseminate Network B last sale price information and CQ Network B quotation information, rather than through network A facilities. The other Participants would continue to report their last sale price information and quotation information through the Network B facilities, just as they do today.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Data users would continue to gain access to transaction reports relating to securities that are listed on other exchanges that NYSE admits to dealings on the basis of UTP by means of a Network B data feed, just as today.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The CTA has designated these amendments as involving solely technical or ministerial matters, which, under Section 11Aa3–2(c)(3)(iii) of the Act,[9] renders the proposal effective upon receipt of this filing by the Commission

The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Section 11Aa3–2(c)(3)(iii) of the Act,[10] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendments are 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 plan amendments that are filed with the Commission, and all written communications relating to the proposed plan amendments 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 CTA. All submissions should refer to File No. SR–CTA–2001–03 and should be submitted by August 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19526 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 240.11Aa3–2(c)(3)(iii).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25095; 812–12538]

First American Investment Funds, Inc., et al.; Notice of Application

July 30, 2001.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

Summary of the Application: Applicants request an order to permit certain series of three registered open-end investment companies to acquire all of the assets and liabilities of the series of another registered open-end investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: First American Investment Funds, Inc. (''FAIF''), First American Funds, Inc. (''FAF''), First American Strategy Funds, Inc. (''FASF''), Firstar Funds, Inc. (''Firstar''), and U.S. Bancorp Piper Jaffray Asset Management, Inc. (''Asset Management'').

Filing Dates: The application was filed on June 1, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants: FAIF, FAF, FASF, 601 Second Avenue South, Minneapolis, MN 55440–1330; Firstar, 615 East Michigan Street, Milwaukee, WI 53201–5011; Asset Management, 601 Second Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 924–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (202)–942–8090).

Applicants' Representations

1. Firstar, a Wisconsin corporation, FAIF, a Maryland corporation, FAF and

FASF, each a Minnesota corporation, are open-end management investment companies registered under the Act. Firstar currently offers shares in 34 series, 33 of which will participate in the Reorganization (the ''Acquired Funds''). FAIF currently offers shares in 30 series, 11 of which will participate in the Reorganization (the ''Operating FAIF Funds''). FAIF also is organizing 14 new shell series, 13 of which will participate in the Reorganization (the ''New FAIF Funds,'' and together with the Operating FAIF Funds, each a ''FAIF Fund'' and collectively the ''FAIF Funds''). FAF currently offers shares in four series, each of which will participate in the Reorganization (the ''Operating FAF Funds,'' and together with the Operating FAIF Funds, the ''Operating Acquiring Funds''). FAF also is organizing two new shell series, each of which will participate in the Reorganization (the ''New FAF Funds,'' and together with the Operating FAF Funds, each a ''FAF Fund'' and collectively the ''FAF Funds''). None of the operating series of FASF will participate in the Reorganization, but FASF is organizing one new shell series that will participate in the Reorganization (the ''New FASF Fund,'' together with the New FAIF Funds and the New FAF Funds, the ''Shell Acquiring Funds,'' and together with the FAIF Funds and the FAF Funds, the ''Acquiring Funds''). The Acquired Funds and the Acquiring Funds are collectively referred to as the ''Funds'' and individually as a ''Fund.''

2. Asset Management, a wholly-owned subsidiary of U.S. Bank National Association (''U.S. Bank'' and an indirect subsidiary of U.S. Bancorp, is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). Asset Management is the current investment adviser to the Operating Acquiring Funds and the Acquired Funds, and will be the investment adviser to the Shell Acquiring Funds. U.S. Bank Trust National Association (''U.S. Trust'') and Firstar Bank, N.A. (''Firstar Bank'') are also wholly-owned subsidiaries of U.S. Bancorp. Asset Management, U.S. Bank, U.S. Trust, Firstar Bank and their affiliates constitute a common control group and are collectively referred to as the ''U.S. Bancorp Affiliates.''

3. Currently, the U.S. Bancorp Affiliates hold of record in their own name or through a nominee more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain Acquiring Funds and certain Acquired Funds. In addition, defined benefit plans for which U.S. Bancorp Affiliates have funding obligations own more than 5% of the outstanding shares of certain Acquiring Funds and certain Acquired Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain of the U.S. Bancorp Affiliates may, at times, own economic interests in one or more of the FAF or Firstar money market funds for their own account. No individual U.S. Bancorp Affiliate currently owns an economic interest of 5% or greater in any FAF or Firstar money market fund.

4. On May 22, 2001, the board of directors of Firstar (the ''Firstar Board''), including the directors who are not ''interested persons'' within the meaning of section 2(a(19) of the Act (''disinterested directors''), unanimously approved the proposed reorganizations of the respective Acquired Funds with and into the corresponding Acquiring Funds, subject to the satisfaction of certain conditions (collectively referred to as the ''Reorganizations'' and individually as a ''Reorganization''). On June 1, 2001, each of the boards of directors of the Acquiring Funds (collectively, the ''First American Boards''), including in each case all of the disinterested directors, approved the applicable Reorganization.

5. Pursuant to the Reorganization agreements between the Acquired Funds and each of the Acquiring Funds (the ''Reorganization Agreements''), each Acquiring Fund proposes to acquire all of the assets and assume all of the liabilities of its corresponding Acquired Fund in exchange for shares of designated classes of the Acquiring Fund equal to the value of the aggregate net assets of the Acquired Fund immediately prior to the effective time of the Reorganization.[1] The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund class by the net asset value per share of the corresponding Acquiring Fund class, computed as of the close of business immediately prior to the effective time of the Reorganization. The assets of each Acquired Fund and each Acquiring Fund will be valued in accordance with their respective valuation procedures as set forth in their then current prospectuses and statements of additional information. Each Acquired Fund will distribute *pro rata* to its shareholders of record the shares of the corresponding Acquiring Fund in exchange for each shareholder's Acquired Fund shares. Afterwards, no additional shares representing interests in the Acquired Fund will be issued, and the Acquired Fund will be liquidated. The distribution will be accomplished by the issuance of the Acquiring Fund shares to open accounts on the share records of the Acquiring Fund in the names of the Acquired Fund shareholders representing the number of Acquiring Fund shares due each shareholder pursuant to the Reorganization Agreement. Simultaneously, all issued and outstanding shares of the Acquired Fund will be canceled on the books of the Acquired Fund.

6. Four classes of shares of the FAIF Funds (Class A, Class B, Class S and Class Y), three classes of shares of the FAF Funds (Class A, Class I and Class S), and two classes of shares of the FASF Strategy Global Growth Allocation Fund (Class S and Class Y) will be issued in conjunction with the Reorganizations.

7. The Firstar non-money market funds currently offer shares in four classes (Retail A, Retail B, Y, and

[1] The Acquired Funds and their corresponding Acquiring Funds are: (1) Firstar Money Market Fund and FAF Prime Obligations Fund; (2) Firstar Institutional Money Market Fund and FAF Prime Obligations Fund; (3) Firstar Tax-Exempt Money Market Fund and FAF Tax Free Obligations Fund; (4) Firstar Ohio Tax-Exempt Money Market Fund and FAF Ohio Tax Free Obligations Fund; (5) Firstar U.S. Government Money Market Fund and FAF Government Obligations Fund; (6) Firstar U.S. Treasury Money Market Fund (Retail A shares) and FAF Treasury Reserve Fund; Firstar U.S. Treasury Money Market Fund (Institutional shares) and FAF Treasury Obligations Fund; (7) Firstar Short-Term Bond Fund and FAIF Limited Term Income Fund; (8) Firstar Intermediate Bond Fund and FAIF Intermediate Term Income Fund; (9) Firstar Bond IMMDEX Fund and FAIF Bond IMMDEX Fund; (10) Firstar U.S. Government Securities Fund and FAIF U.S. Government Securities Fund; (11) Firstar Aggregated Bond Fund and FAIF Fixed Income Fund; (12) Firstar Strategic Income Fund and FAIF Corporate Bond Fund; (13) Firstar Tax-Exempt Intermediate Bond Fund and FAIF Intermediate Tax Free Fund; (14) Firstar Missouri Tax-Exempt Bond Fund and FAIF Missouri Tax Free Fund; (15) Firstar National Municipal Bond Fund and FAIF Tax Free Fund; (16) Firstar Balanced Income Fund and FAIF Balanced Fund; (17) Firstar Balanced Growth Fund and FAIF Balanced Fund; (18) Firstar Growth & Income Fund and FAIF Growth & Income Fund; (19) Firstar Equity Income Fund and FAIF Equity Income Fund; (20) Firstar Relative Value Fund and FAIF Relative Value Fund; (21) Firstar Equity Index Fund and FAIF Equity Index Fund; (22) Firstar Large Cap Core Equity Fund and FAIF Large Cap Core Fund; (23) Firstar Large Cap Growth Fund and FAIF Capital Growth Fund; (24) Firstar International Value Fund and FAIF International Fund; (25) Firstar International Growth Fund and FAIF International Fund; (26) Firstar MidCap Index Fund and FAIF Mid Cap Index Fund; (27) Firstar MidCap Core Equity Fund and FAIF Mid Cap Core Fund; (28) Firstar Small Cap Index Fund and FAIF Small Cap Index Fund; (29) Firstar Small Cap Core Equity Fund and FAIF Small Cap Core Fund; (30) Firstar Science & Technology Fund and FAIF Science & Technology Fund; (31) First MicroCap Fund and FAIF Micro Cap Fund; (32) Firstar REIT and FAIF Real Estate Securities Fund; (33) Firstar Global Equity Fund and FASF Strategy Global Growth Allocation Fund.

Institutional), except that Firstar Short-Term Bond Fund and Firstar Intermediate Bond Fund offer shares in three classes (Retail A, Y, and Institutional), and only two classes of shares in the case of the Firstar Tax-Exempt Intermediate Bond Fund, Firstar Missouri Tax-Exempt Bond Fund, Firstar National Municipal Bond Fund (Retail A and Institutional), and Firstar Global Equity Fund (Y and Institutional). The Firstar Money Market Fund currently offers shares in one class (Retail A), and the Firstar Institutional Money Market Fund offers shares in one class (Shares). The remaining Firstar money market funds offer shares in two classes (Retail A and Institutional).

8. In each Reorganization of an Acquired Fund into a corresponding FAIF Fund, shareholders of Retail A, Retail B, Y, and Institutional shares of the Acquired Fund will receive Class A, Class B, Class S, and Class Y shares, respectively, of the corresponding FAIR Fund. In each Reorganization of an Acquired Fund into a corresponding FAR Fund, shareholders of Retail A and Institutional shares will receive Class A and Class S shares, respectively, of the corresponding FAR Fund.[2] Shareholders of the Firstar Institutional Money Market Fund will receive Class I shares of the FAR Prime Global Equity Fund will receive Class S and Class Y shares, respectively, of the FASF Strategy Global Growth Allocation Fund. Applicants state that the rights and obligations of the Acquired Funds are substantially similar to those of the corresponding class of shares of the Acquiring Funds into which they will be reorganized.

9. No sales charges will be incurred by Acquired Fund shareholders in connection with their acquisition of Acquiring Fund shares pursuant to the applicable Reorganization Agreement. For purposes of calculating any deferred sales charge, holders of Retail A or Retail B shares of an Acquired Fund will be deemed to have held the Class A shares or Class B shares of the Acquiring Fund received in the Reorganization since the date such shareholders initially purchased the shares of the Acquired Fund.

10. The Firstar Board and the First American Boards, including all of their disinterested directors, found that participation in the Reorganizations is in the best interest of each of the Funds, and that the interests of existing shareholders in each of the Funds will not be diluted as a result of the Reorganizations. In approving the Reorganizations, the Firstar Board and the First American Boards considered, among other factors: (a) The potential effect of the Reorganizations on the shareholders of the Funds; (b) the capabilities, practices, and resources of FAAM and Asset Management; (c) the investment advisory and other fees paid by the Acquiring Funds, and the historical and projected expense ratios of the Acquiring Funds as compared with those of the Acquired Funds; (d) the investment objectives, policies, and limitations of the Acquiring Funds and their relative compatibility with those of the Acquired Funds; (e) the terms and conditions of the Reorganization Agreements; (f) the anticipated tax-free status of the Reorganizations; and (g) the number of investment portfolio options that would be available to Acquired Fund shareholders after the Reorganizations. U.S. Bancorp has agreed to pay (or cause one of its affiliates to pay) the customary expenses incurred by the Funds in connection with the Reorganizations.

11. The Closing is expected to occur in mid to late September 2001. Each Reorganization Agreement may be terminated prior to the Closing upon the mutual consent of both parties, or by one party if certain conditions are not met and a majority of the party's board of directors votes to terminate the Reorganization Agreement.

12. Three separate registration statements on Form N–14, each containing a combined prospectus/proxy statement, were filed with the Commission on June 1, 2001 with respect to the Reorganizations of certain Acquired Funds into FAIF Funds, the Reorganizations of certain Acquired Funds (or a particular class of shares of such Acquired Fund) into FAF Funds, and the Reorganization of the Firstar Global Equity Fund into the FASF Strategy Global Growth Allocation Fund, respectively. It is expected that each prospectus/proxy statement will be sent to the shareholders of the relevant Acquired Funds on or about July 31, 2001. Three separate registration statements for shares of the New FAIF Funds, the New FAF Funds, and the FASF Strategy Global Growth Allocation Fund, respectively, were filed with the Commission on June 27, 2001, and will each become effective on or about September 10, 2001. A combined meeting of the Acquired Funds' shareholders is expected to be held on August 30, 2001 to approve the Reorganization Agreements.

13. Each Reorganization is subject to a number of conditions, including: (a) The Acquired Fund shareholders (or, in the case of the Firstar U.S. Treasury Money Market Fund, the shareholders of Retail A shares and Institutional shares, separately) will have approved the Reorganization Agreements; (b) the Acquired Fund will have received an opinion of counsel with respect to the federal income tax aspects of the Reorganization; (c) applicants will have received exemptive relief from the SEC with respect to the issues in the application; (d) a registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; and (e) each Acquired Fund that is not reorganizing into a Shell Acquiring Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and realized net capital gain, if any, for the taxable year. Applicants agree not to make any material changes to the Reorganization Agreements that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus thee Reorganizations may be prohibited by section 17(a) of the Act.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 because the

[2] Shareholders of Retail A shares of the Firstar U.S. Treasury Money Market Fund will receive Class A shares of the FAF Treasury Reserve Fund, and shareholders, of Institutional shares of the Firstar U.S. Treasury Money Market Fund will receive Class S shares of the FAF Treasury Obligations Fund.

Funds may be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by U.S. Bancorp Affiliates of more than 5% of the outstanding voting securities of certain of the Acquired Funds and certain of the Operating Acquiring Funds, each Acquiring Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquired Fund, and vice versa, for reasons not based solely on their common adviser, common trustees and/or common officers. In addition, where the U.S. Bancorp Affiliates' ownership, with power to vote, exceeds 25%, the Acquired Funds and the Operating Acquiring Funds may be presumed to be under common control and, therefore, affiliated persons under section 2(a)(3)(C) of the Act. Accordingly, the Reorganization may not meet the ''solely by reason of'' requirement of rule 17a–8 under the Act.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Firstar Board and the First American Boards, including the disinterested, have determined that participation in the Reorganizations is in the best interest of the shareholders of the Acquiring Funds and the Acquired Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. Applicants also note that the exchange of the Acquired Funds' assets for shares of the Acquiring Funds will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19524 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1958/803–162]

Kamilche Company; Notice of Application

July 31, 2001.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

Applicant: Kamilche Company

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

SUMMARY OF APPLICATION: Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term ''investment adviser.''

Filing Dates: The application was filed on June 1, 2001 and amended on July 10, 2001 and July 24, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 25, 2001 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and this issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicant, Kamilche Company, Suite 2800, 1301 Fifth Avenue, Seattle, Washington 98101–2613.

FOR FURTHER INFORMATION CONTACT: Marticha L. Cary, Attorney, or Jennifer L. Sawin, Assistant Director, at (202) 942–0719 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a Washington corporation in 1974 to be a holding company of an operating company owned by the lineal descendants of Mark E. Reed and Irene S. Reed and the spouses of those descendants (the ''Kamilche Family''). Applicant more recently began investing in partnership interests and other investments. Applicant also performs ''family office'' functions for the Kamilche Company and trusts, foundations, partnerships, limited liability companies, and other entities created by and for the sole benefit of the Kamilche Family (collectively, the ''Clients'').

2. Applicant represents that the ''family office'' services it provides to Clients include: facilitation of estate planning; facilitation of property, casualty, and liability insurance reviews; record keeping; implementation of tax and investment decisions made by Clients; partnership administration; and coordination of professional relationships with accountants, attorneys, custodians, and others as needed. Applicant represents that it also provides the following investment-related ''family-office'' services to Clients: Estate planning assistance, preparation and analysis of financial statements and financial planning packages, trust administration, and coordination of professional relationships with investment advisers.

3. Applicant represents that the investment advisory services that it provides—in the context of the services described above—make up only a small portion of this overall activities, more specifically, less than 25% of one employee's monthly responsibilities. Applicant further represents that it does not exercise investment discretion over any of Clients' investments and that all Clients make their own investment decisions based only in part on services provided by Applicant.

4. Applicant represents that the payments it receives for its services are, in large part, retainers or compensation for administrative, accounting, support, and oversight services that it provides. Applicant represents that only a small portion of the payments that it receives can be characterized as investment advisory in nature.

5. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant represents that it does not engage in any advertising, attend any investment-related conferences as a vendor, or conduct any marketing activities whatsoever; nor is Applicant listed in any phone book as an investment adviser.

6. Applicant represents that it has no plans, now or in the future, to solicit or accept clients from the retail or institutional public. Applicant further

represents that its exclusive mission is to be a holding company for the Kamilche Family's operating company and more recently other investments with a portion of this time spent on ''family office'' services.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities * * *.'' Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement. Applicant asserts that it does not qualify for any of the exemptions provided by section 203(b). Applicant also asserts that it would not be prohibited from registering with the Commission under section 203A(a) because it has assets under management of not less than $25,000,000.

3. Applicant requests that the SEC declare it to be a person not within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring that it be registered under the Advisers Act because it offers its services only to members of the Kamilche Family and related entities, its investment activities make up only a small portion of the overall services that it provides, most of the compensation that it receives is for services other than the rendering of investment advice, and it does not and will not hold itself out to the public as an investment adviser.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19579 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 6, 2001: a closed meeting will be held on Thursday, August 9, 2001, at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions sets forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), 9(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(i), 9(ii) and (10), permit consideration of the schedule matters at the closed meeting.

The subject matter of the closed meeting scheduled for Thursday, August 9, 2001, will be:

Institution and settlement of injunctive actions; and

Institutions and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 2, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–19821 Filed 8–2–01; 3:50 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44621; File No. SR–Amex–s200–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC Relating to the Listing and Trading of Index-Linked Exchangeable Notes

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on June 15, 2001.[3] Amendment No. 2 was filed on July 30, 2001.[4] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons and to grant accelerated approval to the proposed rule change and Amendment Nos. 1 and 2.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading index-linked exchangeable notes pursuant to Section 107A of the Annex *Company Guide.* The text of the proposed rule change, as amended, follows. Additions are in *italics.*

* * * * *

Section 107 Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading.

Such issues will be evaluated for listing against the following criteria:

A. General Criteria

(a) through (c) No change.

B. Equity Linked Term Notes

(a) through (h) No change.

C. Index-Linked Exchangeable Notes

Index-linked exchangeable notes which are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 13, 2001 (''Amendment No. 1''). In Amendment No. 1, Amex clarified the following: broker-dealers cannot be reasonable for calculating the Index; index-linked exchangeable notes will be treated as equity instruments; the notes are subject to call by the issuer; and the circumstances that would result in the suspension of trading in or the removal from listing of a series of index-linked exchangeable notes.

[4] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated July 27, 2001 (''Amendment No. 2''). In Amendment No. 2, Amex made a correction to the proposed rule text to indicate that it is the Exchange rather than the issuer who receives approval from the Commission for indices; clarified that if a broker-dealer is responsible for maintaining an index, that the index cannot be calculated by *any* broker-dealer; and indicated that it will highlight the ''exchangeability'' feature of index-linked exchangeable notes in its circular to members.

exchange a specified minimum amount of notes), on call by the issuer or at maturity for a cash amount (the ''Cash Value Amount'') based on the reported market prices of the Underlying Stocks of an Underlying Index will be considered for listing and trading on the Exchange pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, provided:

(a) Both the issue and the issuer of such security meet the criteria set forth above, ''General Criteria'', except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(b) The issue has a minimum term of one year.

(c) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Section 101(A) of the Company Guide. In the alternative, the issuer will be expected: (1) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Section 101(A); and (ii) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(d) The Index to which an exchangeable-note is linked shall either be (i) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivative securities (each, a ''Third-Party Index'') either by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act) and rules thereunder or by the Exchange under rules adopted pursuant to Rule 19b–4(E); or (ii) indices which the issuer has created and for which an Exchange will have obtained approval from either the Commission pursuant to Section 19(b)(2) and rules thereunder or from the Exchange under rules adopted pursuant to Rule 19b–4(e) (each, and ''Issuer Index''). The Issuer Indices and their underlying securities must meet one of the following:

(i) the procedures and criteria set forth in Commentary .02 to Rule 901C; or

(ii) the criteria set forth in paragraphs (d) through (f) and (h) of Section 107B of the Amex Company Guide, the index concentration limits set forth in Commentary .02 to Rule 901C, and paragraph (b)(iii) of Rule 901C, Commentary .02.

(e) Index-linked Exchangeable Notes will be treated as equity instruments.

(f) Beginning twelve months after the initial issuance of a series of index-linked exchangeable notes, the Exchange will consider the suspension of trading in or removal from listing of that series of index-linked exchangeable noted under any of the following circumstances:

(i) if the series has fewer than 50,000 notes issued and outstanding;

(ii) if the market value of all index-linked exchangeable notes of that series issued and outstanding is less than $1,000,000; or

(iii) if such other event shall occur on such other condition exists which in the option of the Exchange makes further dealings on the Exchange inadvisable.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

1. Purpose

Under Section 107A of the Amex *Company Guide,* the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds debentures, or warrants.[5] The Amex now proposes to list for trading, under new Section 107C, index-linked exchangeable notes that are intended to allow investors to hold a single, exchange-listed not exchangeable for the cash value of the underlying stocks index (''Underlying Stocks'') of an index (''Underlying Index,'' ''Index,'' Underlying Indices,'' and ''Indices''), and thereby to acquire-in a single security and a single trade-exposure to a specific index of equity securities.

Each Underlying Index must be:

- An index that has been created by a third party and approved for the trading of options or other derivative securities (each, a ''Third-Party Index'') by the Commission under section 19(b)(2) of the Act,[6] and the rules thereunder, or by the Exchangeable under rules adopted pursuant to Rule 19b–4(e) [7] or
- An index which the issuer has created and for which an Exchange will have obtained approval from the Commission pursuant to Section 19(b)(2) [8] and the rules thereunder, or from the Exchange under rules adopted pursuant to Rule 19b–4(e) [9] (each, an ''Issuer Index'').

In addition, each Underlying Stock will meet the following criteria:

- Each issuer of an Underlying Stock shall be an Exchange Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities association and is subject to last sale reporting;
- Each Underlying Stock of a Third-Party Index will meet the standards set forth in the Commission's Section 19(b)(2) order approving the index, or the Exchange rules under which is was approved, as the case may be; and
- Each Underlying Stock of an Issuer Index will meet (with minor modifications set forth below) the criteria in Exchange Rule 901C, Commentary .02; or (with minor modifications set forth below) the criteria for underlying securities in Exchange Section 107B and the index concentration limits in Exchange Rule 901C, Commentary .02.

Description of Index-Linked Exchangeable Notes

Index-linked exchangeable notes are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer or at maturity for a cash amount (the ''Cash Value Amount'') based on the reported market prices of the Underlying Stocks of an Underlying Index. Each index-linked exchangeable note is intended to provide investors with an instrument that closely tracks the Underlying Index. Notwithstanding that the notes are

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 240.19b–4(e).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 240.19b–4(e).

linked to an index, they will trade as a single security. The linkage is on a 1-to-1 basis so that a holder of notes is fully exposed to depreciation and appreciation of the Underlying Stocks. The Exchange will disseminate, on a real time basis for each series of index-linked exchangeable notes, an estimate, updated every 15 seconds, of the value of a note of that series. This will be based, for example, upon current information regarding the value of the Underlying Index. The value for any newly created index shall be disseminated by the Exchange on a real time basis and updated every 15 seconds.

Index-linked exchangeable notes are expected to trade at a lower cost than the cost of trading each of the Underlying Stocks separately (because of reduced commission and custody costs), and also to give investors the ability to maintain index exposure without any management or administrative fees and ongoing expenses. The initial offering price for an index-linked exchangeable note will be established on the date the note is priced for sale to the public. In addition, unlike many hybrid products, index-linked exchangeable notes will not include embedded options or leverage. Because index-linked exchangeable notes are debt securities, holders will not be recognized by issuers of the Underlying Stocks as the owner of those stocks and will have no rights as a stockholder with respect to those stocks.

Additional issuances of a series of index-linked exchangeable notes may be made subsequent to the initial issuance of that series (and prior to the maturity of that series) for purposes of providing market liquidity. Each series of index-linked exchangeable notes may or may not provide for quarterly interest coupons based on dividends or other cash distributions paid on the Underlying Stocks during a prescribed period and an annual supplemental coupon based on the value of the Underlying Index during a prescribed period. Index-linked exchangeable notes will generally be acquired, held, or transferred only in round-lot amounts (or round-lot multiples) of 100 notes, although odd-lot orders are permissible.

Beginning on a specified date and up to a specified date prior to the maturity date or any call date, the holder of an index-linked exchangeable note may exchange some or all of its index-linked exchangeable notes for their Cash Value Amount, plus any accrued but unpaid quarterly interest coupons. Holders will generally be required to exchange a certain specified minimum amount of index-linked exchangeable notes, although this minimum requirement may be waived following a downgrade in the issuer's credit rating below specified thresholds or the occurrence of other specified events.

Index-linked exchangeable notes may be subject to call by the issuer on specified dates or during specified periods, upon at least 30, but not more than 60, days notice to holders. The call price would be equal to the Cash Value Amount, plus any accrued but unpaid quarterly interest coupons.

At maturity, the holder of an index-linked exchangeable note will receive cash amount equal to the Cash Value Amount, plus any accumulated but unpaid quarterly and annual supplemental interest coupons. Although a specific maturity date will not be established until the time of the initial offering of a series of index-linked exchangeable notes, the index-linked exchangeable notes will provide for maturity within a period of not less than one nor more than thirty years from the date of issue.

In connection with the initial listing of each series of index-linked exchangeable notes, the Exchange has established that a minimum of 150,000 notes held by at least 400 holders be required to be outstanding when trading begins. Beginning twelve months after the initial issuance of a series of index-linked exchangeable notes, the Exchange will consider the suspension of trading in or removal from listing of that series of index-linked exchangeable notes under any of the following circumstances: (i) If the series has fewer than 50,000 notes issued and outstanding; (ii) if the market value of all index-linked exchangeable notes of that series issued and outstanding is less than $1 million; or (iii) if such other event shall occur or such other condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Eligibility Standards for Issuers

The following standards shall apply to each issuer of index-linked exchangeable notes:

(A) Assets/Equity—The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in Section 101 of the Amex *Company Guide*, the Exchange generally will require the issue to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

(B) Distribution—Minimum public distribution of 150,000 notes with a minimum of 400 public noteholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(C) Pricipal Amount/Aggregate Market Value—Not less than $4 million.

(D) Tangible Net Worth—The issuer will be expected to have a minimum tangible net worth in excess of $250 million, and to otherwise substantially exceed the earnings requirements set forth in Section 101(A) of the Amex *Company Guide.* In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of $150 million, and to otherwise substantially exceed the earnings requirements set forth in Section 101(A); and (ii) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

Description of the Underlying Indices

Underlying Indices will either be: (i) Indices that have been created by a third party and have been reviewed and approved for the trading of options or other derivative securities (each, a ''Third-Party Index'') either by the Commission under Section 19(b)(2) of the Act,[10] and the rules thereunder, or by the Exchange under rules adopted pursuant to Rule 19b–4(e)[11]; or (ii) indices which the issuer has created and for which an Exchange will have obtained approval either from the Commission pursuant to Section 19(b)(2) of the Act[12] and rules thereunder or from the Exchange under rules adopted pursuant to Rule 19b–4(e)[13] (each, an ''Issuer Index'').

All changes to an Underlying Index, including the deletion and addition of Underlying Stocks, index rebalancings, and changes to the calculation of the index, will be made in accordance with the Commission's Section 19(b)(2) order or the Exchange rules under which that index was approved, as the case may be.

The Underlying Index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology. If the issuer or a broker-

[10] 15 U.S.C. 78s(b).

[11] 17 CFR 240.19b–4(e).

[12] 15 U.S.C. 78s(b).

[13] 17 CFR 240.19b–4(e).

dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, it would be required to erect and maintain a ''Fire Wall,'' in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel, and the index must be calculated by a third party who is not a broker-dealer.[14]

Eligibility Standards for Underlying Stocks

The following standards shall apply to each Underlying Stock:

(A) General Criteria—Each issuer of an Underlying Stock shall be an Exchange Act reporting company that is listed on a national securities exchange or is traded through the facilities of a national securities association and is subject to last sale reporting.

(B) Criteria Applicable to Underlying Stocks of Third-Party Indices—In addition to meeting the ''General Criteria'' set forth under clause (A) above, each Underlying Stock of a Third-Party Index shall also meet the criteria specified for Underlying Stocks of that index in the Commission's Section 19(b)(2) order approving that index or the Exchange rules under which it was approved.

(C) Criteria Applicable to Underlying Stocks of Issuer Indices—In addition to meeting the ''General Criteria'' set forth under clause (A) above, each Underlying Stock of an Issuer Index shall also meet the criteria specified in (1) or (2) below:

(1) Each Underlying Stock of an Issuer Index shall meet each of the following criteria:

(a) a minimum market value of at least $75 million, except that for each of the lowest weighted Underlying Stocks in the index that in aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

(b) trading volume in each of the last six months of not less than 1 million shares, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(c) in a capitalization-weighted index, the lesser of the five highest weighted Underlying Stocks in the index or the highest weighted Underlying Stocks in the index that in the aggregate represent at least 30% of the total number of Underlying Stocks in the index, each have an average monthly trading volume of at least 2 million shares over the previous six months;

(d) 90% of the index's numerical index value and at least 80% of the total number of Underlying Stocks will meet the then current criteria for standardized option trading set forth in Exchange Rule 915;

(e) American Depositary Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index;

(f) all component stocks or ADRs will either be listed on the Amex or the New York Stock Exchange or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and reported National Market System securities; and

(g) no Underlying Stock will represent more than 25% of the weight of the index, and the five highest weighted Underlying Stocks in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Stocks).

The standards set forth in clauses (a) to (g) above must be continuously maintained, except that:

(a) The criteria that no single Underlying Stock represent more than 25% of the weight of the index and the five highest weighted Underlying Stocks in the index can not represent more than 50% (or 60% of indices with less than 25 Underlying Stocks) of the weight of the index, need only be satisfied for capitalization-weighted and price-weighted indices as of the first day of January and July in each year;

(b) the total number of Underlying Stocks in the index may not increase or decrease by more than 33⅓% from the number of Underlying Stocks in the index at the time of its initial listing, and in no event may be fewer than nine Underlying Stocks;

(c) the trading volume of each Underlying Stock in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted Underlying Stocks in the index that in the aggregate account for no more than 10% of the weight of the index trading volume must be at least 400,000 shares for each of the last six months; and

(d) in a capitalization-weighted index, the lesser of the five highest weighted Underlying Stocks in the index or the highest weighted Underlying Stocks in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1 million shares over the previous six months.

(2) In the alternative, each Underlying Stock of an Issuer Index shall meet each of the following criteria:

(a)(i) A minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares; (ii) a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares;

(b) No Underlying Stock will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities), except that for capitalization-weighted and price-weighted indices these standards need be satisfied only as of the first day of January and July in each year;

(c) If any Underlying Stock is the stock of a non-U.S. company that is traded in the U.S. market as sponsored American Depositary Shares (''ADS'') or ADRs then for each such security the Exchange shall either:

(i) have in place a comprehensive surveillance sharing agreement with the primary exchange on which each security underlying the ADS or ADR is traded;

(ii) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADSs) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security over the six-month period preceding the date of listing of the related index-linked exchangeable note; or

(iii)(A) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in each non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of listing of the related index-linked exchangeable note; (B) the average daily

[14] *See* Amendment No. 2, *supra* note 4.

trading volume for each non-U.S. security in the U.S. markets over the six months preceding the date of listing of the related index-linked exchangeable note is 100,000 or more shares; and (C) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of listing of the related index-linked exchangeable note.

(d) An Underlying Stock may not exceed 5% of the total outstanding common shares of the issuer of that Underlying Stock, however, if any Underlying Stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such index-linked exchangeable note the instrument may not exceed:

(i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market;

(ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market; and

(iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six-month period preceding the date of listing occurs in the U.S. market.

(e) if any non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six-month period preceding the date of listing, then the instrument may not be linked to that non-U.S. security.

If an issuer proposes to list an index-linked exchangeable note that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division, will evaluate the maximum percentage of index-linked exchangeable note that may be issued on a case-by-case basis.

If an Underlying Stock to which an index-linked exchangeable note is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such Underlying Stock shall be 2,000.

Exchange Rules Applicable to Index-Linked Exchangeable Notes

Index-linked Exchangeable Notes will be treated as equity instruments. Index-linked exchangeable notes will be subject to all Exchange rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to Exchange Rule 117, and responsibilities of the specialist. Exchange equity margin rules and the regular equity trading hours of 9:30 am to 4 pm will apply to transactions in index-linked exchangeable notes.

In addition, consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with respect to, among other things, the fact that the notes are subject to call by the issuer, and the member firm ''know your customer'' responsibilities under Exchange Rule 411. Lastly, as with other structured products, the Exchange will closely monitor activity in index-linked exchangeable notes to identify and deter any potential improper trading activity in the index-linked exchangeable notes.

2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act [15] in general and furthers the objectives of Section 6(b)(5)[16] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–23 and should be submitted by August 27, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act [17] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the Exchange's proposal to list and trade index-linked exchangeable notes will provide an instrument for investors to achieve desired investment objectives through the purchase of debt securities—index-linked exchangeable notes—exchangeable for the cash value of the Underlying Stocks of an Underlying Index.[18] Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, protect investors and the public interest, and is not designed to

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] Index-linked exchangeable notes will generally be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 notes although odd-lot orders are permissible. Although these notes will have features similar to other index related products, they differ from other products with respect to their exchangeability feature. The Commission notes that the holder of the note may exchange the notes at his or her option, on call by the issuer, or a maturity for the cash value based upon the reported market prices of the Underlying Stocks of an Underlying Index. Holders, however, will generally be required to exchange a certain specified minimum amount of index-linked exchangeable notes, although this minimum requirement may be waived following a downgrade in the issuer's credit rating below specified thresholds or the occurrence of other specified events.

permit unfair discrimination between customers, issuers, brokers, or dealers.[19]

The Commission notes that the initial offering price of an index-linked exchangeable note will be determined on the date that the note is priced for sale to the public. The Commission believes that index-linked exchangeable notes will be attractive to investors because they are expected to trade at lower cost than the cost of trading each of the Underlying Stocks separately. The Commission also notes that the Exchange will disseminate an estimate of the value of a note for each series of index-linked exchangeable notes, on a real time basis, every 15 seconds. The value of any Underlying Index will also be publicly available to investors on a real time basis. The Amex, for example, has stated that to the extent there is an existing Index, it will ensure its value is publicly available, and if it is a new Index, that the Amex would publish the value itself on a real time basis. This will ensure investors receive up-to-date information on the value of the note and the Underlying Index. Accordingly, index-linked exchangeable notes should allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies not currently available to retail investors; and (3) reduce transaction costs for trading a group or index of securities.

Although the value of index-linked exchangeable notes will be based on the value of the Underlying Stocks in an Underlying Index, index-linked exchangeable notes are not leveraged instruments.[20] In essence, index-linked exchangeable notes are debt securities based on the Underlying Stocks of an Underlying Index; the holders of such notes will not be considered owners of the Underlying Stocks and will not have the rights of a stockholder in those stocks. However, index-linked exchangeable notes will be regulated as equity instruments and will be subject to all of the Exchange's rules governing the trading of equity securities. Nevertheless, the Commission believes that the unique nature of index-linked exchangeable notes, related to, among other things, the exchangeability feature,[21] raise certain product design, disclosure, trading, and other issues that must be addressed.

A. Index-Linked Exchangeable Notes Generally

The Commission believes that the proposed index-linked exchangeable notes are reasonably designed to provide investors with an investment vehicle that substantially reflects the value of the Underlying Stocks of an Underlying Index. Index-linked exchangeable notes will be treated as equity instruments subject to Amex rules governing the trading of equity securities. As such, the Commission finds that adequate rules and procedures exist to govern the trading of index-linked exchangeable notes. In this regard, the Commission notes that the Exchange will impose specific criteria in the selection of issuers, the Underlying Stocks, and the Underlying Indices.

As noted above, the Amex rules for index-linked exchangeable notes contain specific criteria for issuers. For example, the issuer must have a minimum tangible net worth in excess of $250 million and substantially exceed the earnings requirements in Section 101(A) of the Amex *Company Guide;* or a minimum tangible value of $150 million, substantially exceed the earnings requirements in Section 101(A) of the Amex *Company Guide,* and not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth. These criteria are in part intended to ensure that the issuer has enough assets to meet its obligations under the terms of the note and should help to reduce systematic risk.

The minimum issue requirements for the issue of index-linked exchangeable notes should also serve to establish a minimum level of liquidity for the product. These issues requirements include: (i) A minimum public distribution of 150,000 notes with a minimum of 400 public noteholders (no minimum number of holders if traded in one thousand dollar denominations), and (ii) market value of $4 million.

The Amex rules applicable to the index-linked exchangeable notes also contain minimum requirements for the Indices the note can be linked to and the underlying components of those Indices. For example, because all components of an Underlying Index must be a U.S. reporting company, there will be information of available Index component stocks. Further, the Amex's proposed rules for the Indices underlying index-linked exchangeable notes are linked to other approved criteria for index related products. Accordingly, any Underlying Index would have to follow the criteria adopted by the Commission for that Index, including the criteria for component stocks already in Amex's rules. These requirements will generally contain, among other things, minimum market capitalization, trading volume, and concentration requirements that are designed to reduce manipulation concerns and ensure a minimum level of liquidity for component securities.

In summary, the rules for selecting components of Indices are intended to make the Underlying Stocks and the Underlying Indices representative of the market they are intended to reflect as well as to reduce manipulation concerns by setting forth minimum liquidity standards for Underlying Stocks. Accordingly, the Commission believes that these criteria should serve to ensure that the Underlying Stocks of Underlying Indices are well capitalized and actively traded.

B. Disclosure

The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading index-linked exchangeable notes. The Commission notes that upon the initial listing of any class of index-linked exchangeable notes, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security.[22] The circular will also note Exchange members' responsibilities under Exchange Rule 411 (''know your customer rule'') regarding transactions in index-linked exchangeable notes.

[19] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[20] In contrast, proposals to list exchange-trade derivative products that contain a built-in leverage feature or component raise additional regulatory issues, including heightened concerns regarding manipulation, market impact, and customer suitability. *See e.g.,* Securities Exchange Act Release No. 36165 (August 29, 1995), 65 FR 46653 (September 7, 1995) (relating to the establishment of uniform listing and trading guidelines for stock index, currency, and currency index warrants).

[21] *See supra* note 18.

[22] The Exchange represents that it will highlight the exchangeability feature of index-linked exchangeable notes in its circular to members. Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Sapna C. Patel, Attorney, Division, Commission, on July 24, 2001. *See also* Amendment No. 2, *supra* note 4.

Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[23]

C. Trading of Index-Linked Exchangeable Notes

The Commission finds that adequate rules and procedures exist to govern the trading of index-linked exchangeable notes. Index-linked exchangeable notes will be treated as equity instruments subject to all Amex rules governing the trading of equity securities. These rules include: rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to Exchange Rule 117, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports. In addition, the Exchange's equity margin rules and the regular equity trading hours of 9:30 am to 4 pm will apply to transactions in index-linked exchangeable notes.

The Commission is satisfied with Amex's development of specific listing and delisting criteria for index-linked exchangeable notes. For example, in connection with the initial listing of each series of index-linked exchangeable notes, the Exchange has established that a minimum of 150,000 notes held by at least 400 holders be required to be outstanding when trading begins. These criteria should help ensure that a minimum level of liquidity will exist in each series of index-linked exchangeable notes to allow for maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider suspension of trading and the delisting of a series of index-linked exchangeable notes if an event were to occur that made further dealings in such series inadvisable. This will give the Amex flexibility to delist index-linked exchangeable notes if circumstances warrant such action. Further, Amex rules have specific criteria that allow them to delist if there is fewer than 50,000 notes issued and outstanding, or if the market value of the index exchangeable notes is less than $100,000. This should ensure a minimum level of liquidity for these products. Accordingly, the Commission believes that the rules governing the trading of index-linked exchangeable notes, consistent with Section 6(b)(5) of the Act,[24] provide adequate safeguards to protect investors and the public interest. While the index-linked exchangeable notes have certain call and redemption features that make them different from other products, the Amex has addressed any concerns by adopting the existing criteria used in other index related products. In addition, the Amex will highlight these different features in the circular to members.[25]

D. Dissemination of Information

The Commission believes that the value of index-linked exchangeable notes that the Exchange proposes to disseminate will provide investors with timely and useful information concerning the value of the index-linked exchangeable notes based on current information regarding the value of the Underlying Index. The value of the Underlying Index will also be publicly disseminated. This information will be disseminated and updated every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m., New York Time.

E. Surveillance

The Commission believes that the surveillance procedures developed by the Amex for index-linked exchangeable notes should be adequate to address concerns associated with the listing and trading of such notes. In this regard, the Amex has developed procedures to monitor activity in index-linked exchangeable notes to identify and deter improper trading activity.

The Commission also notes that concerns are raised when a broker-dealer is involved in the development and maintenance of an Underlying Index upon which a product, such as index-linked exchangeable notes is based, in that case, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that the Exchange requires the implementation of procedures that are satisfactory to the Exchange to prevent the misuse of material, non-public information regarding changes to Underlying Stocks of an Underlying Index in a particular series of index-linked exchangeable notes. In addition, the Commission notes that if a broker-dealer is involved in developing or maintaining an Underlying Index, the Index must be calculated by a third party who is not a broker-dealer.[26] The Commission believes that such information barrier procedures will address the unauthorized transfer and misuse of material, non-public information.

F. Scope of the Commission's Order

The Commission is approving the Exchange's proposed listing and trading standards for the index-linked exchangeable notes as discussed herein. Index-linked exchangeable notes addressed in this order can be listed pursuant to Rule 19b–4(e)[27] if they meet the standards discussed above in the Amex rules. The Commission notes that with respect to any future rules adopted by the Exchange pursuant to Rule 19b–4(e),[28] the Exchange has indicated that in its Section 19(b)(2) filings to adopt such new rules, it will state and discuss whether or not it proposes to apply the new rule standards to index-linked exchangeable notes.[29]

G. Accelerated Approval

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal establishes listing and trading standards for a new product, index-linked exchangeable notes. Granting accelerated approval will allow the Exchange to immediately begin listing and trading series of index-linked exchangeable notes under these new standards. Amendment Nos. 1 and 2 make clarifications and minor technical corrections to the proposal.[30] In addition, Amendment Nos. 1 and 2 serve to strengthen the proposal by, among other things, adopting standards for the suspension of trading in these products and setting forth requirements for the calculation of an Underlying Index. While the structure of the product is different from those previously reviewed by the Commission, the Amex proposes to apply existing criteria used for other index related products. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[31] to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–2001–23), as amended, is hereby approved on an accelerated basis.

[23] Amex Rule 411.

[24] 15 U.S.C. 78f(6)(5).

[25] *See supra* note 22.

[26] *See* Amex Rule 901C, Commentary .02.

[27] 17 CFR 240.19b–4(e).

[28] *Id.*

[29] Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Sharon Lawson, Senior Special Counsel, Division, Commission, on July 5, 2001.

[30] *See* Amendment No. 1, *supra* note 3 and Amendment No. 2, *supra* note 4.

[31] 15 U.S.C. 78f(b)(5) and 78s(b).

[32] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19583 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44598; File No. SR–Amex–2001–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, LLC, Relating to Rebate of Marketing Fees to Specialists and Registered Option Traders

July 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2001 the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items the Amex has prepared. On July 10, 2001, the Amex filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to institute a rebate of certain funds in connection with its marketing fee program for equity options transactions of specialists and Registered Options Traders (''ROTs''). The text of the proposed rule change is available at the principal offices of the Amex.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. 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 proposes to establish a rebate of certain funds in connection with its marketing fee program for equity options transactions of specialists and ROTs. In July 2000, the Amex began imposing a marketing fee of $0.40 per contract on the transactions of specialists and ROTs in equity options.[3] Thereafter, the Amex imposed a $0.40 per contract marketing fee on the transactions of the specialist and ROTs in options on the Nasdaq 100 Index, which trade under the symbol ''QQQ.''[4] Trades between ROTs and trades between specialists and ROTs are specifically excluded from the marketing fee. The Amex collects the fee and allocates the funds to the Amex's specialists in amounts proportional to each specialist's share of the overall volume of the options traded at that particular trading station on the Amex. Specialists may then use these funds to pay broker-dealers for orders they direct to and that are executed on the Amex. The specialists, in their discretion, determine the specific terms governing the orders that qualify for payment and the amount of any payments.

The funds that the marketing fee generates are identified according to the trading station where the options subject to the fee are traded, and are then made available to the specialist for use in attracting order flow at that station. The Amex states that ROTs who contribute fees at a particular trading station also participate in the order flow derived from the program. According to the Amex, some broker-dealers and other financial firms will not accept payment for order flow. As a result, the Amex has found that excess fee proceeds remain in the marketing fee fund after distribution. The Amex therefore believes that a marketing fee rebate program is necessary in order to return these unspent funds.

Pursuant to the rebate program, the Amex would initially rebate to specialists and ROTs, on a *pro rata* basis, the excess funds that have accumulated in the marketing fee fund since the commencement of the rebate program. Following the end of every calendar quarter, the Amex would then rebate to specialists and ROTs their *pro rata* shares of the marketing fee proceeds that were raised but not paid to order flow providers during that quarter. For example, before September 30, 2001 (the last day of the 2001 third quarter), the Amex would rebate to specialists and ROTs the balance of the marketing fee funds that it collected during the calendar year 200 and the first quarter of 2001. Shortly after the end of the third quarter of 2001, the Amex would rebate to specialists and ROTs, on a *pro rata* basis, the unspent portions of the fees that it collected in the second quarter of 2001.

The amount of each specialist's or ROT's refund would vary depending on the percentage of the total marketing fees that the specialist or ROT paid at a trading station during the rebate time period. The Amex would multiply a specialist's or ROT's percentage of the total marketing fees at a trading station by the full amount to be rebated. For example, if a specialist or an ROT contributed 1T of the total marketing fees at a particular trading station during the rebate time period, the specialist or ROT would receive 1% of the trading station's overall rebate amount for the rebate time period. The Amex would rebate the funds directly to the specialist's or ROT's clearing firm.

Currently, trades between ROTs and trades between specialists and ROTs are excluded from the marketing fee because the nature of the marketing fee program is to attract customer order flow to the floor of the Amex. The Amex also proposes to exempt certain types of strategies employed by a public customer (*i.e.,* broker-dealers) from the imposition of the marketing fee.

The Amex proposes to exempt the following strategies from the fee: (1) Cabinet trades,[5] (2) reversals and

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000) (SR–Amex–2000–38).

[4] Securities Exchange Act Release No. 44143 (April 2, 2001), 66 FR 18330 (April 6, 2001) (SR–Amex–2001–12). The Amex includes QQQ options within the classification of ''equity options.''

[5] According to the Amex, a ''cabinet'' trade refers to trades in listed options on the Amex that are worthless and not actively traded. The Amex's procedure for engaging in cabinet or accommodation trades is set forth in Amex Rule 959. The Amex believes that the lack of trading in a ''cabinet'' option renders the imposition of the marketing fee unwarranted because the nature of these transactions will not attract order flow to the Amex, and therefore does not serve the purpose of the marketing fee program.

conversions,[6] (3) dividend spreads,[7] and (4) box spreads.[8] Because of the inability of the Amex's billing system to distinguish among these transactions, however, the Amex proposes to employ a manual procedure. Specifically, within thirty calendar days after the particular transaction, a specialist or an ROT must request reimbursement of the marketing fee that was imposed on any trade that was effected pursuant to any of the above-specified trading strategies. To request reimbursement, a specialist or an ROT must submit a Marketing Fee Reimbursement Form to the Service Desk on the Amex Floor. If the Amex approves the request, the Amex will deliver to that member's clearing firm a reimbursement check in the amount of the marketing fee charged for the transaction.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[9] and furthers the objectives of Section 6(b)(4) of the Act[10] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will 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 Amex neither solicited nor received written comments with respect to the proposed rule change.

[6] According to the Amex, a ''conversion'' is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly riskless profit. The Amex describes a ''reversal'' as a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly riskless profit.

[7] According to the Amex, a ''dividend spread'' is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

[8] According to the Amex, a ''box spread'' is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price; this is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the Amex has designated the foregoing proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2) thereunder,[12] the proposal has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendment, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–38 and should be submitted by August 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19585 Filed 8–3–01; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44618; File No. SR–EMCC–2001–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 29, 2001, EMCC filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by EMCC. 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 Term of Substance of the Proposed Rule Change

The proposed rule change modified EMCC's fee schedule to charge members that use the Match-EM formats or the Datatrack/Autoroute communications network.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When EMCC first began operations, EMCC supported the message formats created for the Match-EM trade comparison system operated by General Electric Corporation. In October 1999, however, EMCC stopped accepting trade data via the Match-EM system although it has continued to accept data directly from those members still using the Match-EM formats. Similarly, the Datatrack/Autoroute communications

[1] 15 USC 78s(b)(1)

[2] The Commission has modified the text of the summaries prepared by EMCC.

link offered to members when EMCC began operations has largely been supplanted by communications via the SWIFT network or via direct communication using MQ protocol.

EMCC currently incurs data processing costs attributable to accepting data in the Match-EM format and receiving transmissions via the Datatrack/Autoroute communications network. EMCC does not believe that it is appropriate to absorb these costs and that these costs should be paid by those members who continue to use these services. Accordingly, EMCC has determined to charge those members who, from and after July 1, 2001, continue to use the Match-EM format and/or the Datatrack/Autoroute communications network a fee equal to EMCC's cost of providing such data processing services on a proportionate pass-through basis based upon a formula that takes into account transaction volumes and the number of participants utilizing the services. EMCC estimates these costs to be approximately $30,000 per year for using the Match-EM format and approximately $90,000 per year for using the Datatrack/Autoroute network. Thus, the maximum annual charge a member would have responsibility for, if it were the last member using both services, is $120,000.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder since it provides for the equitable allocation of dues, fees, and other charges among EMCC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(2) [4] thereunder because the proposed rule change establishes a fee. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of he purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the rule proposal that are filed with the Commission, and all written communications relating to the rule proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to file No. SR–EMCC–2001–01 and should be submitted by August 27, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19523 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(3)(A)(ii)

[4] 17 C.F.R. 240.19b–4(f)(2).

[5] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44620; File No. SR–GSCC–2001–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Imposing a Fee on Members That Fail To Submit Their Transaction Data Within One Hour of Trade Execution

July 30, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on June 11, 2001, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

To encourage use of its Real-Time Trade Matching (''RITM'') service, GSCC is proposing to impose a fee on members that do not submit their trade data within one hour of trade execution. Specifically, if a member does not submit all of the transactions in its account within one hour of trade execution, at the end of each month GSCC will charge 5 cents per side of a transaction other than a repo transaction or per repo transaction for each transaction in the account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

During the latter part of 2000, GSCC implemented an interactive messaging facility for GSCC-eligible securities transactions. This facility has provided members with the ready ability to submit trade input on an automated basis to GSCC intraday as trades are executed. The facility will allow GSCC to establish an RTTM service which will provide straight-through processing by allowing for the prompt and easy identification and resolution of trades intraday to achieve 100 percent comparison. GSCC believes that interactive messaging and RTTM

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

processing are critical steps in helping reduce risk by ensuring that more transactions are compared earlier in the day and then promptly netted and guaranteed through GSCC so that intraday exposure to counterparties is minimized.

While GSCC has continued to support its existing batch input and output facilities, it plans to discourage the use of and eventually stop supporting these older formats because the move to interactive messaging is so essential.[3] As an initial step to encourage members to submit their transaction data closer to the time of trade execution, GSCC is proposing to impose a fee on members that do not submit their trade data within one hour of trade execution. Specifically, effective July 1, 2001, if a member does not submit all of the transactions in its account within one hour of trade execution, at the end of each month GSCC will charge 5 cents per side of a transaction other than a repo transaction or per repo transaction for each transaction in the account. Members can avoid the fee if they submit all of their transactions through their account: (i) Interactively as transactions occur using SWIFT-based messages, (ii) via a terminal within one hour of execution, or (iii) in multiple batch format within one hour of execution. GSCC has reserved the right to waive the charges for a particular month if GSCC determines, in its sole discretion, that a portion of a member's transactions were not submitted within one hour of trade execution because of a nonrecurring operational problem. The proposed fee is designed to encourage members to make the development investment necessary to join the RTTM service. This fee will be reviewed periodically by GSCC and may be increased if it is determined that it does not provide sufficient incentive for members to submit trade data on a timelier basis.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to GSCC because it involves a change to GSCC's fee structure that will encourage members to move to interactive processing and thereby allow them to achieve important risk management benefits.

(b) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participate or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and Rule 19b–4(f)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–07 and should be submitted by August 27, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19584 Filed 8–3–01; 8:45 am]

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[3] In addition, other areas of the fixed-income industry are also moving to interactive messaging and RTTM. GSCC is currently in the process of developing RTTM services for mortgage-backed securities jointly with the MBS Clearing Corporation. Further, GSCC has begun working with The Depository Trust & Clearing Corporation to provide interactive messaging and a centralized RTTM service for other fixed-income products, including corporate and municipal bonds.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 2401.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44612; File No. SR–ISE–2001–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Facilitation of Customer Orders

July 27, 2001.

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 May 30, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rule regarding the facilitation of customer orders to reduce the order exposure time from 30 to five seconds.

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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

ISE rules provide that an Electronic Access Member (''EAM'') may not execute its own customer orders as principal unless it either: (1) Enters the customer order into the market and waits at least 30 seconds before entering a counter proprietary order [3]; or (2) enters the customer order into the Facilitation Mechanism, which gives the trading crowd 30 seconds to respond to the order.[4] A member can improve the price of an order being displayed in the Facilitation Mechanism only by entering a quote or order in the ISE trading system. Use of the Facilitation Mechanism generally guarantees the entering EAM that it will be able to trade against 40 percent of the order.

The ISE states that despite its rule establishing a Facilitation Mechanism, the Exchange has failed to capture significant facilitation order flow. The ISE further states that is members explain that the rule's 30-second exposure requirement is a primary reason why they do not use this mechanism. In contrast to the Exchange's requirements, a member can facilitate an order by taking it to the floor of another options exchange, ''expose'' it for an instant by announcing it to the trading crowd on the floor, and then immediately trade against the order.[5] The ISE believes that for the Exchange to be on parity with the floor-based exchanges, and thus to permit the ISE to be in an equal competitive position to attract facilitation order flow to the Exchange, the ISE proposes to amend its rules to reduce the 30 second exposure time required for the Facilitation Mechanism to five seconds.

The ISE believes that this shortened exposure period would be fully consistent with the electronic nature of its trading system. According to the ISE, the Exchange's members have implemented, or have the ability to implement, systems that monitor the Facilitation Mechanism broadcast messages and can automatically respond based upon pre-set parameters. In this electronic environment, the Exchange state, it is not necessary to provide an exposure time sufficiently long to permit a person, in all cases, to manually respond to a Facilitation Order broadcast in order to provide the opportunity for crowd interaction. Thus, the Exchange states, an exposure period of five seconds would permit exposure of orders on the ISE in a manner consistent with its electronic market while addressing the Exchange's competitive concerns.[6]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

In addition to any other views that interested persons may wish to express, the Commission requests comments specifically on whether electronic programs or systems are available that would enable ISE members to monitor the Facilitation Mechanism broadcast messages and automatically respond based upon pre-set parameters, such that a five-second exposure period would provide adequate time for crowd members to interact with an order before it is executed by the EAM. The Commission also requests comments on whether the manner in which orders are exposed and executed through the ISE Facilitation Mechanism under the proposed rule change would be comparable to the manner in which facilitation orders are exposed and executed on floor based exchanges.

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 the filing will also be available for inspection and copying at the principal offices of the ISE. All submissions should refer to File No. SR–ISE–2001–19 and should be submitted by August 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19581 Filed 8–3–01; 8:45 am]

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[3] ISE Rule 717(d).

[4] ISE Rule 716(d).

[5] The floor-based exchanges also provide the entering broker-dealer a minimum guarantee of 40 percent of the order, but without any minimum exposure time. *See* Commentary .02 to American Stock Exchange Rule 950(d); Chicago Board Options Exchange Rule 6.74(d); and Pacific Exchange Rule 6.47(b).

[6] The filing also would delete as unnecessary the requirement that, to improve the facilitation price, a member must improve its quotation or order at least 10 seconds prior to the expiration of the exposure period.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44623; File No. SR–NASD–2001–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Audit Trail and Trading Halt Requirements for Alternative Trading Systems That Trade Security Futures

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to add NASD Rule 3115 and to amend NASD Rule 3340 to establish record-keeping requirements for Alternative Trading Systems (''ATSs'') that trade security futures, and to require ATSs to coordinate trading halts with markets trading the underlying securities and markets trading related securities. Below is the text of the proposed rule change.

Proposed new language is in *italics;* proposed deletions are in [brackets].

Rule 3115. Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures

(a) Alternative Trading Systems' Recording Requirements

(1) Each alternative trading system that accepts orders for security futures (as defined in section 3(a)(55) of the Act) shall record each item of information described in paragraph (b) of this Rule. For purposes of this Rule, the term ''order'' includes a broker/dealer's proprietary quotes that are transmitted to an alternative trading system.

(2) Alternative trading systems shall record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.

(3) Maintaining and Preserving Records

(A) Each alternative trading system shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on ''micrographic media'' as defined in SEC Rule 17a–4(f)(1)(i) or by means of ''electronic storage media'' as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.

(b) Information to be Recorded. The records required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every order:

(1) Date and time (expressed in terms of hours, minutes, and seconds) that the order was received;

(2) Security future product name and symbol;

(3) Number of share to which the order applies;

(4) An identification of the order as related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 80A;

(5) the designation of the order as a buy or sell order;

(6) The designation of the order as a market order, limit order, stop order, stop limit order, or other type of order;

(7) Any limit or stop price prescribed by the order;

(8) The date on which the order expires and, if the time in force is less than one day, the time when the order expires;

(9) The time limit during which the order is in force;

(10) Any instructions to modify or cancel the order;

(11) Date and time (expressed in terms of hours, minutes, and seconds) that the order was executed;

(12) Unit price at which the order was executed; excluding commissions, mark-ups or mark-downs;

(13) Size of the order executed; and

(14) Identity of the alternative trading system's subscribers that were intermediaries or parties in the transaction.

(c) Reporting Requirements

(1) General Requirement

Alternative trading systems shall report information required to be recorded under this Rule to the Association on the next business day following the date the alternative trading system accepted the order or executed the trade, or at such other time period as the Association shall specify.

(2) Method of Transmitting Data

Alternative trading systems shall transmit this information in such form as prescribed by the Association.

* * * * *

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts[3]

(a) No member of person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including ''bid wanted'' and ''offer wanted'' and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect.

(b) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including ''bid wanted'' and ''offer wanted'' and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in:

(1) a future for a single security when the underlying security has a regulatory trading halt that is currently in effect; and

(2) a future on a narrow based securities index when one or more underlying securities that constitute 30% or more of the market capitalization of the index has a regulatory trading halt that is currently in effect.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text of NASD Rule 3340 includes the recently approved changes to this rule that prohibit members from publishing quotations or indications of interest in a security during a trading halt. The Commission approved this rule change on June 5, 2001. *See* Securities Exchange Act Release No. 44390, 66 FR 31262 (June 11, 2001). The rule change becomes effective on August 13, 2001. *See* NASD Notice to Members 01–47.

statements may be examined at the places specified in Item IV below. NASD Regulation 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 NASD is proposing a rule change to establish requirements relating to ATSs for the trading of futures on single securities and narrow-based security indices. The Commodity Futures Modernization Act of 2000 [4] (''CFMA'') ends the nearly 20-year ban on single stock futures and futures on narrow-based stock indices and puts in place a new framework of regulations that will allow both broker/dealers and futures commission merchants (''FCMs'') the ability to trade these instruments.

The CFMA defines a ''security future'' as a contract of sale for future delivery of a single security or of a narrow-based security index. Under the CFMA, security futures are defined as ''securities'' under the Act, thus making the federal securities laws generally applicable to them. The CFMA also specifies the requirements that both securities exchanges and futures contract markets must satisfy in order to list and trade security futures. Under this new regime, broker/dealers that wish to effect transactions in security futures are required to register with the Commodity Futures Trading Commission (''CFTC'') by filing a written notice with the CFTC.[5] Likewise, FCMs and other intermediaries registered with the CFTC that wish to effect transactions in security futures are required to notice register with the SEC.

As discussed below, the NASD's proposed rule change will establish requirements for ATSs that will trade security futures. In the coming months, NASD Regulation intends to file with the SEC a second proposed rule change that will address several additional issues raised by the introduction of security futures trading in the United States.

a. *Requirements for Alternative Trading Systems.* The CFMA requires the NASD, as a national securities association, to meet several requirements with respect to preparing for the trading of security futures by ATSs.[6] Specifically, the CFMA requires the NASD to have rules in place that require ATSs to: (1) Have audit trails necessary to facilitate coordinated surveillance; and (2) coordinate trading halts with markets trading the underlying securities and markets trading related securities.[7]

Accordingly, with respect to audit trails, the proposed rule change would require ATSs to record and report audit trail information on a T+1 basis in such form as NASD Regulation requires. NASD Regulation has based the required elements of the audit trail rule on the existing recordkeeping rule for ATSs, Regulation ATS Rule 302.[8] The form of the reports will be designed to facilitate NASD Regulation's sharing the reports with members of the Intermarket Surveillance Group, an organization whose purpose is to coordinate surveillance among financial markets. The proposed rule change would require that ATSs preserve such records in accordance with Rule 17a–4(b) under the Act,[9] which requires preservation of records for at least three years, the first two years in an accessible place.

b. *Amendments to NASD Rule 3340.* With respect to coordinated trading halts, the proposed rule change would amend the NASD's existing rule prohibiting trading during a halt. Currently, NASD Rule 3340 broadly prohibits broker/dealers and associated persons from effecting a ''transaction * * * in any security as to which a trading halt is currently in effect.'' NASD Regulation proposes to amend this rule by adding a provision that prohibits member firms, including ATSs, from trading, publishing quotes or indications of interest for: (a) A future on a single stock when the underlying stock is subject to regulatory trading halt, and (b) a future on a narrow based securities index when one or more underlying securities that constitute 30 percent or more of the market capitalization of the index are subject to a regulatory trading halt. Further, by limiting application of new NASD Rule 3340(b) to regulatory trading halts, NASD Regulation intends to exclude halts resulting from events such as an order imbalance or a systems failure.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that the Association's rule must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

NASD Regulation further believes that the proposed rule change is consistent with the requirements of the CFMA.[11] The CFMA requires a national securities association, such as NASD, to adopt rules to require ATSs to provide ''audit trails necessary or appropriate to facilitate'' coordinated surveillance among ATSs, the market trading the securities underlying the security future products, and other markets trading related securities in order to detect manipulation and insider trading, and to require ATSs ''to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.'' [12] These provisions of the CFMA are the basis for the proposed new audit trail rule for ATSs and the proposed amendment to the NASD's trading halt rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comment were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[4] The CFMA was signed into law on December 21, 2000. Pub. L. 106–554, 114 Stat. 2763 (2000).

[5] When a broker/dealer files its written notice, the CFTC is to give immediate effectiveness to the registration if: (1) The broker/dealer is a member of a national securities association, such as the NASD; (2) it limits its futures business to security futures products; and, (3) it has not had its registration as a broker or dealer suspended by the SEC. *See* Section 4f(a)(2) of the Commodity Exchange Act; 7 U.S.C. 6f(a)(2).

[6] ATSs generally are systems that maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange and do not perform self-regulatory functions. *See* Regulation ATS Rule 300(a), 17 CFR 242.300(a); Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

[7] *See* 15 U.S.C. 78f(h)(5).

[8] 17 CFR 242.302(c).

[9] 17 CFR 240.17a–4(b).

[10] 15 U.S.C. 78o–3(b)(6).

[11] *See* note 4, *supra.*

[12] *See* 15 U.S.C. 78f(h)(5).

(ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the SR–NASD–2001–47 and should be submitted by August 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19580 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44617; File No. SR–NSCC–2001–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 25, 2001, NSCC filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises NSCC's fee schedule by reducing certain fees and giving NSCC the benefit of the fee reduction retroactive to January 1, 2001.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Set forth in sections A, B, and C below, are the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to reduce certain fees and to give NSCC's members the benefit of these fee changes retroactive to January 1, 2001. The revised fees will be reflected in each member's billing statements transmitted in May 2001.

The Trade Recording fee for each side of each stock, warrant, or right item entered for settlement but not compared by NSCC is currently $.005 per 100 shares with a minimum fee of $.020 and a maximum fee of $.30. Under this rule change, this fee will be reduced to $.004 per 100 shares with a minimum fee of $.016 and a maximum of $.24.

The Trade Clearance fee for trade clearance (netting) is currently $.025 per side. Under this rule change, the fee will be reduced to $.02 per side.

The CNS Delivery Order Movement fee of $.06 per item will be eliminated. This charge was a pass through charge from The Depository Trust Company (''DTC''). It will be billed directly by DTC effective May 1, 2001.

The Fund/SERV transaction fee is currently $.25 per side per order or transfer request. Under this rule change, the fee will be reduced to $.175 per side per order or transfer request.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder since it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(a) of the Act and Rule 19b–4(f)(2) thereunder because the propose rule change reduces fees and other charges. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submission 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 Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications related to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2001–06 and

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

should be submitted by August 27, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19527 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44622; File No. SR–NYSE–2001–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange Inc. Relating to Charges for Exchange Traded Funds Admitted to Dealings on a Unlisted Trading Privileges Basis

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 10, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes that at this time no transactions fees will be charged for investment company units (more commonly referred to as ''exchange traded funds'' or ''ETFs'') admitted to dealings on the Exchange on an unlisted trading privilege (''UTP'') basis.

The text of the proposed rule change is available at the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange anticipates that it will shortly admit ETFs to dealings on the Exchange pursuant to UTP. The Exchange desires to garner experience in providing a market for these high-volume EFTs on a UTP basis before determining the transaction fee schedule to apply to these products. The current competitive environment includes payment for order flow made by certain other markets trading these securities. Accordingly, the Exchange proposes to implement a ''fee holiday,'' constituting zero transactions charges, for the ETFs admitted to dealings on the Exchange on a UTP basis for the initial months of trading. The Exchange expects to file a specific schedule of transaction charges at a future date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [3] in general, and furthers the objectives of Section 6(b)(4) of the Act [4] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed fee change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change is designated by the NYSE as establishing or changing a due, fee, or other charge, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) or the Act [5] and Rule 19b–4(f)(2) [6] thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–20 and should be submitted by August 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19582 Filed 8–3–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recorkeeping Requirements Under OMB Review

Correction

In notice document 01–18453 appearing on page 38776, in the issue of Wednesday, July 25, 2001, under the

[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

heading **SUPPLEMENTARY INFORMATION,** ''No: remove 2184'' and insert ''N/A''.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–19553 Filed 8–3–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0304]

AMT Capital, Ltd.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that AMT Capital, Ltd., 5220 Spring Valley Road, Dallas, Texas 75240, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2000)). AMT Capital, Ltd. proposes to provide equity financing to Ormet Circuits, Inc., 2236 Rutherford Road, Carlsbad, California. The financing is contemplated inasmuch as it is believed to have favorable long-term potential for appreciation and because the terms and conditions appear to be fair and equitable to AMT Capital, Ltd., taking into account any differences in the timing of each party's financing transactions.

The financing is brought within the purview of section 107.730(d)(2) of the Regulations inasmuch as AMT Venture Partners, Ltd. (''AMTVP'') and JHAM, Limited Partnership (''JHAM''), have invested in the small concern. AMTVP and JHAM are Limited Partners of AMT Capital, Ltd. and are therefore considered Associates thereof, as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: July 25, 2001.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–19619 Filed 8–3–01; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

Finding Regarding the Social Insurance System of the Federal Republic of Yugoslavia (Formerly Serbia and Montenegro)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of finding regarding the Social Insurance System of the Federal Republic of Yugoslavia (formerly Serbia and Montenegro).

FINDING:Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months, and prior to the first month thereafter for all of which the individual has been in the United States. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Associate Commissioner for International Programs. Under that authority, the Associate Commissioner for International Programs has approved a finding that the Federal Republic of Yugoslavia (formerly Serbia and Montenegro), as of April 17, 1992, the date that the Federal Republic of Yugoslavia declared their independence as a joint independent state, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of the Federal Republic of Yugoslavia (formerly Serbia and Montenegro) and who qualify for the relevant benefits to receive those benefits, or their actuarial equivalent, while outside of the Federal Republic of Yugoslavia, regardless of the duration of the absence of these individuals from the Federal Republic of Yugoslavia.

The Federal Republic of Yugoslavia (formerly Serbia and Montenegro) proclaimed their status as a joint independent state on April 17, 1992. Before that time, it was considered to be part of the former Yugoslavia, which was determined to have a system that met section 202(t)(2) of the Social Security Act as of March 25, 1959. Effective November 2000, following the formation of a new government, the name of ''Serbia and Montenegro'' was officially changed to ''the Federal Republic of Yugoslavia.'' The Federal Republic of Yugoslavia is a new state, and is not a successor to the former Yugoslavia.

After the Federal Republic of Yugoslavia adopted the constitution of the former Yugoslavia in 1992, the Law on Basic Pension and Invalidity Insurance was passed. However, it did not become effective until January 1, 1997. Before that time, the social insurance law of the former Yugoslavia was still in operation in the Federal Republic of Yugoslavia.

FOR FURTHER INFORMATION CONTACT: Bob Treadaway, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–2764.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: July 20, 2001.

Joseph A. Gribbin,

Associate Commissioner for International Programs.

[FR Doc. 01–19577 Filed 8–3–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3749]

Culturally Significant Objects Imported for Exhibition Determinations: ''Testemunhos do Judaismo em Portugal/Signs of Judaism in Portugal''

DEPARTMENT: United States 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], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibit ''Testemunhos do Judaismo em Portugal /Signs of Judaism in Portugal,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects will be imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at the Yeshiva University Museum of New York, NY, from on about August 16, 2001, to on about November 11, 2001 and possible additional venues as 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 exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 2, 2001.

Brian J. Sexton,

Deputy Assistant Secretary for Professional Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 01–19745 Filed 8–3–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice #3683]

Notice of Discussions on ENUM

On August 15, 2001 from 9:00 to noon, the State Department Communications and Information Policy Division will hold a meeting to address issues associated with potential international implementation of ENUM (Electronic Numbering). This meeting will be held in conjunction with a meeting of US Study Group A of the State Department's International Telecommunication Advisory Committee to be held at the Department of State, Room 1207, 2201 ''C'' Street, NW., Washington, DC.

The meeting will take as a starting point the report of the Study Group A ENUM ad hoc committee (available from minardje@state.gov) and will address issues that the Government can use in preparing positions to take before a September meeting of the International Telecommunication Union, Telecommunication Standardization Study Group 2. The meeting will not attempt to resolve national policy concerns surrounding ENUM deployment in the U.S.

Members of the general public may attend this forum. Directions to meeting location may be determined by calling the Secretariat at 202 647–0965/2592. Entrance to the building is controlled; people intending to attend this forum should send an e-mail to samuelsrn@state.gov no later than 48 hours before the meeting for preclearance. This e-mail should display the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: August 1, 2001.

Marian R. Gordon,

Director, Telecommunication & Information Standardization, Department of State

[FR Doc. 01–19768 Filed 8–2–01; 3:09 pm]

BILLING CODE 4710–45–U

DEPARTMENT OF STATE

[Public Notice #3684]

Notice of Meetings; International Telecommunication Advisory Committee (ITAC), U.S. Study Group B

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU). The meetings will be held at the Department of State, 2201 ''C'' Street, NW., Washington, DC.

The ITAC will meet from 10:00 to noon in State Department Room 1207 on Tuesday August 14, 2001 to continue follow-up to the World Telecommunication Policy Forum on IP Telephony. The ITAC will also meet from 1:30 to 3:00 on August 14, 2001 to continue preparations for the August CITEL meeting on preparations for ITU Plenipot.

US Study Group B will meet by email on the Study Group B reflector August 13–16, 2001, to prepare for the August 30–September 6 meeting of ITU–T Special Study Group for IMT–2000 and beyond. Study Group B will consider three candidate contributions; ''Functional Requirements for Priority Services,'' ''Framework for Supporting Priority Services,'' and ''T1 Specifications Submission to ITU–T Special Study Group.'' People desiring to participate should send their contact information by email to <minardje@state.gov> as soon as possible so they may be added to the reflector. Comments must be posted to the reflector by August 14, reply comments by August 16, 2001.

Members of the general public may attend these meetings. Directions to meeting locations and actual room assignments may be determined by calling the Secretariat at 202 647–0965/2592. For meetings held at the Department of State: Entrance to the building is controlled; people intending to attend any of the ITAC meetings should send an e-mail to samuelsrn@state.gov no later than 48 hours before the meeting for preclearance. This e-mail should display the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: August 1, 2001.

Marian R. Gordon,

Director, Telecommunication & Information Standardization, Department of State.

[FR Doc. 01–19767 Filed 8–2–01; 3:09 pm]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3681]

Shipping Coordinating Committee; Notice of Meetings

The Shipping Coordinating Committee will conduct open meetings at 9:30 am on Thursday, September 6, and October 4, November 1, December 6, 2001 and January 3, 2002. These meetings will be held in the room 3328, Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950. The purpose of these meetings is to prepare for the Sixth Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue which is scheduled for the week of February 18–22, 2002, at the IMO headquarters in London, England.

Among other things, the items of particular interest are:

- Maritime Safety Information for the Global Maritime Distress and Safety System (GMDSS).
- NAVTEX (Navigational Text) Display methods
- Bridge to Bridge Communications
- GMDSS False Alerts
- Positions for the International Telecommunications Union World Radio Conference 2003
- New Technologies

Further information, including meeting agendas with meeting room numbers, minutes, and input papers, can be obtained from the Coast Guard Navigation Information Center Internet World Wide Web by entering: *http://www.navcen.uscg.gov/marcomms.*

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil.*

July 30, 2001.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 01–19604 Filed 8–3–01; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 3682]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9 a.m. on Thursday, 20 September 2001, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the U.S. positions on the draft International Convention on the Control of Harmful Anti-fouling Systems to be considered at the International Conference on the Control of Harmful Anti-fouling Systems for Ships (AFS Conference) to be held at the International Maritime Organization headquarters in London, 1–5 October, 2001.

Documents associated with the AFS Conference may be requested by writing to the address below or via the Internet at: *http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html.* Please note that hard copies of documents associated with this Conference will not be available at this meeting.

Members of the public are invited to attend this meeting up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Lieutenant Beck, U.S. Coast Guard, Environmental Standards Division (G–MSO–4), 2100 Second Street, SW., Washington, DC 20593–0001; telephone: (202) 267–0713; fax: (202) 267–4690; or e-mail: dbeck@comdt.uscg.mil.

Dated: July 31, 2001.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 01–19605 Filed 8–3–01; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Regional Resource Stewardship Council (Regional Council) will hold a meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following/briefings:

1. Feedback from TVA on the Three Recommendations Submitted to the TVA Board of Directors from Council
2. Recommendation/Report on the Roof Issue at Campgrounds and on Rights-of-Way Vegetative Management from the Public Lands Subcommittee
3. Recommendation from the Navigation Subcommittee on Navigation Responsibilities and Issues on the Tennessee River System
4. Three Recommendation from the Water Quality Subcommittee on TVA's Monitoring and Water Quality Improvement Programs
5. Public comments
6. Discussion of the Recommendations
7. Planning for Future Meetings

It is the Regional Council's practice to provide an opportunity for members of the public to make oral public comments at its meetings. Public comment session is scheduled from 1:00—2:00 p.m. Central time. Members of the public who wish to make oral public comments may do so during the Public comment portion of the agenda. Up to one hour will be allotted for the Public comments with participation available on a first-come, first-served basis. Speakers addressing the Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak register at the door and are then called on by the Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, August 29, from 8 a.m. to 4:30 p.m. Central time.

ADDRESSES: The meeting will be held in Guntersville, Alabama, at Lake Guntersville State Park, located at 1155 Lodge Drive, Guntersville, Alabama 35976, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: July 31, 2001.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 01–19557 Filed 8–3–01; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP01–002

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety. The petition is hereinafter identified as DP01–002.

FOR FURTHER INFORMATION CONTACT: Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: Mr. James T. Kuwada submitted a petition to NHTSA by letter dated February 2, 2001, requesting that an investigation be initiated to determine whether to issue an order concerning a defect in Model Year (MY) 1995 Honda Accord vehicles. The petitioner alleges that the ''seal'' of the anti-lock brake system (ABS) modulator leaks brake fluid.

ABS modulator brake fluid leakage is described in Technical Service Bulletin (TSB) No. 96–050 issued by American Honda Motor Co., Inc. (Honda) on November 4, 1996. TSB No. 96–050 concerns the ABS modulator in MY 1994 through 1996 Honda Accord vehicles produced in Ohio (VIN begins with 1HG). The threaded plugs in the ABS modulator assembly were not properly tightened, resulting in a brake fluid leak.

A review of ODI's database revealed that there were eight, fourteen, and six consumer complaints for MY 1994, MY 1995, and MY 1996 Honda Accord vehicles (subject vehicles), respectively, alleging ABS modulator failure. Of these 28 ABS modulator failure complaints, 21 indicated that the ABS modulator leaked or that it had to be resealed; 17 indicated that the ABS warning light came on; 15 complained about the high cost of repair, and three indicated brake performance degradation. No crash or injury was reported in any of the 28 complaints. Moreover, these 28 complaints represent an extremely low proportion of the 898,650 subject vehicles that were produced.

On April 25, 2001, ODI contacted the three complainants (ODI No. 847863, ODI No. 737821, and ODI No. 875406) who alleged brake performance degradation to clarify the extent of that degradation and to ascertain whether it was the result of failure of the ABS modulator on their vehicles. ODI learned that the main concern of these complainants was the loss of anti-lock brake function on their vehicles. All three complainants indicated that their standard brakes functioned normally, even after the ABS warning light had come on. All were able to drive their vehicles to a repair shop where they were told that the ABS modulator on their vehicles had leaked brake fluid.

The brake fluid leakage from the ABS modulator is apparently very slow and will signal a warning to the driver. The complainant for ODI complaint No. 847863 said that the loss of brake fluid was very slow. The complainant for ODI complaint No. 875406 said that he did not observe any loss of brake fluid on the ground and is still driving the vehicle even with the ABS warning light on (he was quoted a price of $1,600 for the ABS module repair and had decided not to have the work done). Also, a fourth complainant (ODI No. 737986) indicated that the ''ABS modulator [is] leaking because of loose fittings or cracks, ABS brake fluid must be topped off every few months.''

Even given a modulator leak, there is little risk to motor vehicle safety since the underlying or foundation brake system will continue to function normally (without the anti-lock function). Considering that the subject vehicles have been on the road for five to seven years and there have not been any reports of crashes in the ODI database, this problem, though costly to remedy, does not appear to present a safety-related defect.

In November 1994, ODI opened an investigation (PE94–067) on MY 1990 Mazda 929 vehicles for brake fluid leakage from the ABS hydraulic control unit. That investigation was closed without a recall due to the absence of a safety-related defect trend.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of the alleged safety-related defect as defined by the petitioner in the subject vehicles at the conclusion of the investigation requested in the 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.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–19547 Filed 8–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 26, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 5, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0068.

Form Number: IRS Form 2441.

Type of Review: Extension.

Title: Child and Dependent Care Expenses.

Description: Internal Revenue Code (IRC) section 21 allows a credit for certain child and dependent care expenses to be claimed on Form 1040 (reduced by employer-provided day care benefits excluded under section 129). Day care provider information must be reported to the IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 6,519,859.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—40 min.

Learning about the law or the form—25 min.

Preparing the form—50 min.

Copying, assembling, and sending the form to the IRS—28 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 15,517,265 hours.

OMB Number: 1545–0187.

Form Number: IRS Form 4835.

Type of Review: Extension.

Title: Farm Rental Income and Expenses.

Description: This form is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported.

Respondents: Individuals or households, farms.

Estimated Number of Respondents/Recordkeepers: 407,719.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 57 min.

Learning about the law or the form—5 min.

Preparing the form—1 hr., 2 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,793,964 hours.

OMB Number: 1545–0188.

Form Number: IRS Form 4868.

Type of Review: Extension.

Title: Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.

Description: Form 4868 is used by taxpayers to apply for an automatic 4-month extension of time to file Form 1040A, or Form 1040EZ. This form contains data used by the Service to determine if a taxpayer qualifies for the extension.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,572,999.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 min.

Learning about the law or the form—12 min.

Preparing the form—17 min.

Copying, assembling, and mailing the form to the IRS—10 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 6,353,219 hours.

OMB Number: 1545–1051.

Regulation Project Number: INTL–29–91 Final.

Type of Review: Extension.

Title: Computation and Characterization of Income and Earnings and Profits under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).

Description: For taxable years after the final regulations are effective, taxpayers operating in hyperinflationary currencies must use the U.S. dollar as their functional currency and compute income using the dollar approximate separate transactions method (DASTM). Small taxpayers may elect an alternate method by which to compute income or loss. For prior taxable years in which income was computed using he profit and loss method, taxpayers may elect to recompute their income using DASTM.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Respondent: 1 hour, 26 minutes.

Frequency of Response: On occasion, Other (one-time election).

Estimated Total Reporting/Recordkeeping Burden: 1,000 hours.

OMB Number: 1545–1620.

Form Number: IRS Form 8812.

Type of Review: Revision.

Title: Additional Child Credit.

Description: Section 24 of the Internal Revenue Code allows taxpayers a credit for each of their dependent children who is under age 17 at the close of the taxpayer's tax year. The credit is advantageous to taxpayers as it directly reduces the tax liability for the year and, if the taxpayer has three or more children, may result in a refundable amount of credit.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 3,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 min.

Learning about the law or the form—5 min.

Preparing the form—22 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,185,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–19519 Filed 8–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 30, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 5, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0923.

Regulation Project Number: REG–209274–85 NPRM and Temporary.

Type of Review: Extension.

Title: Tax Exempt Entity Leasing.

Description: These regulations provide guidance to persons executing lease agreements involving tax-exempt entities under section 168(h) of the Internal Revenue Code. The regulations are necessary to implement congressionally enacted legislation and elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1545–1614.

Regulation Project Number: REG–106177–97 NPRM.

Type of Review: Extension.

Title: Qualified State Tuition Programs.

Description: Respondents are states that establish and maintain qualified state tuition programs. Respondents include distributees who receive benefits under the program are qualified and that distributions are used for qualified educational expenses.

Respondents: Individuals or households, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 20,051.

Estimated Burden Hours Per Respondent/Recordkeeper: 35 hours, 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 705,000 hours.

OMB Number: 1545–1731.

Revenue Procedure Number: Revenue Procedure 2001–37.

Type of Review: Extension.

Title: Extraterritorial Income Exclusion Elections.

Description: This revenue procedure provides guidance for implementing the elections (and revocation of such elections) established under the ''Foreign Sales Corporation (FSC) Repeal and Extraterritorial Income Exclusion Act of 2000.''

Respondents: Business or other for-profit.

Estimated Number of Respondents: 56.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually, Other (once).

Estimated Total Reporting Burden: 19 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–19520 Filed 8–3–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Superior Federal Bank, FSB; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Conservator for Superior Federal Bank, FSB, Hinsdale, Illinois, on July 27, 2001.

Dated: July 31, 2001.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 01–19518 Filed 8–3–01; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Superior Bank, FSB; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for the Superior Bank, FSB, Hinsdale, Illinois (OTS No. 8566), on July 27, 2001.

Dated: July 31, 2001.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 01–19517 Filed 8–3–01; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register

Vol. 66, No. 151

Monday, August 6, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6997-8]

RIN 2060-AI34

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

Correction

In rule document 01–17559 beginning on page 37591 in the issue of Thursday, July 19, 2001, make the following correction:

On page 37592, under the heading **II. Summary of Corrections** in the table under the heading Citation §63.865(b)(4), in the formula ''(21×X)'' should read ''(21 − X)''.

[FR Doc. C1–17559 Filed 8–3–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01-D-0294 and 01D-0295]

Draft Guidances for Industry on Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format: General Considerations and for Food Additive and Color Additive Petitions; Availability

Correction

In the issue of Thursday, August 2, 2001, on page 40322, in the second column, in the correction of notice document 01–18948 in the 8th line ''http://www.dfsan.fda.gov/~dms/opa-toc.html '' should read ''http://www.cfsan.fda.gov/~dms/opa-toc.html. ''

[FR Doc. C1–18948 Filed 8–3–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare Comprehensive Conservation Plans and Envrionmental Impact Assessments for Arrowwood National Wildlife Refuge, Pingree, ND and Sand Lake National Wildlife Refuge, Columbia, SD

Correction

In notice document 01–19122, appearing on page 39786, in the issue of Wednesday, August 1, 2001, make the following correction:

On page 39786, in the third column, in the fifth paragraph, ''September 12, 2001'' should read ''September 13, 2001''.

[FR Doc. C1–19122 Filed 8–3–01; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 44528; File No. SR–CBOE–2001–31]

In the Matter of Chicago Board Options Exchange, Incorporated; Order of Summer Abrogation

Correction

In notice document 01–17516 appearing on page 36809, in the issue of Friday July 13, 2001, make the following correction:

On page 36809, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C1–17516 Filed 8–3–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
August 6, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 et al.

Final Rule With Request for Comments and Direct Final Rule With Request for Comments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 135, and 145

[Docket No. FAA–1999–5836; Amendment Nos. 91–269, 121–286, 135–82, 145–27, and SFAR 36–7]

RIN 2120–AC38

Repair Stations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule with request for comments and direct final rule with request for comments.

SUMMARY: This rule updates and revises the regulations for repair stations. This action is necessary because many of the current repair station regulations do not reflect changes in repair station business practices and aircraft maintenance practices. The rule reorganizes the requirements applicable to repair stations to reduce duplication of regulatory language and eliminate obsolete information. In addition, the rule establishes new definitions applicable to repair stations and updates requirements relating to repair station certification; housing, facilities, equipment, materials, and data; personnel; and operations. The rule also eliminates, where practicable, distinctions between repair stations based on geographical location. This final rule does not adopt the proposed revised repair station ratings and quality assurance system; these proposals will be addressed in a subsequent rulemaking action. Finally this direct final rule removes the appendix to the repair station regulations that sets forth the job functions and equipment requirements for repair stations.

DATES: This rule is effective April 6, 2003, with the following exceptions: § 145.163 which is effective April 6, 2005, and the removal of Appendix A to part 145 which is effective April 6, 2003, unless adverse comments are received by October 5, 2001. Comments on the information collection requirements must be submitted on or before October 5, 2001.

ADDRESSES: Address your comments 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–1999–5836 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov . You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Diana L. Frohn, Aircraft Maintenance Division, Air Carrier Maintenance Branch, AFS–330, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 493–4941; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION: The Direct Final Rule Procedure

The FAA anticipates that the removal of appendix A to part 145 will not result in adverse or negative comments; therefore the FAA is removing appendix A as a direct final rule. Comments received in response to Notice of Proposed Rulemaking No. 99–09 generally opposed appendix A. Many commenters noted that the appendix is outdated. Commenters questioned the FAA's ability to keep any such listing current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the removal of appendix A will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the direct final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the removal of appendix A will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

An opportunity for comment on the information collection requirements of this rule was not provided during the notice of proposed rulemaking stage. Therefore, a 60-day comment period is attached to this final rule.

Also, we have removed appendix A from part 145. Because we did not propose to remove appendix A, we seek comments on its removal. Generally, the final rule accomplishes the purpose of appendix A without restricting a repair station's ability to adapt future technologies. The reasons for removing appendix A are explained in greater detail in the section-by-section discussion of requirements withdrawn from the proposal.

Interested persons are invited to submit written data, views, or arguments regarding the information collection requirements and the removal of appendix A as they may desire. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the FAA before the effective date of the direct final rule. Comments filed late will be considered as far as possible without incurring expense or delay.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–5836.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9-AWA-SBREFA@faa.gov.

Background

Very few substantive changes have been made to the regulations applicable to repair stations since they were recodified in Title 14, Code of Federal Regulations (14 CFR) (27 FR 6662, July 13, 1962). Portions of 14 CFR part 145 are no longer appropriate or have become increasingly difficult to administer. Other portions of the rule no longer make a significant contribution to aviation safety or do not warrant the associated administrative costs. In addition, the FAA has granted exemptions and created other special administrative procedures to handle situations not provided for adequately in the regulations. To ensure the regulations are appropriate for today's repair station industry, the FAA determined that part 145 should be revised.

In 1975, the FAA and industry participants in the FAA's First Biennial Operations Review recommended that specific and substantial requirements of part 145 be revised. Although minor amendments to part 145 were subsequently adopted, no major revision was made. However, a significant amendment to part 145 was adopted on November 22, 1988 (Amendment No. 145–21, 53 FR 47362), that expanded the scope of work foreign repair stations (that is, those U.S.-certificated repair stations located outside the United States) are authorized to perform. The amendment also permitted certain repair stations to contract maintenance functions to noncertificated organizations/facilities under specific conditions.

As part of a regulatory review of 14 CFR part 43; 14 CFR part 65, subpart E; and part 145, the FAA held four public meetings in 1989 (54 FR 30866; July 24, 1989). The meetings were held in Washington, D.C.; Fort Lauderdale, Florida; Dallas, Texas; and San Francisco, California. These meetings provided a forum for the public to offer comments concerning the possible revision of the rules governing repair stations. More than 500 representatives of repair stations, airlines, unions, manufacturers, foreign governments, and industry organizations, and individuals attended the meetings. The goal of the meetings was to gather enough factual information from the public to determine whether the repair station regulations should be revised and, if so, to determine what revisions should be made.

During the review of the repair station rules, the FAA examined various documents and related rulemaking actions. These documents included FAA Order 8300.10, Airworthiness Inspector's Handbook; advisory circulars (ACs) that relate to repair stations, such as AC No. 145–3, *Guide for Developing and Evaluating Repair Station Inspection Procedures Manuals,* and AC No. 145–5, *Repair Station Internal Evaluation Programs;* and previous petitions for exemption from part *145.* The FAA also reviewed Joint Aviation Requirement (JAR) 145: Approved Maintenance Organizations, established by the Joint Aviation Authorities (JAA), an organization of European civil aviation authorities. As a result of the above action, the FAA published Notice of Proposed Rulemaking No. 99–09, ''Part 145 Review: Repair Stations'' (64 FR 33142, June 21, 1999).

The FAA extended the close of the comment period on Notice No. 99–09 from October 19, 1999, to December 3, 1999, in response to commenters' requests. The FAA received approximately 530 comments in response to Notice No. 99–09. Associations representing repair stations and other aviation-related entities, unions, aviation authorities, air carriers, manufacturers, members of Congress, the National Transportation Safety Board (NTSB), and individual repair stations provided comments on the proposal.

The Final Rule

The FAA appreciates the comments received in response to its proposal. Many revisions to the proposal are based in part on language provided by commenters. The revisions clarify the intent of the rule, provide more regulatory flexibility in carrying out the requirements, and in some cases lessen regulatory burdens without compromising safety.

This final rule reorganizes and clarifies certain subparts and sections of part 145. We have arranged the subparts by subject rather than geographic location of the repair station. We also have eliminated limited ratings for manufacturer's maintenance facilities and removed the corresponding subpart.

In addition, we have revised the housing and equipment requirements. Part 145 no longer requires a repair station with an airframe rating to provide permanent housing that encloses at least one of the heaviest aircraft within the weight class for which it is rated. Instead, a repair station is only required to provide permanent housing that encloses the largest type and model of aircraft listed on its operations specifications. The final rule also includes provisions for exchanging equipment among satellite repair stations and for leasing equipment.

The final rule requires repair stations to develop a repair station manual that prescribes its operational procedures. The rule also requires repair stations to develop a quality control manual that is similar to the currently required inspection procedures manual.

Although we proposed a new rating and class system, we have retained the current rating and class system in the final rule. Also, the final rule does not include a quality assurance program. We intend to seek advice and recommendations from the affected aviation community before promulgating rulemaking on these issues.

Finally, the final rule provides for satellite repair stations, expands the scope of contract maintenance, and requires repair stations to develop a training program.

Because the Administrator of the FAA has delegated various responsibilities to offices within the Agency, we have determined it is appropriate to replace references to the ''Administrator'' with the ''FAA.'' Further, in an effort to recognize the use of electronic means to store and send information we have removed references to paper copies.

This final rule will become effective 20 months after it is published in the **Federal Register**. This time period is needed to develop ACs and internal FAA guidance, and to train FAA personnel. Additionally, repair stations will need adequate time to comply with the new requirements. The training

requirements (§ 145.163), become effective 24 months after the effective date of the final rule. Certificated repair stations will need this additional time to develop and submit a training program to the FAA for approval. Specific details regarding the deadlines for submitting a training program for FAA approval are discussed later.

Section-by-Section Discussion of Requirements Withdrawn From the Notice of Proposed Rulemaking

Based on comments received, we are withdrawing some of the sections proposed in the NPRM. Specifically, we are withdrawing advertising (proposed § 145.9), deviation authority (proposed § 145.11), ratings and classes (proposed § 145.59), transition to new system of ratings (proposed § 145.61), quality assurance (proposed § 145.201(a)(1)), and job functions (proposed appendix A to part 145). Below is a section by section discussion of these withdrawn requirements.

Proposed § 145.9 Advertising

Proposed paragraph (a) would have prohibited a repair station from advertising as a certificated repair station until the issuance of a certificate. Proposed paragraph (b) would have prohibited a repair station from making any statement about itself, either orally or in writing, that was false or designed to mislead any person. Finally, proposed paragraph (c) would have required any advertisement to include the repair station's certificate number.

One association requested that the FAA discuss what constitutes advertising for purposes of the proposal. Several commenters recommended deleting proposed paragraphs (a) and (b) because Federal and State laws adequately protect the public from false and misleading advertising. The commenters generally recommended revising proposed paragraph (b) because any statement by any individual could be misinterpreted and construed to be a violation under the proposed language. One commenter suggested revising proposed paragraph (b) to prohibit a repair station from misleading individuals with respect to ratings, limitations, privileges, and other matters regulated by part 145. Several commenters, including one association, supported requiring a repair station to include its certificate number in advertisements. Another commenter stated that including a certificate number in advertisements does not increase safety. That commenter noted that other certificate holders, such as air carriers and pilot training schools, are not required to include certificate numbers in advertisements.

In light of the comments regarding Federal and State laws on false and misleading advertising, the FAA has withdrawn proposed § 145.9(a) and (b). In addition, the FAA finds that requiring a repair station to include its certificate number in any advertising is unnecessary and involves a repair station's business decisions in an area not related to ensuring safety or the airworthiness of articles. The FAA notes that the public has access to a repair station's certificate number under § 145.5(b), which requires the certificate and operations specifications to be available on the repair station's premises for inspection by the public. Therefore, the FAA has not included proposed § 145.9 in the final rule.

Proposed § 145.11 Deviation Authority

The proposal would have established procedures for repair stations to apply for deviation authority from the regulations similar to the procedures used by manufacturers and operators.

Many commenters supported deviation authority for repair stations as a means of providing regulatory flexibility. However, several commenters recommended adding provisions to make the application procedure for deviation authority public. In addition, commenters indicated that the deviation authority should be processed at the local level rather than at FAA Headquarters. Other commenters expressed concern over the discretion given to FAA inspectors to terminate or amend a letter of deviation authority, which the commenters contended could disrupt business. Some of the commenters who opposed the addition of deviation authority stated that it would replace the public process with a hidden process, benefit large certificated repair stations, and provide little or no benefit to small general aviation repair stations.

When proposed, the FAA envisioned that deviation would be sought from only a few sections, in particular the proposed quality assurance system and training program requirements. However, as previously noted, the FAA intends to propose requirements for quality assurance in a subsequent rulemaking action. In addition, the FAA will be issuing guidance on the training program requirements and will approve these programs on a case-by-case basis. In light of the commenters' concerns about granting deviation authority, relief from part 145 regulations will continue to be addressed through the 14 CFR part 11 exemption process. Exemptions are public actions processed at FAA Headquarters.

Proposed § 145.59 Ratings and Classes

This proposed section would have significantly revised the current system of ratings and classes. The FAA specifically requested comments on the proposed regulations and asked whether the proposed system of ratings and classes should be addressed in a separate rulemaking.

Comments on the proposal were mixed. Some commenters found the new system confusing and complicated, and others stated that the proposal is more restrictive than the current system of ratings and classes. One association stated that the proposal merely adds to an outmoded class system and offered in its place an alternative ratings system. Other commenters criticized specific parts of the proposal, using as an example, the weights used to distinguish between aircraft class ratings. Some commenters believe that the number of powerplant class ratings would be confusing, and recommended instead associating powerplant and airframe class ratings.

Although many commenters believe a separate rulemaking action to revise the system of ratings is not necessary, the FAA finds that the comments and alternatives received have merit and should be considered further before a new system of rating and classes is adopted. Therefore, this final rule retains the current rating and class system. The comments will be considered during development of the subsequent notice of proposed rulemaking.

Proposed § 145.61 Transition to New System of Ratings

This section proposed procedures for transitioning to the proposed system of ratings and has not been included in this final rule.

Proposed § 145.201 Quality Assurance and Quality Control Systems

Proposed § 145.201(a)(1) would have required a repair station to establish a quality assurance system.

Commenters generally opposed the proposed quality assurance system requirements. One association stated that although its members support the concept of quality assurance, the FAA has not justified the burden of the requirement in terms of safety. Some commenters opposed the proposal because the FAA has not adequately described the specific requirements. Some of those commenters requested that advisory material be issued along with the proposal to allow the public

adequate opportunity to comment. Four unions expressed support for requiring repair stations to have a quality assurance system. Some commenters asserted that implementation of a quality assurance system would require them to incur significant costs.

The FAA agrees that the quality assurance program must have adequately defined requirements and that guidance material is necessary for implementation of an effective system. We also recognizes that establishment of a quality assurance system may be particularly burdensome for small repair stations. The FAA will review the comments submitted on this issue and develop specific requirements for a quality assurance program in a subsequent notice of proposed rulemaking.

Proposed Appendix A to Part 145 Job Functions

Proposed appendix A set forth job functions and equipment requirements for repair stations.

Commenters are generally opposed to appendix A as proposed. Many commenters noted that the proposed appendix is already outdated. Still, others questioned the FAA's ability to keep any such listing current while other commenters offered specific revisions to the equipment requirements.

The FAA agrees with commenters who expressed concern about the difficulties in keeping appendix A current; therefore, the agency has decided to withdraw appendix A. For the same reason, the FAA has not included current appendix A in the final rule. Because the FAA did not propose to eliminate appendix A in Notice No 99–09, we seek comments on its removal. The final rule will accomplish the purpose of appendix A without restricting a repair station's ability to adapt future technologies.

The final rule revises the equipment requirements and the contracting out provisions to provide more flexibility for repair stations to accomplish maintenance, preventative maintenance, or alterations on articles for which they are rated. Revisions to the equipment section of the final rule will permit certificated repair stations to enter into contracts or other leasing agreements to obtain equipment needed in the maintenance of articles for which it is rated. Repair stations will no longer have to maintain a seldom used, expensive piece of equipment just to retain their current ratings. Repair stations and their contract maintenance providers will still be required to have the equipment when performing a maintenance function. Likewise, the contracting out provisions have been revised to better reflect current industry practices in specialized areas. The combination of these actions effectively incorporates appendix A in its entirety.

Section-by-Section Discussion of the Final Rule

Below is a section-by-section discussion of the final rule. We have provided a brief description of the proposed rule, a summary of the comments received, and the FAA's disposition.

Part 145—Repair Stations

Subpart A—General

Section 145.1 Applicability

Summary of Proposal/Issue: The FAA proposed to revise current § 145.1 with respect to obtaining repair station certificates and the general rules under which certificated repair stations must operate. The FAA proposed to add the term ''preventive maintenance'' and proposed to replace the current reference to ''airframes, powerplants, propellers, and appliances'' with ''any aircraft, airframe, aircraft engine, propeller, appliance, or component part thereof.'' The FAA proposed deleting paragraph (b), which delineated the term ''domestic'' and ''foreign'' in describing the location of a repair station.. As discussed in Notice No. 99–09, the FAA removed, where appropriate, the distinctions between repair stations located inside the United States and those located outside the United States. In addition, the FAA proposed eliminating paragraph (c), which addressed the limited rating for manufacturers.

Comments: Most commenters supported the FAA's proposed revisions to § 145.1. However, several commenters recommended eliminating the phrase ''component part thereof'' because of the burden it would place on the applicant for a repair station certificate. One commenter recommended including the term ''rebuilt'' whenever the term ''maintenance'' is used.

With regard to the proposed elimination of the limited rating for manufacturers, three unions supported the proposal. Manufacturers opposed the elimination of the rating and questioned why a production approval holder may perform major repairs and major alterations, but under the proposal a separate rating would be required to perform basic maintenance. One manufacturer stated that the proposal fails to recognize the unique relationship a manufacturer has to its products.

FAA Response: The FAA made editorial changes to this section in the final rule. The FAA revised this section to state that part 145 contains the rules a certificated repair station must follow with respect to the performance of maintenance, preventive maintenance, and alterations of an aircraft, airframe, aircraft, engine, propeller, appliance, and component part to which part 43 applies. The FAA notes that the revised language includes ''component part'' rather than ''component part thereof;'' the use of ''component part'' is consistent with the terminology used in part 43. In addition, the FAA finds that the term ''maintenance,'' rather than the term ''rebuilt,'' more accurately describes the work performed under this part and is consistent with industry use.

As proposed in Notice No. 99–09, the FAA is eliminating the limited rating for manufacturers. Because maintenance practices and aircraft technologies have evolved since the establishment of limited ratings for manufacturers, the FAA has determined that all repair facilities' systems for inspection, recordkeeping, and quality control should be consistent.

In response to comments from manufacturers, the FAA finds that there is not a significant difference between warranty work (repairs made by the manufacturer) and maintenance. The FAA also disagrees with the manufacturers assertion that warranty work is an extension of the manufacturing process. Once an article completes the manufacturing process and receives its type certificate, any repair including warranty work must be accomplished per an approved maintenance program. The difference between the manufacturer's process and a repair station program is the requirement that the article is approved for return to service upon completion of maintenance.

Manufacturers use numerous methods, such a maintenance/material review boards (MRB) under 14 CFR part 21, to correct manufacturing defects while articles are still in the manufacturing process. Repairs made to articles returned to the manufacturer for warranty work could constitute a change to the article's type design. Although these procedures are acceptable for manufacturers, they do not provide a means to return the item to service, for airworthiness release or to approve the alteration of a type design. A repair of this type may render the item unairworthy since the definition of ''airworthy'' is that it meets its type design and is safe for flight.

As noted in Notice No. 99–09, the FAA will give full consideration to the quality control system established by the manufacturer to comply with part 21. However, the manufacturer's repair station will have to operate in compliance with parts 43 and 145.

Section 145.3 Definition of Terms

Summary of Proposal/Issue: For purposes of part 145, the FAA proposed to define accountable manager, actual work documents, approve for return to service, approved data, article, certificate holding district office, certificated, composite, computer system, consortium, directly in charge, facility, housing, maintenance release, overhauled, and signature.

Comments: The commenters generally asserted that only terms exclusive to part 145 should be defined in part 145. Some of those commenters stated that those terms should also be added to 14 CFR part 1 to ensure they are used consistently throughout the regulations. Other commenters stated that any term not exclusive to part 145 should be defined only in part 1. However, some commenters asserted that all terms should be defined only in part 1. In addition, several commenters suggested adding definitions for the following terms: acceptable to the Administrator, airworthy, approved by the Administrator, authorized inspector, avionics, current as applied to technical information, inspection personnel, job functions, line maintenance, maintenance functions, product, quality assurance system, quality control system, satellite repair station, self evaluation, and supervisory personnel.

With regard to the definition of ''accountable manager,'' the commenters generally are concerned that the accountable manager will be held personally liable for business decisions and stated that the definition conflicts with provisions in parts 121 and 135 that indicate the air carrier or commercial operator has the responsibility for the work performed for them by a repair station. The commenters recommended clarifying the definition to limit the personal liability of the accountable manager. Some commenters suggested the person in this position should be the point of contact with the FAA. Other commenters recommended changing ''accountable manager'' to ''repair station manager.''

Many commenters expressed concern with the definition of ''actual work documents'' and indicated it is easily confused with other terms and should be clarified. Some commenters asked whether the word ''actual'' refers to the original work documents. Several commenters noted the word ''detailed'' is ambiguous and allows for individual interpretation, and indicated the word ''signed'' should be changed to permit other methods to be used, such as stamps, initials, and electronic signatures. Several commenters indicated the definition of ''actual work documents'' is a significant departure from current practices and could cause documentation to become extremely burdensome.

Many commenters opposed the definition of ''approve for return to service'' in § 145.3(c). Some of these commenters indicated that the definition is unnecessary and repeats or is inconsistent with existing regulatory requirements, particularly with regard to parts 43 and 65. The commenters proposed revisions to the definition and suggested moving it to part 43.

One manufacturer supported the proposed definition of ''approved data'' and six commenters recommended clarifications to that proposed definition. Two associations opposed the definition of ''approved data'' because it is not consistent with part 1 or SFAR 36.

Many commenters opposed the definition of ''article'' in § 145.3(e). Several commenters stated the definition conflicts with the use of ''article'' in SFAR 36 and as it relates to technical standard orders.

Commenters who opposed the definition of ''certificate holding district office'' (CHDO) stated the definition is subject to change whenever the FAA reorganizes and changes the names of its divisions and offices, and expressed concern over its application when multiple repair facilities are involved. Several commenters stated that the definition should state that the CHDO has responsibility for administering the certificate of the repair station.

Many commenters supported the definition of ''certificated;'' however, one commenter suggested clarifications. One association opposed the definition and indicated it is redundant and would be more appropriately included in part 1.

Commenters who opposed the definitions of ''composite'' and ''computer system'' suggested that neither definition is adequate and both should be revised and clarified. The commenters provided suggested revisions for each definition.

Most repair stations, manufacturers, and associations who commented on the definition of ''consortium'' opposed it. Several commenters expressed concern about the economic impact this could have on independent repair stations and noted that it appears the FAA is providing an economic advantage to type certificate holders. The commenters also noted that it appears the FAA is creating a two-tiered system of repair stations.

The commenters generally opposed the definition of ''directly in charge'' and offered revisions for clarification. Several other commenters noted that § 145.3(k) paraphrases language from part 121, and one association stated that if the term is adopted in part 145, it should use the same language as that found in part 121. Other commenters noted there is confusion as to whether the term applies to the oversight of external contractors or only internal operations.

An association stated the definition of ''facility'' is confusing and contradictory, and should be excluded; however, the association provided an alternate definition if the Administrator can justify its inclusion in the rule. Some commenters recommended revising the reference to ''land'' to include public ramp space.

Commenters generally supported the definition of ''housing'' in proposed § 145.3(m)(1) but recommended revisions to the language in proposed § 145.3(m)(2). The commenters recommended revising the term ''structures'' to ''method'' and indicated the term ''segregation'' is subjective. Another commenter strongly opposed inclusion of the definition of housing in part 145, because it mixes the concepts of housing, equipment, and facility.

Commenters generally did not support the proposed definition of ''maintenance release.'' Some commenters recommended replacing the term ''repair station document'' with ''statement'' to clarify that a maintenance release is not always a separate document and to ensure the requirements are consistent with part 43. One commenter noted that the proposed definition is contrary to parts 43, 121, and 135. Another commenter indicated that the maintenance release should apply to all persons authorized to perform maintenance, preventive maintenance, or alteration under 14 CFR and that the release provided in part 43 would be acceptable.

The commenters generally indicated that ''overhauled'' is already defined in part 43, and the definition should be moved to part 1.

Commenters supported the inclusion of a definition for ''signature'' but generally indicated it should be in part 1. One commenter commended the FAA for defining the term ''signature'' but stated that because the term has caused serious consternation in the industry,

the FAA should publish advisory material governing acceptable means of compliance.

FAA Response: Based on the comments received, the FAA has not included in the final rule definitions of the following: actual work documents, approve for return to service, approved data, certificate holding district office, certificated, composite, computer system, consortium, facility, housing, maintenance release, overhauled, and signature. However, the FAA has retained definitions for accountable manager, article, directly in charge, and line maintenance.

The FAA generally agrees that terms not unique to part 145, such as ''approve for return to service,'' ''approved data,'' ''certificated,'' ''maintenance release,'' and ''overhauled,'' should not be defined in part 145. In addition, the term ''computer system'' is related to the proposed rating and class system, and no longer needs to be defined for the purposes of part 145. The term ''composite'' is not unique to part 145, and its common definition is adequate for the purposes of part 145. The concept of a consortium and references to actual work documents are not included in the final rule and therefore no longer require definition. Other terms, such as ''facility'' and ''housing,'' are adequately described in the particular sections in part 145 that address those subjects and do not require further definition. Finally, the FAA has removed the definition of ''signature'' from the final rule. The FAA notes that it recently has adopted policies and procedures to implement the requirements of the Government Paperwork Elimination Act, 44 U.S.C. 3504, which defines ''electronic signature'' and requires Federal agencies to provide for the option of using electronic signatures when practicable.

The FAA disagrees with commenters who suggest that the term ''accountable manager'' should be removed from part 145. The FAA has determined that it is necessary for a repair station to have one individual who is responsible for ensuring repair station operations are conducted in accordance with part 145. However, the FAA has revised the definition of ''accountable manager'' to clarify that the person in this position is responsible for and has authority over only repair station operations conducted under part 145. It was not the FAA's intent to dictate who is responsible for repair station operations that are unrelated to part 145, such as accounting. It also was not the intent of the FAA to impose personal liability for repair station operations on the accountable manager. The FAA notes that the term ''accountable manager'' is consistent with JAR terminology, and its use is consistent with the FAA's harmonization efforts. Finally, the FAA notes that the definition in this final rule states that the accountable manager will serve as the primary contact with the FAA as suggested by many commenters.

Although the term ''article'' is used throughout 14 CFR, the FAA has determined that it is important to define the term for the purposes of part 145 because it encompasses the items on which a repair station may perform maintenance. However, the FAA revised the definition so that the items listed are consistent with items on which maintenance, preventive maintenance, and alterations are performed under part 43.

The FAA disagrees with commenters who assert that the definition of ''directly in charge'' should not be placed in part 145 because it is used in part 121 and that inconsistencies could arise between the definitions. For the convenience of the user and because the definition specifically addresses the responsibilities under part 145, the FAA decided that the definition should be included in part 145. The FAA notes that the definition is consistent with the definition found in § 121.378. However, in response to concerns raised by the commenters, the FAA revised the definition of ''directly in charge.'' The revised definition clarifies that the person is responsible for the work of a repair station that performs maintenance, preventive maintenance, and alterations, or other functions affecting aircraft airworthiness. With regard to the comment regarding work that is contracted to an outside source, the FAA notes that § 145.217(b)(2) specifically requires that a repair station remain directly in charge of the work performed by a noncertificated person.

In response to commenter requests, the FAA has added the definition of ''line maintenance'' to mean any unscheduled maintenance resulting from (1) scheduled checks that contain servicing and/or inspections that do not require specialized training, equipment, or facilities, or (2) unforeseen events. The definition is necessary to clarify the work that may be performed under § 145.205(d). The performance of line maintenance is further discussed in the analysis of § 145.205(d).

Section 145.5 Certificate and Operations Specifications Requirements

Summary of Proposal/Issue: Proposed § 145.5(a) would have prohibited any person from operating as a certificated repair station without a repair station certificate or operations specifications. Proposed paragraph (b) stated that a repair station could perform work only on articles for which it is rated and within the limitations of its operations specifications. In paragraph (c), the FAA proposed to revise the current requirement in § 145.19 that a repair station display its repair station certificate at a place normally accessible to the public. The FAA proposed that the certificate be available for inspection by the public and the Administrator. Proposed paragraph (d) would have specified the contents of a repair station's operations specifications.

Comments: Commenters generally opposed the language in proposed paragraph (b) because they felt it might restrict a repair station from performing work not directly related to aviation maintenance. In addition, an association stated that the proposed paragraph repeats the requirements in proposed § 145.215, now § 145.201. With regard to proposed paragraph (c), commenters generally supported not requiring display of a repair station certificate. However, some commenters suggested modifying the proposal by permitting only ''parties of interest'' or persons having a ''business need'' and the Administrator to inspect the certificate, rather than the ''public.'' One commenter who opposed the proposal asked why a certificate is issued if a repair station is not required to display it. That commenter also stated it would be more appropriate to require display of the operations specifications.

FAA Response: This final rule contains paragraph (a) as proposed with a revision stating that a repair station also cannot operate without, or in violation of, its ratings. This revision is for clarity and does not place any additional burden on a repair station, because ratings are an integral part of a repair station's certificate. The FAA agrees that proposed paragraph (b) is similar to proposed § 145.215(a)(1), now § 145.201(a)(1) and, therefore, has not included proposed paragraph (b) in § 145.5. However, the FAA notes that proposed § 145.215(a)(1), now § 145.201(a)(1), did not contain ''and within the limitations placed in its operations specifications,'' which was included in proposed § 145.5(b). Therefore, that phrase has been added to § 145.201(a)(1). With regard to proposed paragraph (c), the FAA disagrees that only ''parties of interest'' or persons with a ''business need'' should be allowed to inspect the certificate. The FAA finds that it is unlikely that a member of the general public will ask to inspect a repair station certificate unless

the person has, at least potentially, business with the repair station. In addition, determining who is a party of interest or whether a particular person has a business need would be subjective and difficult to enforce. Further, the FAA notes that the proposal relaxed the current requirement to always display the repair station certificate. Therefore, the FAA has adopted the proposal with the clarification that the certificate be available for inspection by the ''FAA,'' not the ''Administrator,'' and that the repair station operations specifications also be made available. The FAA notes that operations specifications are an integral part of the repair station certificate. Finally, the FAA has deleted proposed paragraph (d), which would have set forth the contents of the operations specifications. The proposed paragraph was not regulatory in nature and only identified what the FAA may include in repair station operations specifications.

Subpart B—Certification

Section 145.51 Application for Certificate

Summary of Proposal/Issue: The FAA based this proposed section on current §§ 145.11, 145.13, and 145.71. The proposal would have revised the list of items an applicant is required to submit to the FAA with the application. In paragraph (a), the FAA proposed that an applicant submit (1) a copy of the repair station manual to the Administrator for approval; (2) a list by type, make, or model, as appropriate, of the aircraft, airframe, aircraft engine, propeller, appliance, component, or part thereof, for which an application is made; (3) a statement signed by the accountable manager that the procedures described in the repair station manual are in place and meet the requirements of the applicable regulations; (4) an organizational chart with names and titles of management and supervisory personnel; (5) a description of the applicant's facilities, including the physical address; and (6) a list of maintenance functions to be contracted out.

Proposed paragraph (b) would have required that the equipment, personnel, technical data, and housing and facilities required for the certificate and rating be in place at the time of certification by the Administrator.

In proposed § 145.51(c), the FAA expanded the scope of current § 145.71 by permitting an applicant located outside the United States to obtain a repair station certificate if it maintains foreign-registered aircraft operated under the provisions of part 121 or part 135, or aircraft engines, propellers, appliances, components, or parts thereof for use on such aircraft. In addition, the proposal (1) required the applicant to demonstrate that required fees have been paid and (2) codified the FAA's existing practice of requiring that a repair station located outside the United States complete in English an application for a repair station certificate.

Proposed § 145.51(d) would have permitted all consortiums that function as a single entity with regard to quality control and quality assurance functions, that hold an approved type certificate, and that perform maintenance, preventive maintenance, or alterations of that type-certificated product and components thereof to apply for a repair station certificate under this section.

In proposed paragraph (e), the FAA addressed applications for additional ratings or renewal of repair station certificates.

Comments: Many commenters questioned the reference in proposed paragraph (a)(1) to an approved rather than accepted repair station manual. Some of these commenters stated that use of the word ''approved'' applies a more stringent standard to repair stations than to other certificate holders. With regard to proposed paragraph (a)(2), some commenters suggested requiring a listing by model series. Some commenters stated that a listing by parts is burdensome and would generate excessive paperwork and costs. One commenter recommended revising ''part'' to read ''part family.''

Commenters generally opposed requiring the accountable manager to sign a statement that procedures are in place that meet the requirements of part 145. One commenter noted that the application process and subsequent FAA surveillance will ensure compliance with part 145.

Commenters stated that the organizational chart should contain functional titles only. Those commenters opposed including names in the chart; some commenters stated that if names are included, the FAA must understand that those names would be current only at the time of application submission. Some commenters noted that current personnel assignments will be included in the required repair station roster. Another commenter recommended deleting this requirement because the information will be included in the repair station manual. One association stated that FAA approval of a repair station's organizational chart and personnel assignment is inappropriate.

Some commenters suggested requiring only a general description of the applicant's housing and facilities under proposed paragraph (a)(5). An association contended that the proposed paragraph repeated the requirements in proposed § 145.207(c), now § 145.209(c). That association also opposed requiring an applicant's physical address in the application.

With regard to proposed paragraph (a)(6), commenters stated that ''maintenance functions'' is not adequately described; some commenters suggested using ''job function'' as set forth in appendix A. A few commenters indicated that only maintenance functions to be contracted to noncertificated persons should be listed in the application. Some commenters appear to have believed that the proposal would require FAA approval of vendors. One association stated that the required information will be provided on FAA Form 8130–3 and under § 145.207(h), now § 145.217(a), and, therefore, should be eliminated from the application.

Commenters opposed the requirement in proposed paragraph (b) that equipment be in place at the time of certification and stated that is would be unnecessarily burdensome. Commenters suggested requiring only that the equipment be ''available.'' Commenters noted that some repair stations may lease equipment. Other commenters noted that it is only important that the equipment be in place when needed to perform the work.

Commenters stated that proposed paragraph (c) should not be included in the final rule because the FAA has stated an intention to eliminate all distinctions between repair stations located inside the United States and those located outside the United States. Unions noted that the proposal does not require repair stations located outside the United States to comply with drug and alcohol testing programs applicable to repair stations located in the United States. Some unions and members of the U.S. Congress also urged reinstating the need-based requirement for repair stations located outside the United States. Some manufacturing associations opposed a need-based requirement and stated that market forces will determine if a repair station is ''necessary.''

Commenters generally opposed proposed paragraph (d), which recognized consortiums that operate as a single organization. Some commenters felt that the proposal would provide an economic advantage to European repair stations. One association stated that the establishment of requirements for

satellite repair stations make this provision unnecessary.

Comments varied with regard to proposed paragraph (e). Some commenters recommended alternative language, for example, referring to changes to ratings instead of additional ratings. Another commenter recommended deleting the paragraph and adding the requirements to proposed § 145.57(b).

FAA Response: In this final rule, paragraph (a)(1) references a repair station manual ''acceptable to the FAA.'' The FAA has not included the requirement for approval of the repair station manual in § 145.207 of this final rule. In addition, the FAA has added a requirement in paragraph (a)(2) for submission of the applicant's quality control manual as required by § 145.211(c). The requirement for a quality control manual is explained in the preamble discussion of § 145.211. The FAA has revised paragraph (a)(3) (proposed paragraph (a)(2)) by using the term ''article'' rather than ''aircraft, airframe, aircraft engine, propeller, appliance, component or part thereof.'' Commenters interpreted proposed paragraph (a)(2) to require a listing by type, make, model, or ''part'' of the article for which the application is made. The final rule requires, as did the proposal, listing only the type, make, or model of the article for which application is made. The FAA notes that some repair stations work only on parts and therefore the type, make, or model for that part would be required.

Based on commenter opposition, the FAA has eliminated the proposed requirement for the accountable manager to sign a statement that procedures are in place that meet the requirements of part 145.

Paragraph (a)(4) is adopted as proposed. The FAA disagrees with commenters who suggest that only functional titles should be included on the organizational chart. The FAA finds that it is important to the certification process that a repair station demonstrate that qualified personnel are assigned to management and supervisory positions. The FAA notes that although personnel assignments may change after certification, current management and supervisory assignments must be maintained in the roster required by § 145.161. In response to one commenter, the FAA notes that the organizational chart in the repair station manual does not require individual names.

The FAA has adopted paragraph (a)(5) as proposed with minor editorial changes. Requiring only a general description of facilities would lead to subjective determinations of what kind of description is adequate. In addition, the FAA finds it is necessary to have a complete description, including the physical address of the repair station, for the certification process. The FAA recognizes that this information also will be included in the repair station manual. However, the FAA notes that the information in the manual must be kept current after the certification process; therefore, it performs an additional function.

The FAA has adopted paragraph (a)(6) as proposed with minor editorial changes. The FAA notes that the application must include only the list of maintenance functions to be contracted out, not a list of vendors for approval. The FAA does not agree that this requirement should be restricted to maintenance functions contracted to noncertificated persons. The FAA finds that although this information must be made available to the FAA under § 145.217(a), the information is important to the certification process and must be included in the application. The final rule explicitly provides that the list of maintenance functions to be contracted out is subject to the FAA's approval. The FAA notes that under the proposal, this information also was subject to FAA approval because it was included in the proposed repair station manual, which was an approved manual. In response to the comments regarding the meaning of ''maintenance functions,'' the FAA notes that maintenance functions include those individual tasks that comprise the maintenance, preventive maintenance, and alterations required to return an article to service.

This final rule also includes paragraph (a)(7), which requires that an applicant for a repair station certificate submit a training program for approval in accordance with § 145.163. Under the proposal, the training program would have been submitted as part of the repair station manual, which, as previously noted, was proposed to be an approved manual. The FAA notes that § 145.163(a) contains a delayed compliance date; therefore, an applicant for a repair station certificate would not be required to submit a training program with its application until the date specified in § 145.163(a).

The FAA has revised paragraph (b) to permit a repair station to meet the equipment requirement by having a contract acceptable to the FAA that ensures the equipment will be available when the relevant work is performed. Such arrangements may include lease agreements and rental agreements. This will accommodate those repair stations that do not plan to purchase expensive equipment that may not be used regularly. The FAA will review the contract during the certification process, particularly with respect to the applicant's ability to obtain the equipment when the relevant work is performed. However, this provision does not relieve the applicant from having the equipment in place and available for inspection at the time of certification. The applicant need not physically retain the equipment after certification, but the FAA has determined that it is necessary that the applicant have the equipment in place during the certification process. The FAA will observe the placement of the equipment, whether the equipment works, and whether the applicant can use the equipment properly. The FAA notes that the repair station must have procedures in place for ensuring the equipment is calibrated properly, if applicable, at the time of use.

With regard to proposed paragraph (c), the FAA has eliminated as many of the distinctions as possible between repair stations located inside the United States and those located outside the United States. However, the FAA has determined that the proposed application process distinctions are necessary. In response to commenters' concerns, the FAA notes that the proposed rule would require, exactly as does the current § 145.71, that the certificate/rating applied for be necessary for maintaining or altering U.S.-registered aircraft and their parts, or foreign aircraft/parts operated under part 121 or part 135.

With regard to requiring personnel of repair stations located outside the United States to comply with U.S. drug and alcohol testing requirements, the FAA previously has found that there are significant practical and legal concerns precluding implementation of the anti-drug rule outside the United States. In adopting proposed paragraph (c), the FAA has used the word ''articles'' where appropriate. The FAA notes that proposed paragraph (c)(3), which explicitly provided that all documentation from a repair station located outside the United States had to be submitted in English, has not been included in this final rule. This paragraph was not necessary because paragraph (a) requires that all applications be in a format acceptable to the FAA, and the FAA has determined that only applications in English will be acceptable.

Based on comments opposing the concept of consortiums, the FAA has removed from this final rule any provisions for consortiums. The FAA

notes that a rule for consortiums is unnecessary because only a limited number of exemptions have been issued to address this situation. The FAA finds that these limited requests would be better handled on a case-by-case basis under the part 11 exemption process.

The FAA has adopted paragraph (e) as proposed with minor editorial changes. In addition, the paragraph also applies to applications for amended certificates. The FAA notes that this paragraph appears as paragraph (d) in this final rule.

Section 145.53 Issue of Certificate

Summary of Proposal/Issue: The FAA based proposed § 145.53 on current §§ 145.11(b) and 145.71, which address the issuance of a repair station certificate. The FAA notes that in this final rule, § 145.53 includes the requirements in proposed § 145.2, which addressed repairs station certificates issued to persons located outside the United States, including persons in countries with which the United States has a bilateral aviation safety agreement (BASA). Comments on proposed § 145.2 will be addressed below.

Comments: Some commenters stated that the proposed language regarding issuance of certificates is ambiguous and unclear. One commenter recommended returning to the language in current § 145.11(b). Commenters also recommended changing ''organization'' to ''person.''

Commenters generally supported the language of proposed § 145.2(a). However, one commenter noted that paragraph (a) does not include the limitations of proposed § 145.53 and recommended adding the requirement to demonstrate that a repair station certificate is necessary in the interest of safety.

Some commenters supported the language of proposed § 145.2(b), now § 145.53(b). However, a few commenters indicated that the language is redundant and unnecessary because the Administrator already is given this authority by law. One commenter agreed that the requirements for safe maintenance should not depend on the location of the repair station but is concerned that proposed § 145.2(b) does not address repair stations located in countries for which BASAs with the United States do not exist.

Many commenters are concerned with the FAA giving its oversight responsibility to foreign governments. In addition, some members of the U.S. Congress noted that it appears repair stations located outside the United States will be regulated less stringently than facilities based in the United States. They assert that the safety requirements imposed on repair stations located in the United States should be imposed on repair stations located outside the United States. The commenters added that the FAA has not made a case for allowing repair stations located outside the United States to obtain FAA approval for the sole purpose of siphoning business from domestic facilities.

One foreign airline opposed proposed § 145.2(b) because requiring repair stations located outside the United States to comply with all of part 145 is inconsistent with established BASAs.

FAA Response: As previously noted, the FAA has moved the provisions in proposed § 145.2 to § 145.53 in this final rule because both sections deal with the issuance of repair station certificates. In addition, the word ''organization'' has been changed to ''person'' for consistency throughout the rule. The FAA notes that ''person'' is defined in part 1.

In response to commenters' concerns about ambiguity in proposed § 145.53(a), the FAA has reinstated the language found in current § 145.11(b), with minor editorial changes. In this final rule, § 145.53(a) applies to all repair stations, except those repair stations located in a country with which the United States has a BASA. Paragraph (a) provides that a person who meets the requirements of part 145 is entitled to a repair station certificate and ratings, prescribing operations specifications and limitations necessary in the interest of safety.

The FAA has included the text of proposed § 145.2(b), which applies to repair stations located outside the United States in countries with which the United States has a BASA. In response to commenters' concerns regarding surveillance of these repair stations, the FAA notes that the local civil aviation authorities will handle certification tasks for those countries with which the United States has a signed BASA and associated maintenance implementation procedures (MIPs). Repair stations in these countries often must comply with additional requirements if those requirements are stated in the BASA and MIP. The FAA finds that where BASAs exist, repair stations undergo an equivalent level of oversight and inspection when compared to repair stations located in the United States. Not only does the FAA perform routine and, when necessary, extra surveillance when safety may be compromised, other JAA-member countries or national (civil) aviation authorities (NAAs) perform additional surveillance of these repair stations. Finally, the FAA notes that paragraph (b) is informational and clarifies how the BASA/MIP process works in relationship to the part 145 certification process. The provisions in proposed § 145.2(b) are adopted as § 145.53(b) with minor editorial changes.

Section 145.55 Duration and Renewal of Certificate

Summary of Proposal/Issue: This proposed section was similar to current §§ 145.15 and 145.17 but would have revised the current provision in § 145.17(b) that a certificate or rating for a repair station located outside of the United States expires at the end of 12 months after the date on which it was issued. Instead, the proposal provided that the certificate or rating would expire after 24 months.

Proposed paragraph (d) would have modified the current requirement for certificate renewal by specifying that a repair station located outside the United States must submit its request for renewal no later than 90 days before its current certificate expires.

Comments: Many commenters stated that proposed § 145.55 contradicts the FAA's intention of removing the regulatory distinctions between repair stations located inside the United States and those located outside the United States. One association stated that the FAA failed to present any justification for requiring repair stations located outside the United States to renew their certificates. That association believes that the burden of initial certification and continuous surveillance will be dictated under the BASAs and associated MIPs. Another commenter stated that requiring a repair station located outside the United States to renew its certificate every 24 months is incompatible with JAR 145. Some commenters stated that the proposal affects JAA-certificated repair stations located in the United States because there are no reciprocal terms for renewal and reevaluation. Two unions opposed expanding the certificate duration from 12 months to 24 months, citing safety concerns and the quality of operations at repair stations located outside the United States.

With regard to proposed paragraph (d)(1), a commenter noted that the requirement to apply for a renewal of a certificate 90 days before its expiration would be impractical if the 12-month certificate duration is retained in the final rule.

FAA Response: Where appropriate, the FAA has eliminated the regulatory distinctions between repair stations

located inside the United States and those located outside the United States. However, to ensure an appropriate level of oversight, the FAA has determined that it is necessary to retain the expiration and renewal requirements for repair stations located outside the United States. Despite attempts to harmonize with JAA requirements, the FAA notes that the FAA never considered that certificate duration would be identical for repair stations located inside the United States and outside the United States.

The FAA has retained in this final rule the 12-month certificate duration period found in current § 145.17(b). However, this final rule also allows the FAA to renew the certificate for 24 months as currently permitted. The 12-month certificate duration period provides the FAA more oversight opportunity, especially when reviewing a renewal request for a newly certificated repair station located outside the United States. In light of the return to the 12-month certificate duration, the FAA has retained the current provision requiring repair stations to apply for renewal within 30 days of certificate expiration rather than the 90 days proposed. However, the FAA notes that if the repair station does not apply before that 30-day period, it must follow the application procedures in § 145.51.

The proposal is adopted with the changes discussed above and some minor editorial changes, including reordering of the paragraphs.

Section 145.57 Amendment to or Transfer of Certificate

Summary of Proposal/Issue: The proposal was based on current § 145.15 and delineated the circumstances under which a repair station had to apply for a change to its certificate. Proposed § 145.57(b) stated that the privileges of the certificate could not be transferred if the repair station is sold, leased, or otherwise conveyed. Accordingly, to obtain a repair station certificate, a new owner or transferee of repair station assets would have had to apply for a new certificate under the provision of proposed § 145.51.

Comments: With regard to paragraph (a), some commenters recommended eliminating the requirement that the application be on a ''form.'' Commenters generally felt that the prohibition against transfer of repair station certificate privileges in proposed paragraph (b) was overly broad. Commenters noted the changes in the aviation maintenance industry, specifically the increasing number of repair stations owned by publicly held corporations. Commenters stated that the proposal would decrease the value of the repair station certificate and that there are no similar requirements for air carriers. Commenters stated that a change in ownership does not necessarily result in a material change in the operations of the repair station. Commenters complained about the recertification costs if the proposal is adopted.

FAA Response: The FAA has revised paragraph (a) to clarify that a change to a certificate is necessary only if the certificate holder changes its location or requests to add or amend a rating. Therefore, changes to housing and facilities will not require a change to the repair station certificate. However, the FAA notes that § 145.105 provides that a repair station may not make any changes to its housing or facilities that could have a significant effect on its ability to perform the maintenance, preventive maintenance, or alterations under its certificate and operations specifications without written approval from the FAA. Paragraph (a) also has been revised to permit applications for changes in a format acceptable to the FAA rather than on a form as specified in the proposal.

In response to commenters' concerns regarding the transfer of certificates, the FAA has retained the language in current § 145.15(b) with minor editorial changes.

Section 145.59 Ratings

Summary of Proposal/Issue: The proposed section would have completely revised the current system of ratings and classes specified in current §§ 145.31 and 145.33.

Comments: The comments to the proposal were previously addressed.

FAA Response: As previously noted, the proposed rating system has been withdrawn and will be addressed in a subsequent rulemaking. The final rule retains the rating system found in current § 145.31.

Section 145.61 Limited Ratings

Summary of Proposal/Issue: Proposed § 145.61 contained the transition period for the new ratings system.

Comments: The comments on the transition period are not longer relevant to this rulemaking but will be considered in the subsequent rulemaking.

FAA Response: In this final rule, § 145.61 retains the provisions for limited ratings found in current § 145.33 with minor editorial changes. The FAA notes that current § 145.33(b)(13) is not included in this final rule. That paragraph provided for the issuance of a limited rating for any other purpose determined by the Administrator. The FAA does not issue any ''other'' limited ratings, except as specifically delineated in § 145.33(b)(1) through (b)(12), and the provision in paragraph (b)(13) led repair stations to apply for ''other'' limited ratings. Not including it in this final rule will eliminate any confusion caused by the provision.

Subpart C—Housing, Facilities, Equipment, Materials, and Data

Summary of Proposal/Issue: The proposed title for subpart C was ''Facilities, Equipment, Materials, and Housing.''

Comments: One association suggested revising the title of the subpart to more closely parallel the order of subjects in the subpart.

FAA Response: The FAA agrees and the title of subpart C is revised to read ''Housing, Facilities, Equipment, Materials, and Data.''

Section 145.101 General

Summary of Proposal/Issue: This section is based on current § 145.55 with no substantive changes.

Comments: Two associations questioned the use of the words ''quantity'' and ''quality'' because the words are too subjective. Commenters also opposed the use of the word ''standard'' because it is ambiguous and because subpart C does not contain measurable standards for repair station certification; several of these commenters suggested replacing the word ''standards'' with ''applicable requirements.'' Another association commented that the proposed section does not refer to ''housing'' and requested that the section be revised to include all items necessary for a repair station to be in compliance with the regulations.

FAA Response: In this final rule, the FAA has not included the words ''quantity'' and ''quality'' and has replaced the word ''standards'' in the proposal with ''applicable regulations.'' The FAA agrees that the words ''quantity'' and ''quality'' do not provide objective regulatory criteria. In this final rule, a certificated repair station will have to meet the applicable requirements for issuance of the certificate and ratings it holds. This section also has been revised to reference housing and data requirements because both subjects are addressed in this subpart. The reference to personnel requirements has been removed from this section because personnel are addressed under subpart D.

Section 145.103 Housing and Facilities Requirements

Summary of Proposal/Issue: The FAA based proposed § 145.103(a) on current § 145.35.

Proposed § 145.103(b) described the facility and housing requirements currently found in § 145.37. Specifically, proposed § 145.103(b)(1) would have required suitable permanent housing for the largest type and model of aircraft on which a repair station performs maintenance, preventive maintenance, or alteration. Proposed paragraph (b)(2) would have provided for the use of permanent work docks and the performance of work outside, where permitted by climatic conditions. Proposed paragraph (b)(3) would have established new provisions to require a repair station that performs maintenance, preventive maintenance, or alterations on any article of composite construction to meet acceptable process requirements.

Proposed § 145.103(b)(4) through (b)(7) would have revised current requirements to apply to the proposed system of ratings.

Proposed § 145.103(b)(8) would have specifically established a requirement for a repair station to meet any special facilities requirements determined by the manufacturer and approved by the Administrator for an article or system on which maintenance, preventive maintenance, or an alteration is performed.

In § 145.103(c), the FAA proposed to permit a repair station to perform certain job functions on an aircraft at a place other than its fixed location because of a special circumstance as determined by the Administrator.

Comments: With regard to proposed § 145.103(a), commenters expressed concern about the subjective nature of the word ''suitable'' as used to describe required housing and facilities. Commenters also opposed proposed paragraph (a)(5)(v), which would have permitted the Administrator to determine additional circumstances under which machines and equipment should be segregated. These commenters stated that the proposal would allow for subjective opinions from individual inspectors. Some commenters asserted that if proposed paragraph (a)(5)(v) is adopted, the FAA should establish a mediation process or objective criteria on which inspectors could base their decisions.

Various commenters objected to proposed paragraph (a)(6), which would have required a repair station to have assembly space in an enclosed structure where the largest amount of assembly work is done, on the grounds that repair stations may need to perform work outside. One commenter stated that instead of eliminating work outdoors, the FAA should require adequate protection from the environment. However, one union supported the elimination of outdoor work. The union asserted that environmental factors can have an adverse effect on working conditions. Opposition also was expressed to the requirement in proposed paragraph (a)(7) for a repair station to have storage facilities used exclusively to store and protect parts. Commenters argued that the provision would require repair stations to build additional facilities and that exclusive use of a storage facility is not necessary to ensure an article is airworthy.

Some commenters opposed proposed paragraphs (a)(8) through (a)(10) because the requirements relate to environmental codes, and FAA inspectors are not trained to conduct Occupational Safety and Health Administration (OSHA) audits. In addition, some commenters complained that those paragraphs lack objective standards and, therefore, would be subject to the interpretation of individual FAA inspectors.

Some commenters opposed the use of the word ''suitable'' in proposed paragraph (b)(1) on the basis that it could lead to subjective interpretations. Some commenters suggested that the requirement for enclosed permanent housing be based on the capability list rather than the repair station rating. Other commenters cited the expense associated with requiring such housing.

One commenter stated that the use of permanent work docks in proposed paragraph (b)(2) should not be based on climatic conditions. Another commenter stated that the proposal implies that permanent work docks are required to work outside. That commenter contended that work docks are not always necessary. One commenter interpreted the proposal as prohibiting work docks as allowed under the current rules. Another commenter opposed requiring FAA acceptance of the work docks on the basis that FAA inspectors are not able to determine which work docks are acceptable.

Commenters who opposed proposed paragraph (b)(3) stated that all maintenance, preventive maintenance, or alterations require meeting acceptable process requirements, not just work performed on composites. Other commenters recommended deleting this provision because it does not relate to housing and facilities requirements.

One association stated that proposed paragraphs (b)(4) through (b)(7) are redundant to the requirements of proposed paragraph (a), which permits the Administrator to base the housing and facilities requirements on the rating held and the work to be performed.

Commenters suggested possible alternative language for proposed paragraph (b)(8) to permit facilities equivalent to those recommended by the manufacturer.

Comments on proposed paragraph (c) will be addressed in the discussion of § 145.203, which includes the proposed requirements in this final rule.

FAA Response: The FAA has revised § 145.103 in response to issues raised by the commenters. The FAA agrees that the housing and facilities requirements should be based on a repair station's ratings and the work performed. This final rule does not contain many of the specific requirements opposed by the commenters. This final rule provides regulatory flexibility and accommodates changing technologies while helping to ensure only airworthy articles are returned to service.

For example, this rule requires that a repair station have facilities that provide for the proper segregation and protection of articles, and segregated work areas enabling environmentally hazardous or sensitive operations to be performed without affecting other work.

The FAA notes that commenters who contend that the FAA should not issue regulations that address ventilation, lighting, and control of temperature and humidity appear to believe that this area should be regulated only by OSHA. The FAA notes that the regulations addressing these issues are intended to ensure the quality of maintenance performed. If articles and workers performing maintenance functions on these articles are not protected from these elements, the work may not be performed properly. Therefore, the issue is one of the quality of the work performed, which is clearly within the scope of the FAA's authority.

This final rule includes a requirement that a repair station with an airframe rating must provide suitable permanent housing to enclose the largest type and model aircraft listed on its operations specifications. Unlike the current requirement, this final rule does not require a repair station to provide housing for at least one of the heaviest aircraft within the weight class of the rating it seeks. In response to comments opposing the use of the word ''suitable,'' the FAA finds that because the operations conducted by repair stations vary, the agency cannot dictate one type of permanent housing suitable for each repair station. Therefore, the word ''suitable'' is retained in this final rule.

This final rule also provides that a repair station may perform maintenance functions outside of its housing if the repair station provides facilities that are acceptable to the FAA and meet the requirements of § 145.103(a) to ensure the work can be performed in accordance with the requirements of this part and part 43.

The FAA notes that proposed paragraph (c), which is included in § 145.203 of this final rule, will be discussed later.

Section 145.105 Change of Location, Housing, or Facilities

Summary of Proposal/Issue: The proposal specified the types of changes that would require the Administrator's approval. The proposal would have required that any change to the location or facilities of a repair station, including substantial rearrangement of space within its present location, be approved in advance. The proposal also stated that a repair station may not operate at a new location until approved by the Administrator.

Comments: Commenters generally opposed the proposal. They stated that the proposal would lead to subjective and inconsistent interpretations by inspectors. Commenters stated that the rule should not address ''any'' change, and only changes that adversely affect the airworthiness of articles should require FAA approval. Some commenters asserted that only reductions in space should require approval. Other commenters opposed any regulation of changes to housing and facilities. One association opposed the proposal because there is no safety justification for requiring approval to rearrange equipment.

FAA Response: In response to commenters' concerns, the FAA has retained the requirements in current § 145.21 with some changes. Specifically, in this final rule, § 145.105(a) requires approval only of changes to the location of the repair station's housing. Paragraph (b) requires FAA approval of changes to housing or facilities required by § 145.103 only if the change would have a significant effect on the repair station's ability to perform maintenance, preventive maintenance, or alterations under its certificate and operations specifications. Therefore, not all changes to housing or facilities will require approval. The FAA notes that the rule does not require FAA approval for equipment changes under this section. Paragraph (c) retains with minor editorial changes the provision that the FAA may prescribe conditions and limitations under which the repair station must operate during a change to its location, housing, or facilities.

Section 145.107 Satellite Repair Stations (Proposed §§ 145.107 and 145.109)

Summary of Proposal/Issue: In these sections, the FAA proposed to permit a repair station to establish a satellite repair station to perform work at a place other than the repair station's primary facility. Proposed § 145.107(a) described a satellite repair station and specified the requirements for the certification of these facilities. In paragraph (b), the FAA proposed to permit the parent and satellite repair station to use each other's personnel and equipment.

Additionally, in paragraphs (c) and (d) the FAA proposed to codify the current practice that a repair station located within the United States would not be permitted to have a satellite repair station located outside the United States. Likewise, a repair station located outside the United States would not be permitted to have a satellite repair station located within the United States.

Because proposed § 145.109 addressed satellite repair station operations, it has been combined with § 145.107 in this final rule. Proposed § 145.109 required that a chief inspector or an assistant chief inspector be designated for a satellite repair station. The proposal also required that the inspector be available at the satellite repair station or, if away from the premises, by telephone, radio, or other electronic means.

Comments: Commenters generally supported the concept of satellite repair stations. However, the majority of commenters requested that the CHDO for the repair station with managerial control also have responsibility for the satellite repair station. Commenters also indicated that a single point of contact with the FAA is important.

With regard to satellite repair station manuals, commenters requested that a satellite repair station be able to combine its manual with the manual of the managing repair station. Some commenters suggested that the satellite repair station's procedures could be in an appendix to the managing repair station's manual. A few commenters stated that one manual would permit one quality control system for the managing and satellite repair stations, which would promote safety. Commenters also stated that the manual should be accepted rather than approved as provided for in the proposal.

Commenters stated that the word ''independent'' should be removed from proposed paragraph (b) because it has not been defined and appears to create another category of satellite repair stations.

Commenters generally opposed proposed paragraphs (c) and (d) because the restrictions from having satellite repair stations in countries other than the country of the managing repair station hinder the expansion of the aviation industry across international borders. Commenters stated that a single quality control system offers the potential for a satellite repair station to be located ''globally.'' Commenters asked whether a repair station located outside the United States may have a satellite repair station located outside the United States and, if so, whether the satellite repair station must be in the same country as the managing repair station.

With regard to proposed § 145.109, commenters opposed the use of the terms ''chief'' inspector and ''assistant chief'' inspector. Some commenters stated that part 145 does not require those specific positions. The JAA recommended amending the proposal to require that the inspector be present when there is a need to inspect or return to service an article. The JAA noted that it is important to prevent telephone-based judgments made on the basis of another person's observations when an aircraft has been involved in an incident.

FAA Response: The FAA has revised this section in the final rule to clarify the requirements for satellite repair stations. In addition, the final rule does not use the term ''parent'' to describe the managing repair station but rather refers to it as the ''repair station with managerial control'' over the satellite repair station.

The FAA intends that the CHDO for the repair station with managerial control also hold the satellite's repair station certificate. Surveillance will be conducted by the geographic flight standards district office (FSDO) at the request of the CHDO. Although a satellite repair station will have its own certificate, it may not hold a rating not held by the repair station with managerial control. The satellite need not hold all the ratings held by the managing repair station. This requirement is in paragraph (a)(1).

With regard to the satellite's repair station manual, the satellite may use the managing repair station's manual if it is applicable to the satellite's operations. The two manuals may not be identical because the operations of the managing and satellite repair stations may not be identical. It is likely that the satellite repair station will use portions of the managing repair station's manual. The

FAA notes that the manuals could be combined with specific procedures set apart for the satellite repair station. When applying for its certificate, the satellite repair station must submit whatever manual it will use. The FAA notes that the manual must be acceptable to the FAA rather than approved by the Administrator, as proposed.

This final rule also requires that the applicant for a satellite repair station certificate submit a quality control manual acceptable to the FAA. Like the repair station manual, the quality control manual may be identical to the managing repair station's quality control manual, if appropriate. The requirement for a quality control manual will be discussed in the analysis of § 145.211.

Paragraph (b) of this final rule contains the requirements of proposed paragraph (b) and proposed § 145.109. References to ''chief'' inspector and ''assistant chief'' inspector have been deleted. The FAA also included language to clarify that inspection personnel designated for a satellite repair station must be available at the satellite repair station any time a determination of airworthiness or return to service is made. In other circumstances, inspection personnel may be away from the premises but must be available by telephone, radio, or other electronic means.

This final rule combines proposed paragraphs (c) and (d) and provides that a satellite repair station may not be located in a country other than the domicile country of the certificated repair station with managerial control. This prohibition is necessary because of certification and surveillance issues. For example, if the repair station with managerial control is located in a country with whom the United States has a BASA and MIP, certification is accomplished under the BASA and MIP and surveillance is performed by the CAA of the foreign country. If the satellite repair station is located in another country with whom the United States does not have a BASA and MIP, certification of the satellite repair station could not be accomplished in a manner consistent with that of the repair station with managerial control. In addition, the entity providing surveillance of the repair station with managerial control would not provide surveillance of the satellite repair station.

Section 145.109 (Proposed § 145.111) Equipment, Materials, and Data Requirements

Summary of Proposal/Issue: The proposed requirements were based on current §§ 145.47 and 145.49. The proposal would have retained the requirements similar to those of current §§ 145.47(a) and (b), and 145.49(a); however, the proposal would have required that tools used to accomplish work must be those recommended by the manufacturer or equivalent to the manufacturer's recommendation, and acceptable to the Administrator. The proposal also would have required that tools used for product acceptance and/or for making a finding of airworthiness be tested at regular intervals to ensure correct calibration to a standard acceptable to the Administrator.

Comments: Commenters opposed proposed paragraph (a) on the basis that it precludes repair stations from renting or leasing equipment. The commenters stated that this option is particularly important for expensive, rarely used tools.

Commenters stated that proposed paragraph (b) is vague. Some commenters requested that the FAA define a ''standard acceptable to the Administrator.'' Other commenters stated that the regulation should state that the standards be derived from National Institute of Standards and Technology (NIST) standards or ''accepted or approved by a national government standards agency.''

Commenters who opposed proposed paragraph (c) stated that the tools and equipment should be required to be in place only when the work is being performed. In addition, some commenters stated that the proposal limits the repair station's ability to develop alternative tooling that performs the intended function and would be acceptable to the Administrator. A few commenters recommended eliminating this paragraph because equipment and tooling already are addressed in § 43.13(a).

Because the FAA has moved the requirements for a repair station to keep current certain documents from proposed § 145.201(b) and (c) to § 145.109 in this final rule, comments on maintaining current documents and possessing manufacturers' maintenance manual requirements in proposed § 145.201(b) and (c) will be discussed here. Commenters encouraged the FAA to revise the rule to permit the use of electronic databases. Some commenters stated that the rule language should reference part 43. Commenters also opposed the requirement to always have all the documents and data listed in this section. They contended that the information is necessary only when the work is being performed. Specifically, commenters stated that there is no need for a repair station to have all service bulletins applicable to a part unless work required by the particular service bulletin is being performed. Other commenters complained that to require a repair station to maintain all current manufacturers' maintenance manuals relating to an article when maintenance is performed is unnecessarily costly. Some commenters requested that ''approved technical data'' be added to the list of required data.

FAA Response: The FAA has substantially revised the proposed requirements based on the comments. The language adopted in this final rule is based in part on language provided by commenters.

In this final rule, paragraph (a) requires a repair station to have the equipment, materials, and tools necessary to perform the work under its repair station certificate and operations specifications in accordance with part 43. Although proposed paragraph (a) did not preclude repair stations from renting or leasing equipment, the FAA has revised that paragraph to clarify that the equipment must be located on the repair station's premises and under its control when the work is being done.

The FAA has revised paragraph (b) as proposed to require that a repair station ensure that all test and inspection equipment and tools used to make airworthiness determinations are calibrated to a standard acceptable to the FAA. The FAA will issue guidance regarding what standards will be acceptable to the FAA. The FAA has issued numerous exemptions from the current requirement that calibration be to a standard derived from the NIST when the alternative standard has been accepted by the NIST as adequate. The intent of this provision is to provide more regulatory flexibility. The FAA notes that this paragraph no longer requires that the equipment be calibrated at ''regular'' intervals. The interval at which measuring and test equipment is calibrated depends on the type and use of the equipment; therefore, the word ''regular'' does not adequately describe when the equipment should be calibrated. The FAA notes that § 145.211(c)(1)(viii) requires that a repair station's quality control manual contain a description of the systems and procedures for calibrating measuring and test equipment used in maintaining articles, including the intervals at which the equipment will be calibrated.

Paragraph (c) has been simplified and the references to appendix A to part 145 have been eliminated. This final rule provides that equipment, materials, and tools must be those recommended by

the manufacturer of the article, or at least an equivalent, and acceptable to the FAA. In response to the comment, the FAA notes that the rule permits a repair station to develop its own tooling provided it is at least equivalent to that recommended by the manufacturer and acceptable to the FAA.

The FAA has replaced proposed paragraph (d) with requirements similar to those in proposed § 145.201(b) and (c). The FAA has determined that requirements for maintaining documents and data are more appropriately located in § 145.109. This final rule requires each repair station to maintain, in a format acceptable to the FAA, the documents and data necessary to perform work under its repair station certificate and operations specifications in accordance with part 43. The documents and data must be current and accessible when the relevant work is being done. As suggested by one commenter, the FAA has added a reference to other applicable data acceptable to or approved by the FAA.

In addition, the final rule permits the required documents and data to be maintained in a format acceptable to the FAA. As previously noted, this language will permit the information to be stored electronically and give the FAA the discretion to permit the storage of information through other media, if appropriate.

Regarding the document and data requirements, the FAA notes that § 43.13 already requires that work be performed in accordance with the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness or other methods, techniques, and practices acceptable to the Administrator.

Subpart D—Personnel

Section 145.151 Personnel Requirements

Summary of Proposal/Issue: In § 145.151 the FAA proposed to establish the same general personnel requirements for repair stations located inside the United States as those located outside the United States. The FAA also proposed to require each certificated repair station to designate an individual as the accountable manager.

Comments: For reasons previously discussed, commenters opposed requiring a repair station to designate an accountable manager as proposed in paragraph (a)(1). Commenters opposed the requirement in proposed paragraph (a)(2) for a ''sufficient'' number of personnel on the basis that it is vague. Some commenters stated that the level of staffing is a business decision. An association stated that this language may prohibit smaller facilities from meeting the requirements of the paragraph because the workload of a small repair station can fluctuate dramatically during a given time period.

One commenter asked whether ''maintenance operations'' as used in proposed paragraph (a)(3) include alterations. A few commenters recommended removing the word ''noncertificated'' from that paragraph. Other commenters stated the proposal could require all noncertificated employees, such as building maintenance personnel, to be tested. Some commenters stated that requiring practical tests of noncertificated employees would be impractical because the repair station would have to develop and administer tests for every conceivable job function.

With regard to proposed paragraph (c), commenters again criticized the use of the word ''sufficient.'' Commenters also criticized the use of the word ''technique'' because it is unrelated to a standard.

FAA Response: The FAA has made editorial changes, removed redundant requirements, and reorganized this section for clarity. The language adopted in the final rule is based, in part, on language proposed by commenters.

As discussed in the analysis of § 145.3, the FAA has retained the position of accountable manager. The FAA notes that a repair station is not required to hire an individual to fill this position but may designate a current employee as the accountable manager. In addition, a satellite repair station need not designate an accountable manager; the accountable manager for the repair station with managerial control over the satellite repair station may serve in this position.

The FAA has retained the requirement for a ''sufficient'' number of employees in paragraph (c). Because repair stations vary in size, the FAA cannot require a specific number of employees, and the language accommodates this situation. The FAA notes that the rule does not require a repair station to always maintain a certain staffing level but rather requires it have a sufficient number of employees for the work being performed.

In response to one commenter's concern, paragraph (d) in the final rule applies only to employees who perform maintenance functions under part 145. The FAA disagrees with the commenters who suggested removing the word ''noncertificated.'' The final rule requirement that a repair station determine the abilities of its employees based on training, knowledge, experience, or practical tests applies only to noncertificated employees who perform maintenance functions. The FAA notes that a determination based on these criteria is not required for part 65 certificated employees.

In response to the commenter who asked whether maintenance operations include alterations, the FAA previously noted that maintenance functions (proposed as maintenance operations) include all the tasks required to perform maintenance, preventive maintenance, and alterations.

Section 145.153 Supervisory Personnel Requirements

Summary of Proposal/Issue: In this section, the FAA proposed minimum practical experience and training requirements for supervisory personnel. The proposal also would have expanded the Administrator's ability to determine the competence of all supervisory personnel. In addition, this proposed section would have required minimum experience and training requirements for inspection personnel employed at repair stations.

Comments: Commenters generally opposed this proposed section. Commenters questioned why the proposal requires part 65 certification of supervisors. Some of these commenters questioned why a certificated supervisor also must have 18 months of experience. One association asked what constitutes 18 months of experience: for example, performing the maintenance function once a month or once in 18 months. Commenters opposed the proposed requirement for a ''sufficient'' number of trained personnel to supervise the maintenance performed and suggested replacing the term ''trained personnel'' with ''qualified personnel.'' Commenters asked for clarification of the difference between a ''supervisor'' and a ''person directly in charge.'' In addition, commenters opposed the FAA determining the appropriate ratio between supervisors and apprentices or students. Commenters also opposed the proposal to permit the FAA to evaluate supervisory personnel, particularly based on testing. Commenters felt this provision is overreaching and may allow abuse and personal bias.

Commenters stated the proposal does not eliminate the distinctions between repair stations located inside the United States and those located outside the United States. Unions opposed exempting foreign repair station personnel from part 65 certification requirements.

FAA Response: The FAA has revised this section to clarify its requirements and remove redundant provisions. In addition, this section no longer addresses inspection personnel requirements. For clarity, the FAA determined that it would be better to address inspection personnel requirements in a separate section.

The final rule retains the requirement for a ''sufficient'' number of personnel to perform supervisory duties. As previously noted, because repair stations vary in size, the FAA cannot require a specific number of supervisors. The final rule also requires that supervisors hold part 65 certification if employed by a repair station located inside the United States. However, the rule does not require supervisors employed by a repair station located inside the United States to have either 18 months of experience or be trained or thoroughly familiar with the means used to accomplish the maintenance work being supervised, as proposed. The FAA notes it is not necessary to set forth such experience requirements in this rule because the proposed experience requirements are similar to the 18-month practical experience requirement in § 65.77 for mechanics and § 65.101 for repairmen. However, supervisors at repair stations located outside the United States are required under the final rule to meet the proposed experience requirements because they are not required to have part 65 certification. During the certification process of a repair station that is located outside of the United States, the FAA assesses the foreign country's licensing procedures to determine if they meet minimum safety standards that are acceptable to the FAA. Also, under BASAs with other countries, the FAA can assesses the adequacy of licensing procedures either separately or as one of the elements of the MIP.

If the FAA determines that a country's licensing procedures are not acceptable, the FAA has the discretion to require that the personnel performing covered maintenance functions in those repair stations be certificated under part 65 before the station will be issued a part 145 certificate. In the case of a BASA where the Civil Aviation Authority (CAA) does meet all of the FAA licensing standards, the Administrator would require the CAA to add additional requirements. In addition, part 145 sets forth minimum experience and knowledge requirements for foreign maintenance personnel. Adequate controls are in place that allow the Administrator to exercise discretion in the interest of safety and to ensure that only qualified maintenance personnel perform work in repair stations located outside the United States. The FAA finds that requiring all foreign maintenance personnel to meet the part 65 certification requirements would not serve any safety purpose, and it would place an unnecessary burden on both the FAA and the foreign maintenance personnel. Imposing such requirements would impair the exercise of discretion, and thus not be appropriate.

Finally, this final rule includes the requirement that supervisors understand, read, and write English. The FAA notes that the proposal contained such a requirement for supervisors at repair stations located outside the United States. Supervisors at repair stations located inside the United States are required to be certificated under part 65; that part requires those individuals to read, write, speak, and understand English.

The final rule does not dictate the ratio of supervisors to individuals being supervised but leaves this decision to the repair station. With regard to the difference between a ''supervisor'' and a ''person directly in charge,'' the definition of ''directly in charge'' provides that the person need not physically observe and direct each worker constantly but must be available for consultation on matters requiring instruction or decision from higher authority. A supervisor would physically observe and direct a worker when needed.

The FAA has not included proposed paragraph (g) in the final rule. This paragraph provided for FAA evaluation of supervisory personnel based on employment records, tests, or any other methods. The FAA has determined that such a provision is not necessary because this section already requires supervisory personnel to meet certain qualifications.

Section 145.155 (Proposed § 145.153) Inspection Personnel Requirements

Summary of proposal/issue: Proposed § 145.153 would have addressed inspection personnel requirements.

Comments: Commenters opposed the proposal to permit the FAA to evaluate inspection personnel, particularly based on testing. Commenters felt this provision is overreaching and may allow abuse and personal bias.

FAA Response: For clarity, the FAA has addressed inspection personnel requirements in this separate section. The FAA notes that minimum qualification requirements, currently found in § 145.45, were inadvertently omitted from the proposal. The final rule contains qualification requirements similar to those found in the current rule. The final rule does not require that inspection personnel hold part 65 certification. However, the inspectors must be thoroughly familiar with applicable regulations and inspection methods, techniques, practices, aids, equipment, and tools used to determine the airworthiness of an article. In addition, they must be proficient in using various types of inspection equipment and visual inspection aides appropriate for the article being inspected. Finally, the final rule includes the requirement that inspectors understand, read, and write English.

The FAA notes that this section does not include the proposed provision that would permit the FAA to evaluate inspection personnel based on employment records, tests, or any other methods. As noted in the discussion of § 145.153, inspection personnel are already required to meet certain qualifications.

Section 145.157 (Proposed § 145.211(c)) Personnel Authorized To Approve an Article for Return to Service

Summary of Proposal/Issue: Proposed § 145.211(c) would have set forth the qualifications for inspectors authorized to perform inspections under that section.

Comments: No comments were received on this proposal.

FAA Response: The FAA has determined that the requirements for personnel authorized to return an article to service are more appropriately included in subpart D, which contains all other personnel requirements, rather than subpart E, which addresses operating rules. The final rule requires that personnel authorized to return an article to service be part 65 certificated unless employed by a repair station located outside the United States. The final rule requires personnel employed by a repair station outside the United States to have 18 months of practical experience and be thoroughly familiar with the applicable regulations and proficient in the use of the various inspection methods, techniques, practices, aids, equipment, and tools appropriate for the work performed and approved for return to service. Such experience requirements are not necessary for personnel authorized to approve an article for return to service who are employed by a repair station located in the United States, because those personnel hold part 65 certification. Finally, the final rule also includes the requirement that personnel authorized to approve an article for return to service must understand, read, and write English.

Section 145.159 (Proposed § 145.155) Recommendation of a Person for Certification as a Repairman

Summary of Proposal/Issue: The proposal would have required a repair station to recommend a sufficient number of repairmen to meet all applicable requirements of this part if the repair station chooses to use repairmen to satisfy these requirements. The FAA also proposed to delete provisions of current § 145.41(b), which required that each person recommended must be at or above the level of shop foreman or department head or be responsible for supervising the work performed by the repair station. Section 145.41(b) also permitted a repair station to recommend any employee who meets the requirements of current § 65.101 for certification as a repairman.

Consistent with proposed § 145.153(g), proposed § 145.155(b) also would have permitted the Administrator to evaluate any repairman's ability by inspecting employment and experience records and/or by administering an oral or practical test.

Comments: Comments on the proposed language varied. One association contended that the requirements under § 65.101 are explicit enough that proposed § 145.155(a)(3) and (b)(1) through (b)(3) is not necessary. That association stated that the proposed language is confusing because it could be interpreted as imposing requirements in addition to those found in § 65.101. Commenters recommended eliminating proposed paragraph (b), which permitted subsequent FAA evaluation of a repairman based on employment, tests, or any other methods.

FAA Response: The FAA has substantially revised the proposal to address commenters' concerns. This final rule simply requires a repair station who chooses to use repairmen to meet the applicable personnel requirements of this part to certify that each person recommended is employed by the repair station and meets the eligibility requirements of § 65.101. The rule no longer requires a repair station to certify that the person has the necessary training and practical experience to perform the work functions for which certification is required. It was not the FAA's intent to impose training or experience requirements beyond those imposed in § 65.101.

Current § 145.41 requires that a certificated repair station recommend at least one person for certification as a repairman. Under this final rule, a repair station is not required to recommend any specific number of repairmen. However, the FAA notes that a repair station must have an appropriate number of repairmen for the work to be performed under its certificate and ratings. In addition, this final rule does not contain the proposal regarding subsequent evaluation of a repairman.

Section 145.161 (Proposed § 145.157) Records of Management, Supervisory, and Inspection Personnel

Summary of Proposal/Issue: The FAA based this proposed section on current § 145.43. The FAA proposal continued to require a repair station to retain a roster of supervisory (including management) personnel and inspection personnel. In paragraph (a)(3) the FAA proposed to establish a new requirement for a repair station to retain a roster of those certificated personnel authorized to sign a maintenance release for approval for return to service of an altered or repaired article.

The proposal included current requirements relating to the retention of information indicating compliance with experience requirements. The FAA proposed to modify the current rule by requiring that these rosters be kept current.

Comments: Commenters suggested revisions to the proposed language, including elimination of the term ''chief inspector.'' A few commenters requested that the FAA define the term ''technical supervisors'' as used in paragraph (a)(1). Some commenters opposed the requirement that repair stations must prepare a summary of past employment history and total years of experience for individuals listed on the rosters. Commenters stated that the only appropriate information to include in the summary is the individual's title, scope of present assignment, and FAA certificate number. Commenters also stated that the rule should accommodate temporary assignments without requiring updated rosters.

FAA Response: In response to a request to define ''technical supervisors'' as used in proposed paragraph (a)(1), the FAA has revised that paragraph to state ''supervisors who oversee maintenance functions.'' In addition, the FAA has deleted the term ''chief inspector'' from paragraph (a)(2). The FAA has determined that the summary required in paragraph (a)(4) is necessary to assist the agency in determining that an individual is qualified for the position held at the repair station. In addition, the FAA notes that the summary is a current requirement under § 145.43. The FAA has revised proposed paragraph (a)(4)(iii), which would have required that the summary include all past employment records with the names of employers and periods of employment by month and year. The final rule requires only past relevant employment with the names of employers and period of employment.

The FAA has added language in paragraph (b) to provide repair stations with 5 business days for updating rosters. This revision should preclude the necessity for daily revisions of rosters.

Section 145.163 (Proposed § 145.159) Training Requirements

Summary of Proposal/Issue: The FAA proposed to require each certificated repair station to establish a training program approved by the Administrator that consists of initial and recurrent training for employees assigned to perform maintenance, preventive maintenance, or alteration functions. The FAA proposed to require that records of accomplished training be documented by the repair station in a form acceptable to the Administrator and that these records be retained for the duration of each individual's employment.

Comments: Commenters voiced various criticisms about the proposed training requirements. Many commenters complained that the proposal does not contain specific requirements and stated that the FAA should issue advisory material for comment before publication of the final rule. Commenters wanted to know the type of training required, the frequency of training, and what is required to quantify and qualify on-the-job training. Some commenters stated that a ''one size fits all'' rule will not work for small repair stations. One association stated that the hiring practices of small repair stations or the performance of limited and specifically defined, repetitive work does not require continuous training and retraining. Many commenters stated that the training program should be acceptable to the Administrator rather than approved by the Administrator. The NTSB noted that the minimum standards for the recurrent training of pilots, flight attendants, and ground personnel involved in deicing and currency of job-specific skills is no less important for mechanics. The NTSB stated that the final rule should specify a reasonable quantity of recurrent training. An association representing European air carriers stated that the FAA should not require training programs for foreign repair stations that are significantly different than those used by the JAA. Unions and an

association expressed support for a training requirement for repair stations.

With regard to the recordkeeping requirement, commenters stated that the FAA should specify which items to include in the records rather than state that the records should be in a format acceptable to the Administrator. Commenters also recommended that training records be maintained for 2 years only.

FAA Response: The FAA has determined that adoption of a training program for repair station employees who perform maintenance, preventive maintenance, or alterations would enhance aviation safety by helping to ensure that those employees are fully capable of performing the work. It also would promote a level of safety equivalent to that of maintenance performed under parts 121 or part 135.

The FAA disagrees with commenters who contend that training programs should be accepted rather than approved. To ensure that the right type of program and amount of training is tailored to each individual repair station, the FAA has elected to approve training programs rather than accept them. The FAA recognizes that the training programs may vary depending on the size of the repair station and the nature of the work performed. Therefore, the FAA is not prescribing specific training requirements but will approve individual training programs submitted by repair stations. Before the effective date of the final rule, the FAA will issue advisory material regarding the required training program. The FAA does not anticipate that the training program requirement will be burdensome; many repair stations already provide employee training. In addition, the FAA anticipates that training requirements may be met by attending trade or technical society seminars and through on-the-job training. The FAA notes that repair station personnel performing maintenance for certificate holders conducting operations under part 121 or part 135 already must undergo training.

In adopting this rule, the FAA revised the proposal to require repair stations to retain employee training records for a minimum of 2 years. With regard to commenters' concerns regarding the content of the training records, the FAA notes that the language ''in a format acceptable to the FAA'' refers to the media by which the records will be submitted, for example electronically. When submitting its training program for approval, a repair station should delineate the items it intends to include in the records.

The FAA also disagrees that repair stations located outside the United States that operate differently from JAA-approved repair stations be exempt from the training program requirement. The final rule requires each repair station to implement a training program that is tailored to their individual operation. This may require that JAA training be included in the training programs for repair stations that are JAA-approved. This is not limited to only those repair stations located outside the United States. Likewise, repair stations located outside the United States that are not JAA-approved won't be required to include JAA training if this training does not reflect their operations. The FAA has taken great effort to standardize requirements for all repair stations regardless of their location to ensure only the best trained and qualified workforce performs maintenance on U.S.-registered articles.

To provide time for repair stations to develop their training programs, this final rule provides that beginning 2 years after the effective date of the rule, each applicant for a repair station certificate must submit a training program for approval by the FAA. A repair station certificated before that date must submit its training program for approval on the last day of the month in which its certificate was issued. Therefore, if a repair station was issued a certificate in May 1995, that repair station must submit its training program to the FAA by May 31, 2 years after the effective date of the final rule. This compliance schedule allows each certificated repair station at least 2 years to develop its program. The FAA adopted this staggered compliance schedule for certificated repair stations to ensure that all training programs are not submitted to the agency at one time. A repair station may submit its training program before the deadline if it chooses to do so.

Subpart E—Operating Rules

Section 145.201 (Proposed § 145.215) Privileges and Limitations of Certificate

Summary of Proposal/Issue: The proposal would have modified current § 145.51 to include references to preventive maintenance and to permit a repair station to arrange for the maintenance, preventive maintenance, or alteration of any article for which it is rated at another organization under its quality control system. The FAA proposed to delete the current references to the performance of 100-hour, annual, or progressive inspections.

In addition, the FAA proposed in paragraph (b)(3) that a repair station could not approve for return to service any experimental aircraft after a major repair or major alteration unless the work was performed in accordance with methods and technical data acceptable to the Administrator.

Comments: Commenters stated that a repair station should have to survey a contractor only if it is not certificated; those commenters noted that contractors that are certificated repair stations will have a quality control system. Commenters also noted that the proposal permitted a repair station to perform work on experimental aircraft, but the FAA has not established what methods and technical data would be considered acceptable to the Administrator. One commenter questioned how the FAA would administer this proposal for the various purposes for which an experimental certificate is issued. Commenters recommended using the word ''article'' in the final rule where appropriate. One commenter noted that the proposal did not include the provision in current § 145.51 that permitted a repair station to perform maintenance at a place other than the repair station. Another commenter stated that proposed paragraphs (b)(2) and (b)(3) are redundant and should be removed from the final rule.

FAA Response: The FAA has incorporated the word ''article,'' as appropriate, in this section of the final rule. The FAA has adopted paragraph (a)(1) as proposed with minor editorial changes and the addition of the phrase ''within the limitations in its operations specifications.'' As previously noted, this phrase was included in proposed § 145.5(b). That proposed paragraph was not included in the final rule because proposed § 145.5(b) was similar to proposed § 145.215(a)(1), now § 145.201(a)(1), in the final rule. However, because the above-cited phrase was not included in § 145.215(a)(1), it has been included in § 145.201(a)(1) in the final rule.

With regard to paragraph (a)(2), the FAA agrees that a contractor that is certificated under part 145 will have its own quality control system and does not need to be surveyed by the contracting part 145 certificated repair station. Therefore, the final rule provides that a contracting certificated repair station must provide in its contract that a noncertificated person performing a maintenance function must follow a quality control system equivalent to the certificated repair station's system. The FAA notes that it is not enough for the contracting repair station to give its

quality control manual to the noncertificated contractor and assume the proper procedures will be followed. The certificated repair station must provide adequate surveillance to ensure its quality control procedures are followed.

The FAA notes that paragraph (b) is included in the final rule to provide that a certificated repair station may not maintain or alter any article for which it is not rated and may not maintain or alter any article for which it is rated if it requires special technical data, equipment, or facilities that are not available to it. This provision is a current requirement under § 145.53 and was inadvertently omitted from the proposal.

The FAA has adopted paragraph (c) as proposed with minor revisions. In addition to re-designating the paragraph to reflect the addition of paragraph (b) as noted above, the word ''applicable'' was included before ''approved technical data'' to clarify that the data must apply to the work performed. Paragraph (c)(3), which addresses major repairs and major alterations of experimental aircraft, includes a reference to § 43.1(b). Section 43.1(b) provides that part 43 applies to experimental aircraft that were previously issued a different kind of airworthiness certificate. The reference to § 43.1(b) in § 145.201(c)(3) clarifies that the paragraph applies to work performed by a repair station on these experimental aircraft as covered by part 43. The FAA agrees with the commenters who expressed concern over the appropriateness of including a provision in part 145 for major repairs or major alterations of all experimental aircraft.

Finally, the FAA notes that work performed away from a repair station is addressed in § 145.203.

Section 145.203 (Proposed § 145.103(c)) Work Performed at Another Location

Summary of Proposal/Issue: The proposal would have addressed work performed at another location in § 145.103(c). The FAA proposed to permit a repair station to perform certain job functions on aircraft at a place other than its fixed location due to special circumstances as determined by the Administrator. The FAA proposed to require that the repair station manual include procedures for the performance of this work.

Comments: Commenters stated that the proposal is too restrictive and current § 145.51(d) should be retained. A commenter recommended permitting the work to be performed on ''articles'' rather than just ''aircraft.'' A manufacturer stated that the proposal lacks guidance on how type certificate holders can perform maintenance at locations other than the manufacturer's location. The commenter stated that provisions are needed to define the role of service technicians and engineers who work for type certificate holders and are trained to perform maintenance in the field according to FAA-approved instructions once the limited rating for manufacturers is eliminated. An aircraft manufacturer noted that its customers often request that scheduled inspections be performed at their location. Another commenter stated that the rule should allow scheduled maintenance away from the repair station's location. Commenters stated that work away from the repair station's fixed location should be permitted ''as applicable'' rather than ''as approved by the Administrator.''

FAA Response: Because this provision applies to repair station operations, the FAA determined that it should be included in subpart E of part 145. The FAA has revised the final rule to permit work on an ''article'' rather than an ''aircraft.''

In response to comments, the FAA has revised this section. This final rule permits a repair station to perform work away from the repair station's location when the work is necessary due to a one-time special circumstance, for example, an aircraft on the ground or in preparation for a ferry flight, as determined by the FAA. The rule also permits work away from a repair station's fixed location when it is necessary to perform such work on a recurring basis, if the repair station's manual includes procedures for accomplishing maintenance, preventive maintenance, alterations, or specialized services at a place other than the repair station's fixed location. This later provision will allow work away from a repair station's fixed location as part of everyday business practices rather than under special circumstances only, as proposed. In response to the manufacturer's concerns, the FAA notes that a manufacturer will need to obtain a part 145 certificate and perform maintenance under this section in accordance with part 43 just as other certificated repair stations are required to do.

Section 145.205 (Proposed § 145.7) Maintenance, Preventive Maintenance, and Alterations Performed for Certificate Holders Under Parts 121, 125, and 135, and for Foreign Air Carriers or Foreign Persons Operating a U.S.-Registered Aircraft in Common Carriage Under Part 129

Summary of Proposal/Issue: The FAA proposed to retain the current requirements for a repair station performing maintenance, preventive maintenance, or alterations for a part 121 operator having a continuous airworthiness maintenance program to comply with the provisions of those parts pertaining to such a program. The proposal would have specifically listed those sections for which compliance is required. The FAA also proposed to revise the current rule by requiring a certificated repair station performing work for an air carrier or commercial operator having a continuous airworthiness maintenance program under part 135 to comply with the sections of that chapter pertaining to the performance of that work.

The proposal also would have addressed work performed for certificate holders operating aircraft under part 125 and for persons operating aircraft under part 129.

Finally, the FAA proposed to establish provisions that would permit a repair station located at a line station for an air carrier certificated under part 121 or part 135, or at a line station for a foreign air carrier or foreign person operating a U.S.-registered aircraft in common carriage, to perform, under certain circumstances, line maintenance on any aircraft of that air carrier or person.

Comments: One association supported the concept contained in this section but recommended the title be revised to delete the reference to required inspections. Some commenters recommended that the FAA revise parts 121 and 135 to require operators to provide maintenance manuals or other reference manuals to the repair station performing the maintenance.

Many commenters opposed the language in proposed § 145.7(a). Several indicated that the proposed language implies that a repair station would have to completely adopt an air carrier's total requirements rather than following only the air carrier's requirements applicable to the work performed. A commenter noted that although a repair station is required to comply with an air carrier's continuous airworthiness maintenance program, it does not necessarily use the same methods or processes. Some commenters were concerned about the

reference to § 121.375, Maintenance and preventive maintenance training programs, and the potential for complications to enforcement actions and individual FAA inspector interpretations.

One commenter stated that the term ''manual'' in § 145.7(b) should be replaced with ''maintenance program.'' Regarding § 145.7(d), a few commenters recommended changing the language ''a program approved by the Administrator'' to ''the operator's program approved by the Administrator,'' because the proposed language implies that a program must be approved for the repair station by the Administrator.

Some commenters supported the proposed line maintenance provisions in § 145.7(e). Several commenters opposed the proposal because it would permit a repair station to do line maintenance without meeting all part 145 requirements. One commenter stated that the FAA must adopt a separate performance requirement for line maintenance and clearly delineate the function from the air carrier requirements. Another commenter recommended defining line maintenance for aircraft other than large transport category aircraft and including the line maintenance of part 91 aircraft located within the same geographic region of the controlling FSDO.

FAA Response: The FAA moved proposed § 145.7 to subpart E because it is an operating rule. The FAA has deleted the reference to required inspections from the section title. The FAA agrees that these inspections are part of ''maintenance'' as defined in § 1.1; therefore, the reference is not necessary.

In response to commenters, the FAA has revised the proposal. References to the various sections in parts 121 and 135 appeared to confuse commenters; the FAA did not intend to impose additional requirements by including those references. With regard to commenters' requests to require air carriers to provide repair stations with copies of their manuals, such revisions were not proposed and, therefore, are outside the scope of this rulemaking. In addition, the FAA notes that parts 121 and 135 require that maintenance under a continuous airworthiness maintenance program be performed in accordance with the operator's manual, and it is the operator's responsibility to ensure the work performed on its behalf is done so in accordance with its approved programs.

The FAA has revised the requirements in proposed § 145.7(d), now § 145.205(c), to require compliance with the part 129 operators' FAA-approved maintenance program in response to commenters' concerns that the repair station had to obtain approval from the FAA.

The final rule includes the provision for line maintenance as proposed except for the requirement that the repair station be located at the line station. The FAA disagrees with commenters who expressed concern that repair stations performing line maintenance will not be required to comply with part 145 and, therefore, the work will not be appropriately performed. The only requirement that repair stations need not comply with when performing line maintenance is § 145.103(b). The repair stations must otherwise comply with part 145 and meet the additional requirements in § 145.205(d). As previously discussed, § 145.3 defines line maintenance. Finally, the FAA notes that the proposal did not address line maintenance performed for part 91 operators and therefore that issue is outside the scope of this rulemaking.

Section 145.207 (Proposed § 145.205) Repair Station Manual

Summary of Proposal/Issue: The FAA proposed to established a new requirement for a repair station to maintain and use a current, approved repair station manual that would set forth the procedures and policies for the repair station's operation. It also would have set forth requirements specifying the availability of the repair station manual to repair station personnel. The FAA proposed that a repair station provide its CHDO with a current copy of the manual. If the CHDO's copy was an electronic version, it would have to be accompanied by a means to access the manual at the CHDO.

Comments: Commenters opposed requiring approval of a repair station manual and requested that the FAA revise the rule to require the manual be acceptable to the Administrator. Commenters noted that an approval process may hamper their ability to be flexible in meeting customer needs. Commenters questioned whether the FAA has the resources for the approval process. Some commenters asked how often manual revisions must be submitted to the CHDO. Other commenters recommended revising the requirement that the manual be submitted in paper or electronic format; some of those commenters suggested using language to allow submission in any media. Two unions stated that the FAA should require that the manual be translated for use in foreign countries so all mechanics and employees can read and understand the manual. One of the unions stated that the translation should be approved by the FAA. One commenter asked whether having the manual available for personnel in electronic format meets the ''readily available'' requirement.

FAA Response: The FAA has included in this final rule the requirement that a repair station manual must be acceptable to the FAA. Unlike the approval process, the FAA will not issue any formal approval of the manual or revisions to the manual. However, if the FAA determines that the manual itself or revisions of the manual are not acceptable, the FAA will notify the repair station and the repair station must make appropriate changes to the manual. The FAA notes that the frequency with which a repair station must submit its manual revisions to the FAA is set forth in the procedures required by § 145.209(j).

This final rule requires that a repair station manual be accessible for use by repair station personnel rather than ''readily available.'' The FAA notes that the manual must be accessible to personnel when the work is being performed; therefore, a manual in a supervisor's office to which repair station personnel do not have access while work is being performed would not comply with this final rule. The manual may be in any format acceptable to the FAA, including but not limited to paper or electronic format.

With regard to the comment concerning translation of the repair station manual, the FAA notes that such a requirement was not proposed and therefore is outside the scope of this rulemaking.

Section 145.209 (Proposed § 145.207) Repair Station Manual Contents

Summary of Proposal/Issue: In the proposal, the FAA outlined the minimum requirements for a repair station manual. As proposed, the manual would have included an organizational chart of management personnel, a roster of inspection personnel, a description of the facility's operations, an explanation of its quality assurance system, a description of its training program, procedures for performing work at a location other than the facility, procedures for self-evaluations, a list of the maintenance functions contracted to an outside certificated facility or noncertificated person, procedures for conducting work under proposed § 145.7, a description of the facility's recordkeeping system, the repair station's capability list, procedures for updating the capability list, manual revision procedures, and

procedures for changes in location and facilities of the repair station.

Comments: Commenters generally opposed including names of individuals in the organizational chart or the roster of authorized inspection personnel. Commenters stated that a management or inspection personnel change would require a manual revision. Commenters also stated that the organizational chart should contain only functional titles. Commenters suggested that the roster should be maintained separate from the manual.

Some commenters stated that one manual should not include all the proposed items; for example, the quality control procedures could be in a separate manual. A few commenters stated that the term ''system'' in ''quality control system'' is too broad and subject to interpretation; one of those commenters noted that the FAA failed to supply examples of a required quality control system.

Commenters also opposed requiring a list of facilities to which the certificated repair station contracts out maintenance functions. Similarly, commenters opposed including the capability list in the manual. Commenters contended that it is not necessary to include a general description of the repair station's operations, including housing, facilities, and equipment, because this information already is provided to the FAA through certification requirements. Commenters also opposed including the training program in the manual. Commenters suggested including only a general description of the program.

Commenters opposed including the procedures for self-evaluation for adding items to a capability list. One commenter stated that there is no precedent for FAA approval of an internal audit program.

Three commenters opposed the requirement to describe the recordkeeping system, because part 43 already defines these requirements. Many commenters opposed the proposed requirement of including procedures for changes to a repair station location or facilities. Commenters stated that procedures for changing location or facilities is already addressed in the regulations and is unrelated to aviation safety.

FAA Response: The FAA has revised the proposal by deleting requirements for the names of specific personnel in the organizational chart; only functional titles will be required. In addition, throughout this section, the FAA has eliminated, where appropriate, requirements to maintain the actual items, such as rosters, capability lists, and names of outside contractors, and instead requires that procedures for revising this information be set forth in the manual. As with personnel names, much of this information is subject to change and if included in the manual would require frequent manual revisions.

As previously noted, the FAA has removed the quality assurance requirements from the rule; therefore, any references to it have been removed from the manual requirements. The FAA also has removed the quality control system requirements from the manual and has addressed them separately in § 145.211. Requirements relating to the procedures for surveying noncertificated contractors also have been moved to § 145.211(c)(vi) and are discussed later. The FAA has retained the requirement to include procedures for the self-evaluation required to add an article to a repair station's capability list. The FAA has determined that it is important to ensure that an article is added to the list only when the article is within the scope of the ratings and classes of the repair station certificate. The repair station also must have all of the facilities, equipment, materials, technical data, processes, housing, and personnel to perform the work; adequate self-evaluation procedures are a means to achieve this. However, the FAA notes that § 145.215 now makes the use of a capability list optional for repair stations with limited ratings rather than mandatory for all repair stations. Moreover, the FAA notes that the manual, and hence the procedures for self-evaluations, will not require FAA approval but only FAA acceptance.

The FAA disagrees with commenters who opposed including in the manual a general description of repair station operations and its recordkeeping requirements. The FAA has determined that it is important for the repair station to set forth how it operates. In addition, any changes to these operations will be reflected in the most current revision of the manual.

The FAA notes that procedures for revising the training program required by § 145.163 must be included in the manual. However, because the FAA is delaying implementation of the training program, these procedures need not be included in the manual until the repair station is required to have a training program.

The FAA has not included in the final rule the proposed requirement that the manual have procedures for changing the repair station's location and facilities. Section 145.105 adequately addresses this issue.

Unlike the proposal, the final rule does not require that a repair station manual include a table of contents, list of effective pages, or list of revisions with the date of each revision. To accommodate the technological changes that permit repair stations to maintain and revise their manuals in different formats and manners, the final rule provides that the manual must include a description of the system used to identify and control sections of the repair station manual.

Section 145.211 (Parts of Proposed §§ 145.201, 145.207, and 145.209) Quality Control System

Summary of Proposal/Issue: Proposed § 145.201 would have required a repair station to establish a quality assurance system. The FAA also proposed to continue to require a repair station to have a quality control and inspection system but expanded the scope of the system to include the quality control of any work performed by a contractor. The proposal also would have required these systems to be described in the repair station manual. Proposed § 145.209 would have modified current provisions related to the use of inspection devices and the conduct of inspection procedures. The FAA also proposed to require that a repair station establish specific procedures for the inspection of incoming raw materials and articles, as well as inspection procedures for articles on which contract maintenance or alterations were performed.

Comments: Commenters generally opposed requiring repair stations to implement a quality assurance system. Even commenters who supported the concept of quality assurance stated that the FAA should issue appropriate guidance material on the subject and permit public comment before adopting a final rule. Some commenters cited the cost of external audits; others questioned the impact such a system would have on safety. One association noted that neither air carriers nor production approval holders are required to have quality assurance programs, even though they may be authorized to perform maintenance. Another association stated that part 145 is a quality assurance system, and the FAA has not identified how it has failed. Unions generally supported requiring quality assurance systems. However, even some unions stated that the FAA should define specific and objective standards for quality assurance systems.

With regard to quality control systems, commenters stated that a repair station should not be required to survey certificated contractors or ensure they follow quality control procedures. Many

of those commenters argued that if the contractor is certificated, it will have a quality control system, and it is the FAA's responsibility to survey these repair stations.

Commenters opposed the proposed requirements that repair stations have an incoming inspection of raw materials and articles to ensure conformity with type design data. Those commenters also opposed an inspection of articles on which contract maintenance has been performed to ensure conformity with type design data and that the article is in condition for safe operation. Some commenters noted that a repair station inspection can ensure only that the article is in an airworthy condition and that the work was performed in a manner as prescribed in part 43.

With regard to hidden damage, some commenters stated that an inspector cannot disassemble every part or component to search for such damage. Commenters stated that the rule should require owners/operators to notify the repair station that an article may have been involved in an accident. Another commenter stated that limiting inspections for hidden damage to accident-related parts is inadequate for ensuring safety.

Commenters recommended that inspection personnel requirements be moved to proposed § 145.153. In addition, some commenters stated that inspection personnel should be required to be familiar with only ''applicable'' methods, techniques, and equipment rather than ''all'' of those items.

FAA Response: As previously noted, the FAA has not included the proposed requirement for establishing a quality assurance system. The FAA intends to issue a subsequent rulemaking that will address this issue. Comments on Notice No. 99–09 will be considered during that rulemaking process.

The FAA has retained the quality control system requirements and combined the applicable provisions of proposed §§ 145.201, 145.207, and 145.209 in § 145.211 of this final rule.

Section 145.211 requires a repair station to maintain a quality control system acceptable to the FAA that ensures the airworthiness of articles on which the repair station or any of its contractors perform maintenance. This final rule requires the repair station to keep a quality control manual and delineates the items that must be included in that manual. The required items were set forth in various sections of the proposal but primarily in the proposed repair station manual requirements; some of the items also are required to be maintained in the repair station inspection procedures manual under current § 145.45(f). The FAA determined that it was more appropriate to consolidate all of the provisions relating to quality control into one section. The FAA notes that the quality control manual may be separate from the repair station manual or included with that manual as a separate section or volume.

In this final rule, repair stations that contract maintenance functions to other certificated repair stations will not be required to survey those contractors. The rule requires a certificated repair station to qualify and survey only noncertificated persons who perform maintenance functions for the repair station.

The final rule also requires a repair station to inspect incoming raw materials to ensure acceptable quality and to perform a preliminary inspection of articles that are maintained. The final rule contains the requirement that a repair station have procedures for inspecting for hidden damage to articles involved in accidents.

The FAA agrees that the inspection personnel requirements of the proposal should be moved to subpart D, which addresses personnel requirements. As previously noted, § 145.155 requires that inspectors be familiar with the applicable regulations and the inspection methods, techniques, practices, aids, equipment, and tools used to determine the airworthiness of the article on which the maintenance, preventive maintenance, or alterations are performed. Inspectors also must be proficient in using the various types of inspection equipment and visual inspection aids appropriate for the article being inspected.

Section 145.213 (Proposed § 145.211) Inspection of Maintenance, Preventive Maintenance, or Alterations

Summary of Proposal/Issue: The FAA based this proposed section on the requirements regarding inspection of maintenance, preventive maintenance, or alteration in current § 145.59 and expanded it to address repair stations located outside the United States. The FAA proposed to include current restrictions placed on repair stations located outside the United States and on the supervisory and inspection personnel employed by these repair stations.

Comments: Commenters generally supported the language in proposed § 145.211(a) but indicated that the phrase ''aircraft, airframe, aircraft engine, propeller, appliance, and component, or part thereof'' should be replaced with the word ''article.'' In addition, many commenters indicated that the inspector is responsible for determining the airworthiness only of the article on which work was performed rather than the entire aircraft and suggested adding the phrase ''with respect to the work performed'' to paragraph (b)(2). Other commenters suggested replacing the word ''work'' in paragraphs (b)(1) and (b)(2) with the phrase ''maintenance, preventive maintenance, and alteration.'' Many commenters indicated the language of proposed § 145.211(c) should be removed because it repeats proposed § 145.153 and is in conflict with the FAA's intention of removing the distinction between domestic repair stations and foreign repair stations. Commenters also indicated that proposed § 145.211(d) should be rewritten to specify that only persons designated by a repair station may sign off on final inspections and maintenance releases for the repair station because designated persons currently sign final inspections and maintenance releases under the repair station's certificate, not their personal certificates.

FAA Response: Except as discussed below, the rule is adopted as proposed. As suggested by a commenter, the FAA has revised the rule to use the word ''article'' when appropriate. In response to commenters'' concerns, the FAA has included language in paragraph (b)(2) to clarify that an inspector must inspect the article on which the repair station has performed work to determine the article to be airworthy ''with respect to the work performed.'' In addition, the FAA has moved the inspection personnel requirements to § 145.155. The FAA agrees that all personnel requirements should be located in subpart D.

Section 145.215 (Proposed § 145.203) Capability List

Summary of Proposal/Issue: The proposal would have required each repair station to prepare and retain a current capability list that contains a list of the articles on which it performs maintenance, preventive maintenance, or alterations. The proposal would have required that these articles be identified by make and model, part number, or other nomenclature designated by the article's manufacturer. The FAA proposed to require that before revising its capability list, a repair station must complete a self-evaluation to ensure it meets all of the requirements for the proposed operations.

Comments: Many commenters opposed the concept of a capability list. The commenters generally stated that creating and maintaining a capability

list would create a significant administrative burden and increase operating costs without enhancing safety. Commenters noted that the capability list is redundant in light of the other requirements in part 145. Some commenters noted that a capability list has merit, but stated that listing each article by make, model, and part number is excessive. Some of those commenters added that the part number should be the basic part number and not include ''dash numbers.'' Some commenters noted that the self-evaluation system is not defined. The commenters indicated that proposed § 145.203(d) should be revised to permit the use of a designee when the accountable manager is unavailable. Some commenters believed paragraph (d) places an unacceptable level of personal liability on the accountable manager and should be deleted. One association stated that a repair station should have to submit only changes to its capability list, not the entire list, and changes should be allowed to be submitted electronically to the FAA.

FAA Response: The FAA has revised the proposed requirements to provide repair stations with only limited ratings the option of using a capability list. If the repair station chooses not to use a capability list, it must perform maintenance, preventive maintenance, or alterations of articles only as listed in its operations specifications. The FAA determined that it would be burdensome for all repair stations to maintain a capability list as proposed. In addition, the FAA finds that repair stations with limited ratings would be more likely to exercise this option. Based on the comments, the FAA recognizes that the use of a capability list is not appropriate for every repair station. The FAA also notes that it never intended to require, for example, repair stations that perform C and D checks on many different airplanes to compile a capability list with every part of every airplane it works on.

For repair stations with limited ratings, the use of a capability list will be less onerous than frequently requesting revisions to their operations specifications and provide regulatory flexibility. The FAA has not included in the final rule the requirement to identify each article by part number. The final rule requires identification by make and model or other nomenclature designated by the article's manufacturer. If a repair station with a limited rating chooses to use a capability list, its operations specifications will not need to be revised each time a new article is added to the list. However, the final rule retains the requirement that a repair station perform a self-evaluation before adding an article to its capability list. The FAA has determined that such an evaluation is necessary to ensure the repair station has the facilities, equipment, materials, technical data, processes, housing, and trained personnel in place to perform work on that article. The FAA notes that § 145.209 requires a repair station to include in its repair station manual procedures for performing this self-evaluation and reporting the results to the appropriate manager for review and action. The FAA has removed the requirement that the accountable manager must sign the evaluation. However, documentation of the evaluation must be retained on file by the repair station. If the repair station chooses to use a capability list, its manual also must include procedures for revising the capability list and reporting the revisions to the CHDO, including the frequency with which its revisions will be reported. Finally, the FAA notes that the capability list must be maintained in a format acceptable to the FAA; as previously discussed, the use of this language will permit repair stations to maintain the list electronically.

Section 145.217 (Proposed § 145.213) Contract Maintenance

Summary of Proposal/Issue: The FAA proposed to address requirements for repair stations that contract out maintenance functions. The FAA proposed that a repair station could not contract a job function to another certificated repair station or a noncertificated person unless the contracting repair station met the quality control system requirements proposed in §§ 145.201(a)(2) and 145.209(c)(2). The contracting repair station manual must also contain the procedures specified in proposed § 145.207(h), including procedures for surveying that certificated repair station or noncertificated entity. The proposal also would have provided that a certificated repair station may not contract the maintenance, preventive maintenance, or alteration of a complete type-certificated product, and it may not provide only approval for return to service of any article following contract maintenance.

Comments: Many commenters opposed the requirement that a certificated repair station must audit another certificated repair station that performs contract work. Commenters asserted that the FAA already has made a determination that a certificated repair station's quality control and inspection system is adequate when the repair station is issued a repair station certificate. Commenters added that mandatory audits should be required for noncertificated subcontractors only.

Several commenters opposed some of the requirements regarding job functions contracted to a noncertificated person. Some commenters requested that the term ''job function'' be changed to ''maintenance/job function.'' One commenter noted that the FAA's use of the terms ''certificated repair station,'' ''contracting repair station,'' and ''noncertificated person'' is not clear. Furthermore, several commenters noted that the FAA needs to clarify the supervisory role of the repair station.

Many commenters contended that the prohibition against contracting out the maintenance of a complete type-certificated product is unrealistic and would not allow engines to be overhauled or nondestructive testing to be performed. Commenters added that this requirement prohibits a certificated repair station from sending a type-certificated product to the original equipment manufacturer for warranty or factory work. In addition, a foreign authority noted that this requirement may be too restrictive and recommended revising it to make it similar to the requirement in JAR 145. Other commenters noted that this prohibition would be costly to and limit the business flexibility of certificated repair stations.

FAA Response: The FAA agrees that it is not necessary for a certificated repair station to survey another certificated repair station who performs a maintenance function under contract. This final rule does not include that provision. This final rule retains the requirement that a certificated repair station must ensure that a noncertificated person who performs a maintenance function under contract follows a quality control system equivalent to the system followed by the certificated repair station. The certificated repair station also must remain directly in charge of the work and verify, by test or inspection, that the work was performed satisfactorily and that the article is airworthy before approving the article for return to service. The FAA notes that ''directly in charge'' is defined in § 145.3. The FAA also notes that with regard to the inspection requirement, a repair station is always responsible under § 145.213 for ensuring that an article is inspected and that a determination is made that the article is airworthy.

In addition to the revisions discussed above, the FAA has revised ''job function'' to read ''maintenance function.'' This section also contains

requirements for information previously proposed for inclusion in the repair station manual, such as the maintenance functions contracted to each outside facility and the name of the facility and the type of certificate and ratings, if any, held by each facility. With respect to contract maintenance, this final rule requires that a repair station manual must contain only the procedures for maintaining and revising this information. The FAA determined that because this information may be subject to frequent revision, it need not be included in the repair station manual. In addition, the final rule provides that the FAA must approve the maintenance function to be contracted to an outside source. The FAA notes that under the proposal, this information would have been included in the repair station manual, which was an approved manual.

With regard to the prohibition against contracting out the maintenance, preventive maintenance, or alteration of a complete type-certificated product, the FAA has clarified these provisions in response to commenters' concerns. The rule now provides that a certificated repair station may not provide only the approval for return to service of a complete type-certificated product following contract maintenance, preventive maintenance, or alterations. As noted in the proposal, this prohibition is intended to preclude ''paper only'' repair stations.

Section 145.219 (Proposed § 145.217) Recordkeeping

Summary of Proposal/Issue: The FAA based this proposed section on current §§ 145.61 and 145.79. The proposal would have modified the current rule by requiring all repair stations to retain detailed records showing the make, model, identification number, and serial number (when applicable) of the article on which work was performed. The current 2-year record retention requirement was retained; however, the FAA proposed that the period from which this time would be measured would commence on the date on which the article was approved for return to service, instead of the date on which the work was performed. The proposal also would have required that these records include a copy of the maintenance release and that the repair station provide a copy of an article's maintenance release, retrievable in English, to the owner or operator.

In addition, the proposal required that a repair station make available to the Administrator or any authorized representative of the NTSB all maintenance records required to be kept by proposed § 145.217. The proposed paragraph specified that the records be provided in English.

Finally, the proposal specified those recordkeeping requirements that apply to repair stations located outside the United States.

Comments: Commenters generally opposed the distinction made between repair stations located inside the United States and those located outside the United States, and contended that all similar repair stations should have identical recordkeeping requirements. Some commenters objected to the use of subjective terms, such as ''adequate'' records, and stated that the FAA should establish an objective minimum standard. A few commenters suggested replacing the word ''owner'' in proposed paragraph (b) with ''customer'' or expanding the paragraph to require the repair station to give a copy of the work order to the owner's or operator's agent.

FAA Response: The FAA has revised this section to simplify recordkeeping requirements. This final rule requires a certificated repair station to maintain in English those records that demonstrate compliance with the requirements of part 43. The rule no longer lists any specific records that must be maintained. The rule retains the 2-year retention requirement and the requirement to provide a copy of the maintenance release to the owner or operator of the article. The FAA does not find it necessary to include language in the rule to permit a repair station to give a copy of the maintenance release to the owner or operator's agent. However, the rule does not preclude an owner or operator from making such arrangements between the repair station and the owner or operator of the aircraft. The rule also retains with minor editorial changes the requirement that the records be available for inspection by the FAA and the NTSB.

The rule does not contain separate recordkeeping requirements for repair stations located inside the United States versus those located outside the United States. With regard to records required to be maintained by certificated repair stations located outside the United States, the FAA notes that the recordkeeping requirements do not apply to foreign-registered aircraft operated by foreign operators.

Section 145.221 (Proposed § 145.219) Reports of Failures, Malfunctions, or Defects

Summary of Proposal/Issue: Under current § 145.63 or § 145.79, repair stations are required to submit reports of defects or unairworthy conditions to the FAA. The FAA proposed to standardize the type of data reported under the service difficulty reporting system by specifically listing the information required when a repair station submits a report.

Current § 145.63(b) states that in cases where filing a report of defects or unairworthy conditions might prejudice the repair station, the repair station shall refer the matter to the Administrator for a determination as to whether a report is necessary. Because such a condition does not appear in other parts of the regulations requiring such reports, the FAA proposed to eliminate this condition.

Comments: One commenter stated that the proposal constitutes an invasion of privacy. One association stated that the FAA should consider the final rule recently published on service difficulty reports when adopting the final rule language for this requirement. That association also requested that the FAA define ''serious defect'' and ''recurring unairworthy condition.'' The association stated the FAA should make clear that ''recurring unairworthy conditions'' are those that are not contemplated or covered by data approved by or acceptable to the Administrator. Commenters recommended revising the time for reporting from 72 hours to 96 hours and using ''article'' where appropriate. Commenters opposed including the name and address of the operator in the report, because the report already includes the registration number, which can be used for obtaining the other information. Other commenters stated that the rule should be revised to ensure only one report is submitted for each service difficulty. One commenter stated that the rule should be expanded to include all part 145 certificated repair stations.

FAA Response: The FAA has revised this section to reflect recent revisions adopted in Amendment Nos. 121–279, 125–35, 135–77, and 145–22, ''Service Difficulty Reports'' (65 FR 56192, September 15, 2000), including revising any ''serious defects'' or ''other unairworthy condition'' to read ''failure, malfunction, or defect,'' and increasing the time period for reporting from 72 hours to 96 hours. The FAA also clarified the reporting requirements proposed in paragraph (b) to require only the registration number of the aircraft rather than the name and address of the operator and to require ''time since last overhaul,'' if applicable.

Section 145.223 (Proposed § 145.221) FAA Inspections

Summary of Proposal/Issue: The FAA based this proposed section on current § 145.23 and expanded it so the FAA would be able to inspect repair stations' contract maintenance providers. The FAA proposed to require that arrangements for contractors' services include provisions for inspection of the contractor by the FAA.

Comments: Many commenters opposed proposed § 145.221. Several commenters indicated that the language regarding inspecting any contractor is beyond the scope of aviation safety and should be removed. Commenters noted that the FAA already has the right to inspect certificated repair stations; however, the surveillance of noncertificated facilities should be the responsibility of the certificated repair station. Commenters stated that the FAA has no authority over noncertificated facilities that usually are non-aviation suppliers, and the agency has presented no safety reason or justification for inspecting them. Furthermore, several commenters added that this could have a negative economic impact on certificated repair stations. Other commenters noted that the surveillance of noncertificated facilities should be limited to the functions performed for the certificated repair station and are performed only when there is cause and proper notification. In addition, several commenters suggested that the rule should continue to require written notification by the FAA of any inspection findings.

FAA Response: The FAA has revised the proposed requirement to provide that a certificated repair station may not contract for the performance of a maintenance function on an article with a noncertificated person unless it provides in its contract with the noncertificated person that the FAA may make an inspection and observe the performance of the noncertificated person's work on the article. This requirement no longer applies to certificated repair stations that are performing a maintenance function for another certificated repair station because the FAA already has the right to inspect the contract facility.

The final rule also provides that a certificated repair station may not return to service any article on which a maintenance function was performed by a noncertificated person if the noncertificated person does not permit the FAA to make the inspection described in the paragraph above.

With regard to the commenters who opposed the FAA's decision to remove the current provision that provides that a repair station will be notified in writing of any defects found during an inspection, the FAA notes that this is common FAA practice and need not be specified in regulatory language.

Part 91—General Operating and Flight Rules

Section 91.411 Altimeter System and Altitude Reporting Equipment Tests and Inspections

Summary of Proposal/Issue: The proposal would have revised § 91.411 to reflect the proposed ratings and classes. In addition, the FAA proposed to eliminate the provision relating to the limited rating for manufacturers.

Comments: A foreign air carrier opposed the proposed specialized service rating.

FAA Response: As previously noted, the FAA is not adopting the proposed ratings and classes. However, the final rule amends § 91.411 by removing paragraph (b)(2)(v), which referred to the limited rating for manufacturers.

Section 91.413 ATC Transponder Tests and Inspections

Summary of Proposal/Issue: The proposal would have revised § 91.413 to reflect the proposed ratings and classes. In addition, the FAA proposed to eliminate the provision relating to the limited rating for manufacturers.

Comments: A foreign air carrier opposed the proposed specialized service rating.

FAA Response: As previously noted, the FAA is not adopting the proposed ratings and classes. However, the final rule amends § 91.413 by removing paragraph (c)(1)(iv), which referred to the limited rating for manufacturers.

Appendix A to Part 91 Category II Operations: Manual, Instruments, Equipment, and Maintenance

Summary of Proposal/Issue: The proposal would have revised appendix A to part 91 to reflect the proposed ratings and classes. In addition, the FAA proposed to eliminate the provision relating to the limited rating for manufacturers.

Comments: No comments were received on this proposal.

FAA Response: As previously noted, the FAA is not adopting the proposed ratings and classes. However, the final rule amends appendix A to part 91 by removing paragraph 4(b)(1)(iii), which referred to the limited rating for manufacturers.

Part 121—Operating Requirements: Domestic, Flag, and Supplemental Operations

Special Federal Aviation Regulation No. 36

Summary of Proposal/Issue: The proposal would have revised paragraph 2(c) of this regulation by replacing the reference to current § 145.51 with a reference to proposed § 145.215(b)(2). The FAA also proposed to replace the references to ''domestic repair station certificate under 14 CFR part 145'' with ''repair station certificate under 14 CFR part 145 that is located in the United States.''

Comments: No comments were received on this proposal.

FAA Response: The final rule is adopted as proposed except that the reference to proposed § 145.215(b)(2) is revised to § 145.201(c)(2) to correspond to the sections as they appear in this final rule.

Section 121.378 Certificate Requirements

Summary of Proposal/Issue: The FAA proposed to revise this section by replacing ''repair stations certificated under the provisions of subpart C of part 145'' in paragraph (a) with ''a certificated repair station that is located outside the United States'' and by changing the word ''alteration'' to ''alterations.''

Comments: No comments were received on this proposal.

FAA Response: This section is adopted as proposed.

Section 121.709 Airworthiness Release or Aircraft Log Entry

Summary of Proposal/Issue: The FAA proposed to revise this section by replacing ''a repair station certificated under the provisions of subpart C of part 145'' in the concluding text of paragraph (b) with ''a certificated repair station that is located outside the United States,'' and by designating that text as paragraph (c). The FAA also proposed to redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

Comments: No comments were received on this proposal.

FAA Response: This section is adopted as proposed.

Part 135—Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons on Board Such Aircraft

Section 135.435 Certificate Requirements

Summary of Proposal/Issue: The FAA proposed to revise this section by replacing ''repair stations certificated

under the provisions of subpart C of part 145'' in paragraph (a) with ''a certificated repair station that is located outside the United States.''

Comments: No comments were received on this proposal.

FAA Response: This section is adopted as proposed.

Section 135.443 Airworthiness Release or Aircraft Maintenance Log Entry

Summary of Proposal/Issue: The FAA proposed to revise this section by replacing ''a repair station certificated under the provisions of subpart C of part 145'' in the concluding text of paragraph (b) with ''a certificated repair station that is located outside the United States,'' and by designating that text as paragraph (c). The FAA also proposed to re-designate paragraph (c) as paragraph (d).

Comments: No comments were received on this proposal.

FAA Response: This section is adopted as proposed.

Paperwork Reduction Act

This final rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The request for review and approval has been submitted to OMB. An opportunity for comment on the paperwork portion of this rule was not provided during the NPRM stage. Therefore, there is a 60-day comment period attached to this final rule. The title, description, respondents, and description of the burden are shown below.

Title: Part 145 Review: Repair Stations.

Description: Under current regulations, certificate holders operating under part 145 certificated repair stations are required maintain an inspection procedures manual and comply with recordkeeping requirements. The objective of the amendment to part 145 is to update and revise the regulations for repair stations. The rule reorganizes the requirements applicable to repair stations to reduce duplication of regulatory language and eliminate obsolete information.

The submittal and collection of information required by this part is necessary for (1) issuance of, renewal of, or amendment to repair station certificates and operations specifications, and (2) ensuring that each certificated repair station meets minimum acceptable standards.

Description of Respondents: This rule will constitute several new paperwork burdens for repair station certificate holders. The FAA notes that the current information collection and recordkeeping requirements were approved under OMB assigned Control Numbers 2121–0003, 2120–0010, and 2120–0571.

Description of Burden: The FAA expects that this rule will affect approximately 5,000 existing repair stations certificated under part 145 and manufacturer's maintenance facilities. The estimated total reporting and recordkeeping burden is 1,801,700 hours and the estimated annual cost to the respondent is $27,025,500.

The annual cost is determined by estimating the respondent's time required to complete and submit new applications, as well as applying for renewal or amendment to existing certificates. The estimate also includes the average time required to prepare the repair station manual, quality control manual, capability lists, subcontractors listing and training programs. Additionally, it includes the estimated time for respondents to prepare letters of recommendation for repairman, and to maintain records of supervisory and inspection personnel, and to prepare performance records and reports.

Section	Description	Occurrences	Hours	Total cost
§ 145.51	Application	500	150	$2,250
§ 145.51(a)(1)	Repair station Manual	5,000	400,000	6,000,000
§ 145.51(a)(2)	Quality Control Manual	5,000	200,000	3,000,000
§ 145.51(a)(3)	List of Articles	5,000	40,000	600,000
§ 145.51(a)(4)	Organization Chart	5,000	20,000	300,000
§ 145.51(a)(5)	Description of Facilities	5,000	20,000	600,000
§ 145.51(a)(6)	List of Functions	5,000	40,000	600,000
§ 145.105	Changes to Locations	600	1,200	18,000
§ 145.107	Satellite Repair Stations	600	150	2,225
§ 145.157	Return to Service Personnel	600	1,200	18,000
§ 145.161	Records of Management	5,000	20,000	300,000
§ 145.163	Training Requirements	5,000	200,000	3,000,000
§ 145.213	Maintenance Records	12,000	48,000	720,000
§ 145.215	Capability List	3,000	36,000	540,000
§ 145.219	Recordkeeping	3,000,000	750,000	11,250,000
§ 145.221	Reports of Defects	2,500	25,000	375,000
Total Burden to Respondents			1,801,700	27,025,500

When an OMB control number is assigned, notification of that number will be published in the **Federal Register**.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified several differences.

ICAO standards (§ 4.2.1.2 (e)) address human performance and limitations for aircraft maintenance license holders. Neither part 145 nor part 65 address human performance and limitations.

ICAO standards (§ 4.2.1.3) have a two-tier approach to mechanic certification. ICAO requires 4 years of experience, or 2 years with the completion of an approved training course. ICAO also allows mechanics to be certificated with restrictions—limiting their work to certain aircraft or aircraft systems—listed on their licenses. Part 145 requires a minimum of 18 months of experience in order to be authorized to return articles back to service and to obtain certification as a repairman. The final rule mirrors part 65 requirements for certification as a mechanic or repairman that requires 18 months of experience and requires initial and recurrent training for all personnel assigned to perform maintenance, preventative maintenance, alterations, or inspections.

ICAO standards (§ 4.2.2.2) require the privileges of an aircraft maintenance license holder to be annotated on their license. ICAO requires the aircraft, powerplant, or aircraft system, or component make/model be entered on the license. Neither part 145 nor part 65 requires aircraft type, make, model, or aircraft system to be annotated on a mechanic's certificate.

ICAO (§ 8.7.3.2) requires maintenance organizations to establish an independent quality assurance system (QA system) to monitor compliance with and adequacy of the procedures or by providing an inspection system to ensure all maintenance is properly performed. Part 145 does not include provisions for a QA system based on adverse public comments and the lack of FAA guidance for these systems. Although the final rule does not explicitly require a QA system, the rule does include portions of a typical QA system, such as, the self-evaluation (audit) required prior to using capability lists, the addition of a quality control manual, and the inclusion of a maintenance personnel training program.

ICAO (§ 8.7.7.2) requires certain information that constitutes the maintenance release: basic details of the maintenance performed, the date of the maintenance, the identity of the approved maintenance organization, and the identity of the person(s) signing the release. The final rule includes a section for personnel authorized to approve articles for return to service, but does not require all of the information the ICAO standards do. This information usually is required by the repair station's inspection system and is detailed in the repair station manual.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Will generate benefits that justify its costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The Federal Aviation Administration (FAA) is updating and revising the regulations for part 145 repair stations. The final rule is necessary because many of the current repair station regulations do not reflect changes in repair station business practices, advancements in technology, and aircraft maintenance practices. The benefits and costs have been calculated for 13 years.

The estimated quantifiable safety benefits, being difficult to quantify, are calculated based on what the reduction in accidents needs to be in order to equate the discount costs to the discounted safety benefits. If the safety benefits are half of those discussed in the initial regulatory evaluation (6.9 total accidents will be avoided, preventing 2.2 fatalities, 1.7 serious injuries, and 2.7 minor injuries), then the quantifiable safety benefits of the final amendment will be approximately, $28.5 million in current dollars discounted at 7 percent, over 13 years. On an annual basis (assuming that quantifiable benefits are only one-half of those estimated in the initial regulatory evaluation) an average of 3.4 total accidents will be avoided, preventing 1.1 fatalities, 0.8 serious injuries, and 1.4 minor injuries. The avoidance of 3.4 accidents will avert at a minimum the destruction of at least 2.4 general aviation aircraft and will avert the substantial damage of 0.7 general aviation aircraft. Property damage to other types of aircraft will also be averted.

The estimated net cost of compliance after subtracting cost savings with the final amendment will be $22.2 million (net of cost savings) in current dollars, discounted at 7 percent, over 13 years. The most costly requirement, section 145.161, Training Requirements, will result in repair stations incurring discounted costs of $30.5 million. The most cost-saving requirement, the Manufacturer's Service Manual, will result in repair stations saving between $22.8 and $45.5 million discounted.

The final rule is not expected to have a significant impact on international trade nor is it expected to have a significant impact on a substantial number of small firms.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605 (b) of the 1980 act provides that the head of the agency may so certify and a RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In many cases, the Small Business Administration suggests that ''small'' represents the impacted entities with an annual revenue of $5 million or less. For this final rule, a small entity group is defined as aircraft servicing and repairing, except on a factory basis (Standard Industrial Classification Code 4581). At present, it is difficult for the FAA to determine exactly how many of these repair stations have an annual revenue of $5 million or less but believes that the number is probably large. The FAA found a minimum of 19 repair stations in the World Aviation Directory that meet this definition.

For each of these entities the FAA attempted to find the annual sales from World Aviation Directory 1998, the Net Present Value of Costs, and annualized costs. After calculating the annualized costs accounting for firm size using the same assumptions that were used in the cost section, the FAA then compared the annualized costs with annual sales.

As stated earlier, a minimum of 19 repair stations meet this standard. For the smallest entity listed in table C1, one company with three employees had

sales of $500,000 and another company with 9 employees had sales of $300,000. The annualized cost of the final rule is very small in comparison to annual sales of the affected entities—considerably less than 1 percent of their sales. At most, the final rule will impose an annualized cost on one small entity that is approximately 0.1 percent of its annual sales. Therefore, the FAA does not consider the costs imposed by this final rule to have a significant impact on a substantial number of small entities.

Furthermore, the FAA has rewritten several provisions that provide regulatory flexibility, especially for small entities. Two of these provisions relate to capability lists and repair station manuals. In addition, one set of provisions on quality assurance has been deleted from the final rule because of the disproportionate impact on small entities. The following discussion addresses each of these three subjects.

Capability List

The final rule allows for use of a capability list. The use of this list provides regulatory flexibility because it provides repair stations with a limited rating the option not having to always change its operations specifications under the existing rule—a repair station that performs maintenance, preventive maintenance or alterations on articles must do so in accordance with its operations specifications. Under the final rule, a repair station with a limited rating may use a capability list, and will no longer have to revise its operations specifications each time a new article is added to the list (however, the final rule retains the requirement that a repair station perform a self-evaluation before adding an article to its capability list).

For example, existing § 145.11(a)(4) requires that an applicant for a propeller rating (class 2) prepares a list of each propeller for which the repair station seeks approval. Revisions to the current list require FAA approval, which makes timely revisions cumbersome in the dynamic maintenance marketing environment.

The FAA believes that repair stations that choose to use a capability list will incur cost savings. Since the FAA does not know how many repair stations with limited ratings will choose this option or how frequently they will choose this option, it is not possible at this time to quantify the cost savings.

Repair Station Manuals

Based on FAA statistics and information provided by industry that was used in the preliminary regulatory evaluation, repair stations are estimated to employ approximately 12,877 supervisors and at least 13,444 inspectors. These repair stations must maintain approximately 26,321 IPMs. Because of the complexity of many repair stations' operations, the repair stations should document additional aspects of their operations not covered in the current IPM. Therefore, the FAA will eliminate the requirements that repair stations maintain an IPM and replace it with a requirement that repair stations maintain an acceptable quality control and require the repair station to maintain a repair station manual to document operational procedures. Also, the current requirement for all repair stations' supervisory and inspection personnel to each have a copy of the manual has been withdrawn. In the final rule, only 4,625 repair station manuals will be required to be maintained, so the total number of required manuals will be reduced by 21,696. Final § 145.207 will require only that the repair station manual be accessible for use by repair station personnel. Furthermore, the since smaller repair stations do not perform as complex operations as do larger repair stations (due to the number of employees, duties, and responsibilities), the cost for the smaller repair station to revise their IPM and to meet the requirements of final § 145.209 is approximately half that of a larger repair station.

Deletion of Quality Assurance

Proposed § 145.201 required each repair station to establish and maintain a quality assurance system acceptable to the Administrator. The FAA estimated that repair stations were going to incur a total one-time cost of approximately $1,471,400 and annual costs of approximately $12,123,200 on this quality assurance system. However, for the final rule, the FAA withdrew this requirement and, therefore, no cost will be incurred by these repair stations for the quality assurance system. As stated in the Preamble, the FAA has removed the quality assurance requirements from the final rule and any references to it have been removed from the manual requirements. The FAA intends to issue a subsequent SNPRM that will address this issue.

The FAA has determined that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605 (b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The final rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. Furthermore, the final rule is consistent with the terms of several trade agreements to which the United States is a signatory, such as the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), incorporating the Agreement on Trade in Civil Aircraft (31 U.S.T. 619) and the Agreement on Technical Barriers to Trade (Standards) (19 U.S.C. 2531), as well as the General Agreement on Trade in Services (19 U.S.C. 3511). The revision to part 145 is also consistent with 49 U.S.C. 40105, formerly 1102 (a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its powers and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate

is deemed to be a ''significant regulatory action.''

These final rule does not meet the cost thresholds described above. Furthermore, this final rule will not impose a significant cost or uniquely affect small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Plain Language

In response to the June 1, 1998, Presidential Memorandum regarding the use of plain language, the FAA reexamined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential Memorandum and the plain language initiative at http://www.plainlanguage.gov.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), enacted as Public Law 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Cross Reference Table

To identify where we have located present requirements in the final rule, we have provided the following cross reference table.

CROSS-REFERENCE TABLE

Old section	New section(s)
§ 145.1	§ 145.1
§ 145.2	§ 145.205
§ 145.3	§ 145.5
§ 145.11	§§ 145.51 and 145.53
§ 145.13	§ 145.51
§ 145.15	§§ 145.55 and 145.57
§ 145.17	§ 145.55
§ 145.19	§ 145.5
§ 145.21	§ 145.105
§ 145.23	§ 145.223
§ 145.25	Deleted
§ 145.31	§ 145.59
§ 145.33	§ 145.61
§ 145.35	§ 145.103
§ 145.37	§ 145.103
§ 145.39	§§ 145.151 and 145.153
§ 145.41	§ 145.159
§ 145.43	§ 145.161
§ 145.45	§§ 145.155 and 145.211
§ 145.47	§§ 145.109 and 145.217
§ 145.49	§ 145.109
§ 145.51	§§ 145.107, 145.201, and 145.203
§ 145.53	§ 145.201
§ 145.55	§ 145.101
§ 145.57	§§ 145.109 and 145.201
§ 145.59	§§ 145.157 and 145.213
§ 145.61	§ 145.219
§ 145.63	§ 145.221
§ 145.71	§ 145.51
§ 145.73	§§ 145.53 and 145.201
§ 145.75	§§ 145.151, 145.153, 145.155 and 145.157
§ 145.77	§ 145.201
§ 145.79	§§ 145.219 and 145.221
§ 145.101	Deleted.
§ 145.103	Deleted.
§ 145.105	Deleted.
Appendix A	Deleted.

CROSS-REFERENCE TABLE

New section	Old section(s)
§ 145.1	§ 145.1
§ 145.3	New.

CROSS-REFERENCE TABLE—Continued

New section	Old section(s)
§ 145.5	§ 145.3 and 145.19
§ 145.51	§§ 145.11, 145.13, and 145.71
§ 145.53	§§ 145.11 and 145.73
§ 145.55	§§ 145.15 and 145.17
§ 145.57	§ 145.15
§ 145.59	§ 145.31
§ 145.61	§ 145.33
§ 145.101	§ 145.55
§ 145.103	§§ 145.35 and 145.37
§ 145.105	§ 145.21
§ 145.107	§ 145.51
§ 145.109	§§ 145.47, 145.49, and 145.57
§ 145.151	§§ 145.39 and 145.75
§ 145.153	§§ 145.39 and 145.75
§ 145.155	§§ 145.45 and 145.75
§ 145.157	§§ 145.59 and 145. 75
§ 145.159	§ 145.41
§ 145.161	§ 145.43
§ 145.163	New.
§ 145.201	§§ 145.51, 145.53, 145.57, 145.73, and 145.77
§ 145.203	§ 145.51
§ 145.205	§ 145.2
§ 145.207	New.
§ 145.209	New.
§ 145.211	145.45
§ 145.213	145.59
§ 145.215	New.
§ 145.217	145.47
§ 145.219	145.61 and 145.79
§ 145.221	145.63 and 145.79
§ 145.223	145.23

List of Subjects

14 CFR Part 91

Aircraft, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 121

Aircraft, Airmen, Airplanes, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Airmen, Aviation safety, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Recordkeeping and reporting, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, 135, and 145 of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

§ 91.411 [Amended]

2. Amend § 91.411 by removing paragraph (b)(2)(v).

§ 91.413 [Amended]

3. Amend § 91.413 by removing paragraph (c)(1)(iv).

Appendix A to Part 91 [Amended]

4. Amend appendix A to part 91 by removing paragraph 4(b)(1)(iii).

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

6. Amend Special Federal Aviation Regulation No. 36 by revising paragraph (2)(c) to read as follows:

Special Federal Aviation Regulation No. 36

* * * * *

(2) * * *

(c) Contrary provisions of § 145.201(c)(2) notwithstanding, the holder of a repair station certificate under 14 CFR part 145 that is located in the United States may perform a major repair on an article for which it is rated using technical data not approved by the FAA and approve that article for return to service, if authorized in accordance with this Special Federal Aviation Regulation. If the certificate holder holds a rating limited to a component of a product or article, the holder may not, by virtue of this Special Federal Aviation Regulation, approve that product or article for return to service.

* * * * *

7. Amend § 121.378 by revising paragraph (a) to read as follows:

§ 121.378 Certificate requirements.

(a) Except for maintenance, preventive maintenance, alterations, and required inspections performed by a certificated repair station that is located outside the United States, each person who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections must hold an appropriate airman certificate.

* * * * *

8. Amend § 121.709 by revising paragraph (b); redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and adding a new

paragraph (c), and revising redesignated paragraphs (d) and (e) to read as follows:

§ 121.709 Airworthiness release or aircraft log entry.

* * * * *

(b) The airworthiness release or log entry required by paragraph (a) of this section must—

(1) Be prepared in accordance with the procedures set forth in the certificate holder's manual;

(2) Include a certification that—

(i) The work was performed in accordance with the requirements of the certificate holder's manual;

(ii) All items required to be inspected were inspected by an authorized person who determined that the work was satisfactorily completed;

(iii) No known condition exists that would make the airplane unairworthy; and

(iv) So far as the work performed is concerned, the aircraft is in condition for safe operation; and

(3) Be signed by an authorized certificated mechanic or repairman except that a certificated repairman may sign the release or entry only for the work for which he is employed and certificated.

(c) Notwithstanding paragraph (b)(3) of this section, after maintenance, preventive maintenance, or alterations performed by a repair station that is located outside the United States, the airworthiness release or log entry required by paragraph (a) of this section may be signed by a person authorized by that repair station.

(d) When an airworthiness release form is prepared the certificate holder must give a copy to the pilot in command and must keep a record thereof for at least 2 months.

(e) Instead of restating each of the conditions of the certification required by paragraph (b) of this section, the air carrier may state in its manual that the signature of an authorized certificated mechanic or repairman constitutes that certification.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

9. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

10. Amend § 135.435 by revising paragraph (a) to read as follows:

§ 135.435 Certificate requirements.

(a) Except for maintenance, preventive maintenance, alterations, and required inspections performed by a certificated repair station that is located outside the United States, each person who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections must hold an appropriate airman certificate.

* * * * *

11. Amend § 135.443 paragraph (b), redesignating paragraph (c) as paragraph (d) and revising it, and adding a new paragraph (c) to read as follows:

§ 135.443 Airworthiness release or aircraft maintenance log entry.

* * * * *

(b) The airworthiness release or log entry required by paragraph (a) of this section must—

(1) Be prepared in accordance with the procedure in the certificate holder's manual;

(2) Include a certification that—

(i) The work was performed in accordance with the requirements of the certificate holder's manual;

(ii) All items required to be inspected were inspected by an authorized person who determined that the work was satisfactorily completed;

(iii) No known condition exists that would make the aircraft unairworthy; and

(iv) So far as the work performed is concerned, the aircraft is in condition for safe operation; and

(3) Be signed by an authorized certificated mechanic or repairman, except that a certificated repairman may sign the release or entry only for the work for which that person is employed and for which that person is certificated.

(c) Notwithstanding paragraph (b)(3) of this section, after maintenance, preventive maintenance, or alterations performed by a repair station located outside the United States , the airworthiness release or log entry required by paragraph (a) of this section may be signed by a person authorized by that repair station.

(d) Instead of restating each of the conditions of the certification required by paragraph (b) of this section, the certificate holder may state in its manual that the signature of an authorized certificated mechanic or repairman constitutes that certification.

12. Amend part 145 as follows:

A. The authority citation continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

B. By removing Appendix A.

C. By revising subparts A through D to read as follows (SFAR No. 36 Note remains unchanged):

PART 145—REPAIR STATIONS

* * * * *

Sec.

Subpart A—General

145.1 Applicability.
145.3 Definition of terms.
145.5 Certificate and operations specifications requirements.

Subpart B—Certification

145.51 Application for certificate.
145.53 Issue of certificate.
145.55 Duration and renewal of certificate.
145.57 Amendment to or transfer of certificate.
145.59 Ratings.
145.61 Limited ratings.

Subpart C—Housing, Facilities, Equipment, Materials, and Data

145.101 General.
145.103 Housing and facilities requirements.
145.105 Change of location, housing, or facilities.
145.107 Satellite repair stations.
145.109 Equipment, materials, and data requirements.

Subpart D—Personnel

145.151 Personnel requirements.
145.153 Supervisory personnel requirements.
145.155 Inspection personnel requirements.
145.157 Personnel authorized to approve an article for return to service.
145.159 Recommendation of a person for certification as a repairman.
145.161 Records of management, supervisory, and inspection personnel.
145.163 Training requirements.

Subpart E—Operating Rules

145.201 Privileges and limitations of certificate.
145.203 Work performed at another location.
145.205 Maintenance, preventive maintenance, and alterations performed for certificate holders under parts 121, 125, and 135, and for foreign air carriers or foreign persons operating a U.S.-registered aircraft in common carriage under part 129.
145.207 Repair station manual.
145.209 Repair station manual contents.
145.211 Quality control system.
145.213 Inspection of maintenance, preventive maintenance, or alterations.
145.215 Capability list.
145.217 Contract maintenance.
145.219 Recordkeeping.
145.221 Reports of failures, malfunctions, or defects.
145.223 FAA inspections.

* * * * *

Subpart A—General

§ 145.1 Applicability.

This part describes how to obtain a repair station certificate. This part also contains the rules a certificated repair station must follow related to its performance of maintenance, preventive maintenance, or alterations of an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which part 43 applies. It also applies to any person who holds, or is required to hold, a repair station certificate issued under this part.

§ 145.3 Definition of terms.

For the purposes of this part, the following definitions apply:

(a) *Accountable manager* means the person designated by the certificated repair station who is responsible for and has the authority over all repair station operations that are conducted under part 145, including ensuring that repair station personnel follow the regulations and serving as the primary contact with the FAA.

(b) *Article* means an aircraft, airframe, aircraft engine, propeller, appliance, or component part.

(c) *Directly in charge* means having the responsibility for the work of a certificated repair station that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness. A person directly in charge does not need to physically observe and direct each worker constantly but must be available for consultation on matters requiring instruction or decision from higher authority.

(d) *Line maintenance means*—

(1) Any unscheduled maintenance resulting from unforeseen events; or

(2) Scheduled checks that contain servicing and/or inspections that do not require specialized training, equipment, or facilities.

§ 145.5 Certificate and operations specifications requirements.

(a) No person may operate as a certificated repair station without, or in violation of, a repair station certificate, ratings, or operations specifications issued under this part.

(b) The certificate and operations specifications issued to a certificated repair station must be available on the premises for inspection by the public and the FAA.

Subpart B—Certification

§ 145.51 Application for certificate.

(a) An application for a repair station certificate and rating must be made in a format acceptable to the FAA and must include the following:

(1) A repair station manual acceptable to the FAA as required by § 145.207;

(2) A quality control manual acceptable to the FAA as required by § 145.211(c);

(3) A list by type, make, or model, as appropriate, of each article for which the application is made;

(4) An organizational chart of the repair station and the names and titles of managing and supervisory personnel;

(5) A description of the housing and facilities, including the physical address, in accordance with § 145.103;

(6) A list of the maintenance functions, for approval by the FAA, to be performed for the repair station under contract by another person in accordance with § 145.217; and

(7) A training program for approval by the FAA in accordance with § 145.163.

(b) The equipment, personnel, technical data, and housing and facilities required for the certificate and rating, or for an additional rating must be in place for inspection at the time of certification or rating approval by the FAA. An applicant may meet the equipment requirement of this paragraph if the applicant has a contract acceptable to the FAA with another person to make the equipment available to the applicant at the time of certification and at any time that it is necessary when the relevant work is being performed by the repair station.

(c) In addition to meeting the other applicable requirements for a repair station certificate and rating, an applicant for a repair station certificate and rating located outside the United States must meet the following requirements:

(1) The applicant must show that the repair station certificate and/or rating is necessary for maintaining or altering the following:

(i) U.S.-registered aircraft and articles for use on U.S.-registered aircraft, or

(ii) Foreign-registered aircraft operated under the provisions of part 121 or part 135, and articles for use on these aircraft.

(2) The applicant must show that the fee prescribed by the FAA has been paid.

(d) An application for an additional rating, amended repair station certificate, or renewal of a repair station certificate must be made in a format acceptable to the FAA. The application must include only that information necessary to substantiate the change or renewal of the certificate.

§ 145.53 Issue of certificate.

(a) Except as provided in paragraph (b) of this section, a person who meets the requirements of this part is entitled to a repair station certificate with appropriate ratings prescribing such operations specifications and limitations as are necessary in the interest of safety.

(b) If the person is located in a country with which the United States has a bilateral aviation safety agreement, the FAA may find that the person meets the requirements of this part based on a certification from the civil aviation authority of that country. This certification must be made in accordance with implementation procedures signed by the Administrator or the Administrator's designee.

§ 145.55 Duration and renewal of certificate.

(a) A certificate or rating issued to a repair station located in the United States is effective from the date of issue until the repair station surrenders it or the FAA suspends or revokes it.

(b) A certificate or rating issued to a repair station located outside the United States is effective from the date of issue until the last day of the 12th month after the date of issue unless the repair station surrenders the certificate or the FAA suspends or revokes it. The FAA may renew the certificate or rating for 24 months if the repair station has operated in compliance with the applicable requirements of part 145 within the preceding certificate duration period.

(c) A certificated repair station located outside the United States that applies for a renewal of its repair station certificate must—

(1) Submit its request for renewal no later than 30 days before the repair station's current certificate expires. If a request for renewal is not made within this period, the repair station must follow the application procedures in § 145.51.

(2) Send its request for renewal to the FAA office that has jurisdiction over the certificated repair station.

(d) The holder of an expired, surrendered, suspended, or revoked certificate must return it to the FAA.

§ 145.57 Amendment to or transfer of certificate.

(a) The holder of a repair station certificate must apply for a change to its certificate in a format acceptable to the FAA. A change to the certificate is necessary if the certificate holder—

(1) Changes the location of the repair station, or

(2) Requests to add or amend a rating.

(b) If the holder of a repair station certificate sells or transfers its assets, the new owner must apply for an amended certificate in accordance with § 145.51.

§ 145.59 Ratings.

The following ratings are issued under this subpart:

(a) *Airframe ratings.*

(1) *Class 1:* Composite construction of small aircraft.

(2) *Class 2:* Composite construction of large aircraft.

(3) *Class 3:* All-metal construction of small aircraft.

(4) *Class 4:* All-metal construction of large aircraft.

(b) *Powerplant ratings.*

(1) *Class 1:* Reciprocating engines of 400 horsepower or less.

(2) *Class 2:* Reciprocating engines of more than 400 horsepower.

(3) *Class 3:* Turbine engines.

(c) *Propeller ratings.*

(1) *Class 1:* Fixed-pitch and ground-adjustable propellers of wood, metal, or composite construction.

(2) *Class 2:* Other propellers, by make.

(d) *Radio ratings.*

(1) *Class 1:* Communication equipment. Radio transmitting and/or receiving equipment used in an aircraft to send or receive communications in flight, regardless of carrier frequency or type of modulation used. This equipment includes auxiliary and related aircraft interphone systems, amplifier systems, electrical or electronic intercrew signaling devices, and similar equipment. This equipment does not include equipment used for navigating or aiding navigation of aircraft, equipment used for measuring altitude or terrain clearance, other measuring equipment operated on radio or radar principles, or mechanical, electrical, gyroscopic, or electronic instruments that are a part of communications radio equipment.

(2) *Class 2:* Navigational equipment. A radio system used in an aircraft for en route or approach navigation. This does not include equipment operated on radar or pulsed radio frequency principles, or equipment used for measuring altitude or terrain clearance.

(3) *Class 3:* Radar equipment. An aircraft electronic system operated on radar or pulsed radio frequency principles.

(e) *Instrument ratings.*

(1) *Class 1:* Mechanical. A diaphragm, bourdon tube, aneroid, optical, or mechanically driven centrifugal instrument used on aircraft or to operate aircraft, including tachometers, airspeed indicators, pressure gauges drift sights, magnetic compasses, altimeters, or similar mechanical instruments.

(2) *Class 2:* Electrical. Self-synchronous and electrical-indicating instruments and systems, including remote indicating instruments, cylinder head temperature gauges, or similar electrical instruments.

(3) *Class 3:* Gyroscopic. An instrument or system using gyroscopic principles and motivated by air pressure or electrical energy, including automatic pilot control units, turn and bank indicators, directional gyros, and their parts, and flux gate and gyrosyn compasses.

(4) *Class 4:* Electronic. An instrument whose operation depends on electron tubes, transistors, or similar devices, including capacitance type quantity gauges, system amplifiers, and engine analyzers.

(f) *Accessory ratings.*

(1) *Class 1:* A mechanical accessory that depends on friction, hydraulics, mechanical linkage, or pneumatic pressure for operation, including aircraft wheel brakes, mechanically driven pumps, carburetors, aircraft wheel assemblies, shock absorber struts and hydraulic servo units.

(2) *Class 2:* An electrical accessory that depends on electrical energy for its operation, and a generator, including starters, voltage regulators, electric motors, electrically driven fuel pumps magnetos, or similar electrical accessories.

(3) *Class 3:* An electronic accessory that depends on the use of an electron tube transistor, or similar device, including supercharger, temperature, air conditioning controls, or similar electronic controls.

§ 145.61 Limited ratings.

(a) The FAA may issue a limited rating to a certificated repair station that maintains or alters only a particular type of airframe, powerplant, propeller, radio, instrument, or accessory, or part thereof, or performs only specialized maintenance requiring equipment and skills not ordinarily performed under other repair station ratings. Such a rating may be limited to a specific model aircraft, engine, or constituent part, or to any number of parts made by a particular manufacturer.

(b) The FAA issues limited ratings for—

(1) Airframes of a particular make and model;

(2) Engines of a particular make and model;

(3) Propellers of a particular make and model;

(4) Instruments of a particular make and model;

(5) Radio equipment of a particular make and model;

(6) Accessories of a particular make and model;

(7) Landing gear components;

(8) Floats, by make;

(9) Nondestructive inspection, testing, and processing;

(10) Emergency equipment;

(11) Rotor blades, by make and model; and

(12) Aircraft fabric work.

(c) For a limited rating for specialized services, the operations specifications of the repair station must contain the specification used to perform the specialized service. The specification may be—

(1) A civil or military specification currently used by industry and approved by the FAA, or

(2) A specification developed by the applicant and approved by the FAA.

Subpart C—Housing, Facilities, Equipment, Materials, and Data

§ 145.101 General.

A certificated repair station must provide housing, facilities, equipment, materials, and data that meet the applicable requirements for the issuance of the certificate and ratings the repair station holds.

§ 145.103 Housing and facilities requirements.

(a) Each certificated repair station must provide—

(1) Housing for the facilities, equipment, materials, and personnel consistent with its ratings.

(2) Facilities for properly performing the maintenance, preventive maintenance, or alterations of articles or the specialized services for which it is rated. Facilities must include the following:

(i) Sufficient work space and areas for the proper segregation and protection of articles during all maintenance, preventive maintenance, or alterations;

(ii) Segregated work areas enabling environmentally hazardous or sensitive operations such as painting, cleaning, welding, avionics work, electronic work, and machining to be done properly and in a manner that does not adversely affect other maintenance or alteration articles or activities;

(iii) Suitable racks, hoists, trays, stands, and other segregation means for the storage and protection of all articles undergoing maintenance, preventive maintenance, or alterations;

(iv) Space sufficient to segregate articles and materials stocked for installation from those articles undergoing maintenance, preventive maintenance, or alterations; and

(v) Ventilation, lighting, and control of temperature, humidity, and other climatic conditions sufficient to ensure personnel perform maintenance, preventive maintenance, or alterations to the standards required by this part.

(b) A certificated repair station with an airframe rating must provide suitable

permanent housing to enclose the largest type and model of aircraft listed on its operations specifications.

(c) A certificated repair station may perform maintenance, preventive maintenance, or alterations on articles outside of its housing if it provides suitable facilities that are acceptable to the FAA and meet the requirements of § 145.103(a) so that the work can be done in accordance with the requirements of part 43 of this chapter.

§ 145.105 Change of location, housing, or facilities.

(a) A certificated repair station may not change the location of its housing without written approval from the FAA.

(b) A certificated repair station may not make any changes to its housing or facilities required by § 145.103 that could have a significant effect on its ability to perform the maintenance, preventive maintenance, or alterations under its repair station certificate and operations specifications without written approval from the FAA.

(c) The FAA may prescribe the conditions, including any limitations, under which a certificated repair station must operate while it is changing its location, housing, or facilities.

§ 145.107 Satellite repair stations.

(a) A certificated repair station under the managerial control of another certificated repair station may operate as a satellite repair station with its own certificate issued by the FAA. A satellite repair station—

(1) May not hold a rating not held by the certificated repair station with managerial control;

(2) Must meet the requirements for each rating it holds;

(3) Must submit a repair station manual acceptable to the FAA as required by § 145.207; and

(4) Must submit a quality control manual acceptable to the FAA as required by § 145.211(c).

(b) Unless the FAA indicates otherwise, personnel and equipment from the certificated repair station with managerial control and from each of the satellite repair stations may be shared. However, inspection personnel must be designated for each satellite repair station and available at the satellite repair station any time a determination of airworthiness or return to service is made. In other circumstances, inspection personnel may be away from the premises but must be available by telephone, radio, or other electronic means.

(c) A satellite repair station may not be located in a country other than the domicile country of the certificated repair station with managerial control.

§ 145.109 Equipment, materials, and data requirements.

(a) Except as otherwise prescribed by the FAA, a certificated repair station must have the equipment, tools, and materials necessary to perform the maintenance, preventive maintenance, or alterations under its repair station certificate and operations specifications in accordance with part 43. The equipment, tools, and material must be located on the premises and under the repair station's control when the work is being done.

(b) A certificated repair station must ensure all test and inspection equipment and tools used to make airworthiness determinations on articles are calibrated to a standard acceptable to the FAA.

(c) The equipment, tools, and material must be those recommended by the manufacturer of the article or must be at least equivalent to those recommended by the manufacturer and acceptable to the FAA.

(d) A certificated repair station must maintain, in a format acceptable to the FAA, the documents and data required for the performance of maintenance, preventive maintenance, or alterations under its repair station certificate and operations specifications in accordance with part 43. The following documents and data must be current and accessible when the relevant work is being done:

(1) Airworthiness directives,

(2) Instructions for continued airworthiness,

(3) Maintenance manuals,

(4) Overhaul manuals,

(5) Standard practice manuals,

(6) Service bulletins, and

(7) Other applicable data acceptable to or approved by the FAA.

Subpart D—Personnel

§ 145.151 Personnel requirements.

Each certificated repair station must—

(a) Designate a repair station employee as the accountable manager;

(b) Provide qualified personnel to plan, supervise, perform, and approve for return to service the maintenance, preventive maintenance, or alterations performed under the repair station certificate and operations specifications;

(c) Ensure it has a sufficient number of employees with the training or knowledge and experience in the performance of maintenance, preventive maintenance, or alterations authorized by the repair station certificate and operations specifications to ensure all work is performed in accordance with part 43; and

(d) Determine the abilities of its noncertificated employees performing maintenance functions based on training, knowledge, experience, or practical tests.

§ 145.153 Supervisory personnel requirements.

(a) A certificated repair station must ensure it has a sufficient number of supervisors to direct the work performed under the repair station certificate and operations specifications. The supervisors must oversee the work performed by any individuals who are unfamiliar with the methods, techniques, practices, aids, equipment, and tools used to perform the maintenance, preventive maintenance, or alterations.

(b) Each supervisor must—

(1) If employed by a repair station located inside the United States, be certificated under part 65.

(2) If employed by a repair station located outside the United States—

(i) Have a minimum of 18 months of practical experience in the work being performed; or

(ii) Be trained in or thoroughly familiar with the methods, techniques, practices, aids, equipment, and tools used to perform the maintenance, preventive maintenance, or alterations.

(c) A certificated repair station must ensure its supervisors understand, read, and write English.

§ 145.155 Inspection personnel requirements.

(a) A certificated repair station must ensure that persons performing inspections under the repair station certificate and operations specifications are—

(1) Thoroughly familiar with the applicable regulations in this chapter and with the inspection methods, techniques, practices, aids, equipment, and tools used to determine the airworthiness of the article on which maintenance, preventive maintenance, or alterations are being performed; and

(2) Proficient in using the various types of inspection equipment and visual inspection aids appropriate for the article being inspected; and

(b) A certificated repair station must ensure its inspectors understand, read, and write English.

§ 145.157 Personnel authorized to approve an article for return to service.

(a) A certificated repair station located inside the United States must ensure each person authorized to approve an article for return to service under the repair station certificate and operations specifications is certificated under part 65.

(b) A certificated repair station located outside the United States must

ensure each person authorized to approve an article for return to service under the repair station certificate and operations specifications is—

(1) Trained in or has 18 months practical experience with the methods, techniques, practices, aids, equipment, and tools used to perform the maintenance, preventive maintenance, or alterations; and

(2) Thoroughly familiar with the applicable regulations in this chapter and proficient in the use of the various inspection methods, techniques, practices, aids, equipment, and tools appropriate for the work being performed and approved for return to service.

(c) A certificated repair station must ensure each person authorized to approve an article for return to service understands, reads, and writes English.

§ 145.159 Recommendation of a person for certification as a repairman.

A certificated repair station that chooses to use repairmen to meet the applicable personnel requirements of this part must certify in a format acceptable to the FAA that each person recommended for certification as a repairman—

(a) Is employed by the repair station, and

(b) Meets the eligibility requirements of § 65.101.

§ 145.161 Records of management, supervisory, and inspection personnel.

(a) A certificated repair station must maintain and make available in a format acceptable to the FAA the following:

(1) A roster of management and supervisory personnel that includes the names of the repair station officials who are responsible for its management and the names of its supervisors who oversee maintenance functions.

(2) A roster with the names of all inspection personnel.

(3) A roster of personnel authorized to sign a maintenance release for approving a maintained or altered article for return to service.

(4) A summary of the employment of each individual whose name is on the personnel rosters required by paragraphs (a)(1) through (a)(3) of this section. The summary must contain enough information on each individual listed on the roster to show compliance with the experience requirements of this part and must include the following:

(i) Present title,

(ii) Total years of experience and the type of maintenance work performed,

(iii) Past relevant employment with names of employers and periods of employment,

(iv) Scope of present employment, and

(v) The type of mechanic or repairman certificate held and the ratings on that certificate, if applicable.

(b) Within 5 business days of the change, the rosters required by this section must reflect changes caused by termination, reassignment, change in duties or scope of assignment, or addition of personnel.

§ 145.163 Training requirements.

(a) A certificated repair station must have an employee training program approved by the FAA that consists of initial and recurrent training. For purposes of meeting the requirements of this paragraph, beginning April 6, 2005—

(1) An applicant for a repair station certificate must submit a training program for approval by the FAA as required by § 145.51(a)(7).

(2) A repair station certificated before that date must submit its training program to the FAA for approval by the last day of the month in which its repair station certificate was issued.

(b) The training program must ensure each employee assigned to perform maintenance, preventive maintenance, or alterations, and inspection functions is capable of performing the assigned task.

(c) A certificated repair station must document, in a format acceptable to the FAA, the individual employee training required under paragraph (a) of this section. These training records must be retained for a minimum of 2 years.

(d) A certificated repair station must submit revisions to its training program to its certificate holding district office in accordance with the procedures required by § 145.209(e).

Subpart E—Operating Rules

§ 145.201 Privileges and limitations of certificate.

(a) A certificated repair station may—

(1) Perform maintenance, preventive maintenance, or alterations in accordance with part 43 on any article for which it is rated and within the limitations in its operations specifications.

(2) Arrange for another person to perform the maintenance, preventive maintenance, or alterations of any article for which the certificated repair station is rated. If that person is not certificated under part 145, the certificated repair station must ensure that the noncertificated person follows a quality control system equivalent to the system followed by the certificated repair station.

(3) Approve for return to service any article for which it is rated after it has performed maintenance, preventive maintenance, or an alteration in accordance with part 43.

(b) A certificated repair station may not maintain or alter any article for which it is not rated, and may not maintain or alter any article for which it is rated if it requires special technical data, equipment, or facilities that are not available to it.

(c) A certificated repair station may not approve for return to service'

(1) Any article unless the maintenance, preventive maintenance, or alteration was performed in accordance with the applicable approved technical data or data acceptable to the FAA.

(2) Any article after a major repair or major alteration unless the major repair or major alteration was performed in accordance with applicable approved technical data; and

(3) Any experimental aircraft after a major repair or major alteration performed under § 43.1(b) unless the major repair or major alteration was performed in accordance with methods and applicable technical data acceptable to the FAA.

§ 145.203 Work performed at another location.

A certificated repair station may temporarily transport material, equipment, and personnel needed to perform maintenance, preventive maintenance, alterations, or certain specialized services on an article for which it is rated to a place other than the repair station's fixed location if the following requirements are met:

(a) The work is necessary due to a special circumstance, as determined by the FAA; or

(b) It is necessary to perform such work on a recurring basis, and the repair station's manual includes the procedures for accomplishing maintenance, preventive maintenance, alterations, or specialized services at a place other than the repair station's fixed location.

§ 145.205 Maintenance, preventive maintenance, and alterations performed for certificate holders under parts 121, 125, and 135, and for foreign air carriers or foreign persons operating a U.S.-registered aircraft in common carriage under part 129.

(a) A certificated repair station that performs maintenance, preventive maintenance, or alterations for an air carrier or commercial operator that has a continuous airworthiness maintenance program under part 121 or part 135 must follow the air carrier's or commercial operator's program and

applicable sections of its maintenance manual.

(b) A certificated repair station that performs inspections for a certificate holder conducting operations under part 125 must follow the operator's FAA-approved inspection program.

(c) A certificated repair station that performs maintenance, preventive maintenance, or alterations for a foreign air carrier or foreign person operating a U.S.-registered aircraft under part 129 must follow the operator's FAA-approved maintenance program.

(d) Notwithstanding the housing requirement of § 145.103(b), the FAA may grant approval for a certificated repair station to perform line maintenance for an air carrier certificated under part 121 or part 135, or a foreign air carrier or foreign person operating a U.S.-registered aircraft in common carriage under part 129 on any aircraft of that air carrier or person, provided—

(1) The certificated repair station performs such line maintenance in accordance with the operator's manual, if applicable, and approved maintenance program;

(2) The certificated repair station has the necessary equipment, trained personnel, and technical data to perform such line maintenance; and

(3) The certificated repair station's operations specifications include an authorization to perform line maintenance.

§ 145.207 Repair station manual.

(a) A certificated repair station must prepare and follow a repair station manual acceptable to the FAA.

(b) A certificated repair station must maintain a current repair station manual.

(c) A certificated repair station's current repair station manual must be accessible for use by repair station personnel required by subpart D of this part.

(d) A certificated repair station must provide to its certificate holding district office the current repair station manual in a format acceptable to the FAA.

(e) A certificated repair station must notify its certificate holding district office of each revision of its repair station manual in accordance with the procedures required by § 145.209(j).

§ 145.209 Repair station manual contents.

A certificated repair station's manual must include the following:

(a) An organizational chart identifying—

(1) Each management position with authority to act on behalf of the repair station,

(2) The area of responsibility assigned to each management position, and

(3) The duties, responsibilities, and authority of each management position;

(b) Procedures for maintaining and revising the rosters required by § 145.161;

(c) A description of the certificated repair station's operations, including the housing, facilities, equipment, and materials as required by subpart C of this part;

(d) Procedures for—

(1) Revising the capability list provided for in § 145.215 and notifying the certificate holding district office of revisions to the list, including how often the certificate holding district office will be notified of revisions; and

(2) The self-evaluation required under § 145.215(c) for revising the capability list, including methods and frequency of such evaluations, and procedures for reporting the results to the appropriate manager for review and action;

(e) Procedures for revising the training program required by § 145.163 and submitting revisions to the certificate holding district office for approval;

(f) Procedures to govern work performed at another location in accordance with § 145.203;

(g) Procedures for maintenance, preventive maintenance, or alterations performed under § 145.205;

(h)Procedures for—

(1) Maintaining and revising the contract maintenance information required by § 145.217(a)(2)(i), including submitting revisions to the certificate holding district office for approval; and

(2) Maintaining and revising the contract maintenance information required by § 145.217(a)(2)(ii) and notifying the certificate holding district office of revisions to this information, including how often the certificate holding district office will be notified of revisions;

(i) A description of the required records and the recordkeeping system used to obtain, store, and retrieve the required records;

(j) Procedures for revising the repair station's manual and notifying its certificate holding district office of revisions to the manual, including how often the certificate holding district office will be notified of revisions; and

(k) A description of the system used to identify and control sections of the repair station manual.

§ 145.211 Quality control system.

(a) A certificated repair station must establish and maintain a quality control system acceptable to the FAA that ensures the airworthiness of the articles on which the repair station or any of its contractors performs maintenance, preventive maintenance, or alterations.

(b) Repair station personnel must follow the quality control system when performing maintenance, preventive maintenance, or alterations under the repair station certificate and operations specifications.

(c) A certificated repair station must prepare and keep current a quality control manual in a format acceptable to the FAA that includes the following:

(1) A description of the system and procedures used for—

(i) Inspecting incoming raw materials to ensure acceptable quality;

(ii) Performing preliminary inspection of all articles that are maintained;

(iii) Inspecting all articles that have been involved in an accident for hidden damage before maintenance, preventive maintenance, or alteration is performed;

(iv) Establishing and maintaining proficiency of inspection personnel;

(v) Establishing and maintaining current technical data for maintaining articles;

(vi) Qualifying and surveilling noncertificated persons who perform maintenance, prevention maintenance, or alterations for the repair station;

(vii) Performing final inspection and return to service of maintained articles;

(viii) Calibrating measuring and test equipment used in maintaining articles, including the intervals at which the equipment will be calibrated; and

(ix) Taking corrective action on deficiencies;

(2) References, where applicable, to the manufacturer's inspection standards for a particular article, including reference to any data specified by that manufacturer;

(3) A sample of the inspection and maintenance forms and instructions for completing such forms or a reference to a separate forms manual; and

(4) Procedures for revising the quality control manual required under this section and notifying the certificate holding district office of the revisions, including how often the certificate holding district office will be notified of revisions.

(d) A certificated repair station must notify its certificate holding district office of revisions to its quality control manual.

§ 145.213 Inspection of maintenance, preventive maintenance, or alterations.

(a) A certificated repair station must inspect each article upon which it has performed maintenance, preventive maintenance, or alterations as described in paragraphs (b) and (c) of this section before approving that article for return to service.

(b) A certificated repair station must certify on an article's maintenance release that the article is airworthy with respect to the maintenance, preventive maintenance, or alterations performed after—

(1) The repair station performs work on the article; and

(2) An inspector inspects the article on which the repair station has performed work and determines it to be airworthy with respect to the work performed.

(c) For the purposes of paragraphs (a) and (b) of this section, an inspector must meet the requirements of § 145.155.

(d) Except for individuals employed by a repair station located outside the United States, only an employee certificated under part 65 is authorized to sign off on final inspections and maintenance releases for the repair station.

§ 145.215 Capability list.

(a) A certificated repair station with a limited rating may perform maintenance, preventive maintenance, or alterations on an article if the article is listed on a current capability list acceptable to the FAA or on the repair station's operations specifications.

(b) The capability list must identify each article by make and model or other nomenclature designated by the article's manufacturer and be available in a format acceptable to the FAA.

(c) An article may be listed on the capability list only if the article is within the scope of the ratings of the repair station's certificate, and only after the repair station has performed a self-evaluation in accordance with the procedures under § 145.209(d)(2). The repair station must perform this self-evaluation to determine that the repair station has all of the housing, facilities, equipment, material, technical data, processes, and trained personnel in place to perform the work on the article as required by part 145. The repair station must retain on file documentation of the evaluation.

(d) Upon listing an additional article on its capability list, the repair station must provide its certificate holding district office with a copy of the revised list in accordance with the procedures required in § 145.209(d)(1).

§ 145.217 Contract maintenance.

(a) A certificated repair station may contract a maintenance function pertaining to an article to an outside source provided—

(1) The FAA approves the maintenance function to be contracted to the outside source; and

(2) The repair station maintains and makes available to its certificate holding district office, in a format acceptable to the FAA, the following information:

(i) The maintenance functions contracted to each outside facility; and

(ii) The name of each outside facility to whom the repair station contracts maintenance functions and the type of certificate and ratings, if any, held by each facility.

(b) A certificated repair station may contract a maintenance function pertaining to an article to a noncertificated person provided—

(1) The noncertificated person follows a quality control system equivalent to the system followed by the certificated repair station;

(2) The certificated repair station remains directly in charge of the work performed by the noncertificated person; and

(3) The certificated repair station verifies, by test and/or inspection, that the work has been performed satisfactorily by the noncertificated person and that the article is airworthy before approving it for return to service.

(c) A certificated repair station may not provide only approval for return to service of a complete type-certificated product following contract maintenance, preventive maintenance, or alterations.

§ 145.219 Recordkeeping.

(a) A certificated repair station must retain records in English that demonstrate compliance with the requirements of part 43. The records must be retained in a format acceptable to the FAA.

(b) A certificated repair station must provide a copy of the maintenance release to the owner or operator of the article on which the maintenance, preventive maintenance, or alteration was performed.

(c) A certificated repair station must retain the records required by this section for at least 2 years from the date the article was approved for return to service.

(d) A certificated repair station must make all required records available for inspection by the FAA and the National Transportation Safety Board.

§ 145.221 Reports of failures, malfunctions, or defects.

(a) A certificated repair station must report to the FAA within 96 hours after it discovers any failure, malfunction, or defect of an article. The report must be in a format acceptable to the FAA.

(b) The report required under paragraph (a) of this section must include as much of the following information as is available:

(1) Aircraft registration number;

(2) Type, make, and model of the article;

(3) Date of the discovery of the failure, malfunction, or defect;

(4) Nature of the failure, malfunction, or defect;

(5) Time since last overhaul, if applicable;

(6) Apparent cause of the failure, malfunction, or defect; and

(7) Other pertinent information that is necessary for more complete identification, determination of seriousness, or corrective action.

(c) The holder of a repair station certificate that is also the holder of a part 121, 125, or 135 certificate; type certificate (including a supplemental type certificate); parts manufacturer approval; or technical standard order authorization, or that is the licensee of a type certificate holder, does not need to report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported under § 21.3, 121.703, 121.704, 125.409, 125.410, 135.415, or 135.416 of this chapter.

(d) A certificated repair station may submit a service difficulty report (operational or structural) for the following:

(1) A part 121 certificate holder under § 121.703(g) or § 121.704(f), provided the report meets the requirements of §§ 121.703(d) and 121.703(e), or §§ 121.704(c) and 121.704(d) of this chapter, as appropriate.

(2) A part 125 certificate holder under § 125.409(g) or § 125.410(f), provided the report meets the requirements of §§ 125.409(d) and 125.409(e), or §§ 125.410(c) and 125.410(d) of this chapter, as appropriate;

(3) A part 135 certificate holder under § 135.415(g) or § 135.416(f), provided the report meets the requirements of §§ 135.415(d) and 135.415(e), or § 135.416(c) and 135.416(d) of the chapter, as appropriate.

(e) A certificated repair station authorized to report a failure, malfunction, or defect under paragraph (d) of this section must not report the same failure, malfunction, or defect under paragraph (a) of this section. A copy of the report submitted under paragraph (d) of this section must be forwarded to the certificate holder.

§ 145.223 FAA inspections.

(a) A certificated repair station must allow the FAA to inspect that repair station at any time to determine compliance with this chapter.

(b) A certificated repair station may not contract for the performance of a maintenance function on an article with

a noncertificated person unless it provides in its contract with the noncertificated person that the FAA may make an inspection and observe the performance of the noncertificated person's work on the article.

(c) A certificated repair station may not return to service any article on which a maintenance function was performed by a noncertificated person if the noncertificated person does not permit the FAA to make the inspection described in paragraph (b) of this section.

Issued in Washington, DC on July 30, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–19362 Filed 7–30–01; 4:40 pm]

BILLING CODE 4910–13–P

Federal Register

Monday,
August 6, 2001

Part III

Department of Education

Rehabilitation Short-Term Training; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Short-Term Training

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes a priority under the Rehabilitation Short-Term Training program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002 and in later years. We take this action to focus on training in areas of national need. We intend the priority to improve the leadership among top-level managers and administrators of the State Vocational Rehabilitation Services Program.

DATES: We must receive your comments on or before September 5, 2001.

ADDRESSES: Address all comments about this proposed priority to Sylvia Johnson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649. If you prefer to send your comments through the Internet, use the following address: Sylvia.Johnson@ed.gov.

You must include the term ''Short-Term Training Program'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Sylvia Johnson. Telephone: (202) 205–9312 or via Internet: Sylvia.Johnson@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 3414, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

National Rehabilitation Leadership Institute

Background

The authority for us to establish training priorities under the Rehabilitation Short-Term Training program by reserving funds to support particular training activities is in section 302 of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 772). Under this program we make awards to public agencies and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

The State Vocational Rehabilitation Services Program continues to undergo significant change. In addition to serving increased numbers of individuals with significant disabilities, the vocational rehabilitation (VR) programs are seeking to reach unserved and underserved populations, including individuals from linguistically and culturally diverse backgrounds. In their efforts to improve the employment outcomes of the individuals they serve, State VR agencies must remain alert to this ever-changing environment. For example, State VR agencies regularly analyze their practices, policies, and procedures and make adjustments that will promote responsive service delivery. In addition, State VR agencies are increasingly recognizing that their success in promoting the employment of their consumers depends in part on the strength of their linkages with employers and with generic employment and training programs.

The changed environment of State VR agencies demands a different set of skills from leaders and managers than has traditionally been required. Managers and leaders in the VR system need to develop new skills that will enable them, for example, to change their agencies' focus from processes and compliance to the achievement of high-quality outcomes and to build working relationships with organizations outside their agencies.

Elements of a VR Leadership Training Program

To have maximum utility to administrators in the State VR Services Program, a leadership training program must include training in leadership

skills that includes periodic reinforcement and feedback to participants, application of leadership skills to VR issues, and provision of training in a peer setting. Many skills associated with effective leadership can be taught, given sufficient instruction, practice, and feedback on performance.

Effective skills training uses a strategy of repeated practice over time with feedback on performance. In the training arena, this often translates into providing a series of training programs. The time between training programs is used for practicing newly learned skills. Subsequent events allow for feedback by instructors and peers on their efforts. For example, an institute may propose a series of short courses (several days each) over the course of a year, each building upon the other. The time between the courses would be used to try out new techniques and exercise new skills. At the next course, experiences may be discussed to allow the instructors to provide feedback. The instructors then would move on to new topics. It is a progressive learning technique that has proven effective, especially when training busy professionals such as rehabilitation administrators. There also may be a ''pick and choose'' series of courses from which a given administrator, in concert with a training specialist on the grantee's staff, could select to develop a ''customized'' program of learning. Efforts such as these have proven to be effective in programs designed for busy professionals.

The second element of effective VR leadership training is the application of training to actual issues. This approach both helps trainees solve real problems and relates to a long-held principle of adult learning: Adults learn most effectively when the content of the training is directly related to issues they face. Within VR, new policies, initiatives, and legislation will require top administrators and directors to make major changes in procedures and practices within their agencies. Tying the content of leadership training to these types of issues makes the training in leadership skills more effective and helps solve real world problems.

The third element of effective leadership training is the provision of training in a peer setting. A well-tested management principle relates to the benefits of working in teams with others who face similar situations. Group, as opposed to individual, examination of issues often reveals a wider range of options for addressing those issues and results in better solutions.

Leadership skills, like all skills, can improve over time. Therefore, we consider progressive levels of leadership training programs, such as courses for new directors, programs for administrators and directors with various levels of experience, and seminars for seasoned administrators and directors, essential to meeting the diverse needs of VR administrators and directors.

We have determined that it is in the best interest of the State VR Services Program to provide leadership skills training through one national institute. Having one institute lends consistency in the quality and content of training and better enables us to monitor the quality and relevance of the training. We intend to be involved with the grantee to provide direction and technical assistance on the content of the training.

To expand the funding base for the project and to encourage State agencies to contribute to the costs of training, we are proposing that participants be required to provide some level of contribution for training.

In summary, we have determined that it is in the best interest of the State VR Services Program to develop a leadership training program that focuses on leadership skills as applied to the unique issues facing the VR agencies in a peer setting. Progressive levels of training are needed to meet the varying needs of administrators and directors. One institute would ensure consistency in training and provide for better quality control. State agencies would be required to provide some degree of support to the program.

Proposed Priority: We propose to fund one project to establish a National Rehabilitation Leadership Institute that will focus on developing the leadership skills of top-level managers and administrators in State VR agencies. The project must have plans for addressing the leadership needs in all VR agencies funded under the Act and programs funded under section 121 of the Act.

The project must employ a curriculum that focuses on the development of leadership skills and on the application of those skills to current challenges and issues in the VR program. The project must be capable of structuring leadership curricula around current VR issues of national significance, such as using VR evaluation standards and performance indicators to assess and improve agency performance, coordinating effectively with generic employment and training programs, and increasing client choice. The advisory committee (described later in this notice) and the Assistant Secretary will determine actual issues.

The project must employ a curriculum that includes several levels of training to meet the needs of audiences ranging from new State administrators and directors to seasoned administrators and directors. The project's curriculum must include sequential courses that allow for repeated practice of newly learned skills over time, with performance feedback. The project must provide training in a peer setting.

The project must coordinate its training activities with activities conducted under the State Vocational Rehabilitation Unit In-Service Training program, the Rehabilitation Continuing Education Program, and the National Technical Assistance Centers funded by the Rehabilitation Services Administration (RSA). These programs are also charged with improving the leadership skills of State agency personnel. Therefore, collaboration and coordination are necessary.

The project must establish an advisory committee that includes RSA central and regional office representatives, representatives of State VR agency administrators and trainers, rehabilitation counselors, VR clients, Regional Continuing Education Centers, other educators and trainers of VR personnel, tribes and tribal agencies, and others as determined to be appropriate by the grantee and RSA. This committee must provide substantial input on and direction to the training curriculum, including the specific VR issues to be incorporated.

The project must include an evaluation component based upon clear, specific performance and outcome measures. The results must be reported in its annual progress report.

The project must be designed to ensure that State agencies will contribute to the costs of the participant's training.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This proposed priority would address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a

strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 390.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number: 84.246D, Rehabilitation Short-Term Training)

Program Authority: 29 U.S.C. 772.

Dated: July 31, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–19528 Filed 8–3–01; 8:45 am]

BILLING CODE 4000–01–P

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Monday, August 6, 2001

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Naval Amphibious Base; security zone; comments due by 8-13-01; published 6-13-01
Naval Supply Center Pier; security zone; comments due by 8-13-01; published 6-13-01
Regattas and marine parades:
Patapsco River, MD; fireworks display; comments due by 8-13-01; published 6-13-01

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 8-13-01; published 6-12-01
General Electric Co.; comments due by 8-13-01; published 6-12-01
Honeywell International, Inc.; comments due by 8-13-01; published 6-12-01
McDonnell Douglas; comments due by 8-13-01; published 6-29-01
Airworthiness standards:
Special conditions—
Raytheon C90A airplane; comments due by 8-16-01; published 7-17-01
Raytheon Model Hawker 800XP airplanes; comments due by 8-17-01; published 7-18-01
Class E airspace; comments due by 8-13-01; published 7-13-01

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration

Consumer information:
Light motor vehicles; rollover resistance; driving maneuver tests evaluation; comments due by 8-17-01; published 7-3-01
Motor vehicle safety standards:
Economic impact on small businesses entities; comments due by 8-14-01; published 7-3-01

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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/index.html. Some laws may not yet be available.

S. 360/P.L. 107–21

To honor Paul D. Coverdell. (July 26, 2001; 115 Stat. 194)

S. 1190/P.L. 107–22
To amend the Internal Revenue Code of 1986 to rename the education individual retirement accounts as the Coverdell education savings accounts. (July 26, 2001; 115 Stat. 196)
Last List July 26, 2001

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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.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–044–00001–6)	6.50	[4] Jan. 1, 2001
3 (1997 Compilation and Parts 100 and 101)	(869–044–00002–4)	36.00	[1] Jan. 1, 2001
4	(869–044–00003–2)	9.00	Jan. 1, 2001
5 Parts:			
1–699	(869–044–00004–1)	53.00	Jan. 1, 2001
700–1199	(869–044–00005–9)	44.00	Jan. 1, 2001
1200–End, 6 (6 Reserved)	(869–044–00006–7)	55.00	Jan. 1, 2001
7 Parts:			
1–26	(869–044–00007–5)	40.00	[4] Jan. 1, 2001
27–52	(869–044–00008–3)	45.00	Jan. 1, 2001
53–209	(869–044–00009–1)	34.00	Jan. 1, 2001
210–299	(869–044–00010–5)	56.00	Jan. 1, 2001
300–399	(869–044–00011–3)	38.00	Jan. 1, 2001
400–699	(869–044–00012–1)	53.00	Jan. 1, 2001
700–899	(869–044–00013–0)	50.00	Jan. 1, 2001
900–999	(869–044–00014–8)	54.00	Jan. 1, 2001
1000–1199	(869–044–00015–6)	24.00	Jan. 1, 2001
1200–1599	(869–044–00016–4)	55.00	Jan. 1, 2001
1600–1899	(869–044–00017–2)	57.00	Jan. 1, 2001
1900–1939	(869–044–00018–1)	21.00	[4] Jan. 1, 2001
1940–1949	(869–044–00019–9)	37.00	[4] Jan. 1, 2001
1950–1999	(869–044–00020–2)	45.00	Jan. 1, 2001
2000–End	(869–044–00021–1)	43.00	Jan. 1, 2001
8	(869–044–00022–9)	54.00	Jan. 1, 2001
9 Parts:			
1–199	(869–044–00023–7)	55.00	Jan. 1, 2001
200–End	(869–044–00024–5)	53.00	Jan. 1, 2001
10 Parts:			
1–50	(869–044–00025–3)	55.00	Jan. 1, 2001
51–199	(869–044–00026–1)	52.00	Jan. 1, 2001
200–499	(869–044–00027–0)	53.00	Jan. 1, 2001
500–End	(869–044–00028–8)	55.00	Jan. 1, 2001
11	(869–044–00029–6)	31.00	Jan. 1, 2001
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200–219	(869–044–00031–8)	32.00	Jan. 1, 2001
220–299	(869–044–00032–6)	54.00	Jan. 1, 2001
300–499	(869–044–00033–4)	41.00	Jan. 1, 2001
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14 Parts:			
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16 Parts:			
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1000–End	(869–044–00046–6)	53.00	Jan. 1, 2001
17 Parts:			
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200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
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18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–044–00052–1)	23.00	Apr. 1, 2001
19 Parts:			
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141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–044–00055–5)	20.00	[5] Apr. 1, 2001
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400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
1–99	(869–044–00059–8)	37.00	Apr. 1, 2001
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
170–199	(869–044–00061–0)	45.00	Apr. 1, 2001
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
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600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
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1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
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300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
*0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
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25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
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§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
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§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
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§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
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27 Parts:			
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200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–042–00098–6)	43.00	July 1, 2000
43-end	(869-042-00099-4)	36.00	July 1, 2000
29 Parts:			
0–99	(869–042–00100–1)	33.00	July 1, 2000
100–499	(869–042–00101–0)	14.00	July 1, 2000
500–899	(869–042–00102–8)	47.00	July 1, 2000
900–1899	(869–042–00103–6)	24.00	July 1, 2000
1900–1910 (§§ 1900 to 1910.999)	(869–042–00104–4)	46.00	[6]July 1, 2000
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1911–1925	(869–042–00106–1)	20.00	July 1, 2000
1926	(869–042–00107–9)	30.00	[6]July 1, 2000
1927–End	(869–042–00108–7)	49.00	July 1, 2000
30 Parts:			
1–199	(869–042–00109–5)	38.00	July 1, 2000
200–699	(869–042–00110–9)	33.00	July 1, 2000
700–End	(869–042–00111–7)	39.00	July 1, 2000
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0–199	(869–042–00112–5)	23.00	July 1, 2000
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1–190	(869–042–00114–1)	51.00	July 1, 2000
191–399	(869–042–00115–0)	62.00	July 1, 2000
400–629	(869–042–00116–8)	35.00	July 1, 2000
630–699	(869–042–00117–6)	25.00	July 1, 2000
700–799	(869–042–00118–4)	31.00	July 1, 2000
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125–199	(869–042–00121–4)	45.00	July 1, 2000
200–End	(869–042–00122–5)	36.00	July 1, 2000
34 Parts:			
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400–End	(869–042–00125–7)	54.00	July 1, 2000
35	(869–042–00126–5)	10.00	July 1, 2000
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18–End	(869–042–00132–0)	47.00	July 1, 2000
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50–51	(869–042–00135–4)	28.00	July 1, 2000
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60	(869–042–00139–7)	66.00	July 1, 2000
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90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–042–00176–1)	23.00	Oct. 1, 2000
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166–199	(869–042–00178–8)	42.00	Oct. 1, 2000
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1–199	(869–042–00200–8)	55.00	Oct. 1, 2000
200–599	(869–042–00201–6)	35.00	Oct. 1, 2000

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600–End	(869–042–00202–4)	55.00	Oct. 1, 2000
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 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, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..