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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AI72

Statutory Bar to Appointment of Persons Who Fail To Register Under Selective Service Law; Technical Amendment

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending the regulations that require compliance with Selective Service registration requirements as a condition of employment in executive agencies. The amendment updates the telephone number for the Selective Service System which is cited in the regulations.

EFFECTIVE DATE: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole or Robert Grady on (202) 606–0830, TDD (202) 606–0023, or FAX (202) 606–0390.

SUPPLEMENTARY INFORMATION: Section 3328 of title 5, United States Code, provides that men born in 1960 or later who are required to, but did not register under section 3 of the Military Service Act (50 U.S.C. App. 453), generally are ineligible for appointment to Federal executive agencies. OPM's regulations carrying out the statutory requirement are found in title 5, Code of Federal Regulations, part 300. These regulations, issued in 1987, cite a toll-free telephone number for the Selective Service System that agencies can call to check if an individual has registered. This telephone number has changed and we are issuing a technical amendment to reflect the correct number.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations only affect Federal job applicants and employees.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making the amendment effective in less than 30 days. The amendment merely replaces an incorrect telephone number with the correct number.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 continues to read as follows:

Authority: 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. In § 300.705, paragraph (a) is revised to read as follows:

§ 300.705 Agency action following statement.

(a) Agencies must resolve conflicts of information and other questions concerning an individual's registration status prior to appointment. An agency may verify, at its discretion, an individual's registration status by requesting the individual to provide proof of registration or exemption issued by the Selective Service System and/or by contacting the Selective Service System at 888–655–1825.

* * * * *

[FR Doc. 99–13507 Filed 5–26–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–033–1]

Asian Longhorned Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by expanding the quarantined areas in the State of New York to include new areas in New York City and in Nassau and Suffolk Counties. As a result of this action, the interstate movement of regulated articles from those areas are restricted. This action is necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule is effective May 21, 1999. We invite you to comment on this docket. We will consider all comments that we receive by July 26, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–033–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–033–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of

organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255; or e-mail: Ron.P.Milberg@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, Rose of Sharon, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing it. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately 3/8-inch diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery and forest products industries could experience severe economic losses.

The Asian longhorned beetle regulations (7 CFR 301.51–1 through 301.51–9, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of New York City and Nassau and Suffolk Counties in the State of New York and portions of the city of Chicago, DuPage County, and the village of Summit in the State of Illinois are already designated as quarantined areas.

Recent surveys conducted by inspectors of New York State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred outside the quarantined areas in the State of New York. Specifically, infestations have been found outside the quarantined areas in the boroughs of Brooklyn and Queens and in Nassau and Suffolk Counties. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New York are conducting an intensive survey and eradication program in the infested areas. The State of New York has quarantined the infested areas and is restricting the intrastate movement of regulated articles from the quarantined areas to prevent the artificial spread of ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the artificial spread of ALB to other States and Canada.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where ALB has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending § 301.51–3(c) by expanding the quarantined areas in New York City and in Nassau and Suffolk Counties in the State of New York. The new quarantined areas are described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the ALB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that a Federal quarantine for ALB will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of

1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**, by calling the Plant Protection and Quarantine Fax Service at (301) 734–3560, or by visiting the following Internet site: http://www.aphis.usda.gov/ppd/ead/ppqdocs.html.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 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. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.51–3, paragraph (c) is amended by revising the entry for the State of New York to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

New York

New York City. That area in the boroughs of Brooklyn and Queens in the city of New York that is bounded as follows: Beginning at the point where the Manhattan Bridge intersects the bank of the East River; then south from the Manhattan Bridge along Flatbush Avenue to Lafayette Avenue; then east along Lafayette Avenue to Himrod Street; then northeast along Himrod Street to Myrtle Avenue; then east along Myrtle Avenue to Fresh Pond Road; then north along Fresh Pond Road to Flushing Avenue; then northeast along Flushing Avenue to Grand Avenue; then northeast along Grand Avenue to 69th Street; then north along 69th Street to 37th Avenue; then east along 37th Avenue to 70th Street; then north along 70th Street to Northern Boulevard; then west along Northern Boulevard to Queens Plaza North; then west along Queens Plaza North to the point where the Queensborough Bridge intersects the bank of the East River; then south and west along the bank of the East River to the point of beginning.

That area in the borough of Queens in the city of New York that is bounded as follows: Beginning at the point where Utopia Parkway intersects the shoreline of Little Bay; then south along Utopia Parkway to the Grand Central Parkway; then east along the Grand Central Parkway to the New York City/Nassau County line; then northwest along the New York City/Nassau County line to the shoreline of Little Neck Bay; then west along the shorelines of Little Neck Bay, Willets Point, and Little Bay to the point of beginning.

Nassau and Suffolk Counties. That area in the villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, Massapequa, Massapequa Park, and East Massapequa; in the towns of Oyster Bay and Babylon; in the counties of Nassau and Suffolk that is bounded as follows: Beginning at the point where West Main Street intersects the west bank of Carlis Creek; then west along West Main Street to Route 109; then north along Route 109 to Arnold Avenue; then northwest along Arnold Avenue to Albin Avenue; then west along Albin Avenue to East John Street; then west along East John Street to Wellwood Avenue; then south along Wellwood Avenue to West Hoffman Avenue; then west along West Hoffman Avenue to Marconi Boulevard; then west along Marconi Boulevard to Great Neck Road; then north and northwest along Great Neck Road to the Southern State Parkway; then west along the Southern State Parkway to Broadway; then south along Broadway to Hicksville Road; then south along Hicksville Road to Division Avenue; then south along Division Avenue to the shoreline of South Oyster Bay; then east along the shoreline of South Oyster Bay to Carlis Creek; then north along the west bank of Carlis Creek to the point of beginning.

Done in Washington, DC, this 21st day of May 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13516 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: NCUA amends its regulation dealing with newly chartered and troubled credit unions that requires prior notice of the appointment or employment of directors and senior officers. The amendment clarifies when the notice period commences and when the new director or senior officer may begin service.

Also, for corporate credit unions, the amendment clarifies that the definition of a ''troubled'' credit union will be based on the Corporate Risk Information System (CRIS), or on CAMEL for those state-chartered corporate credit unions in states that do not adopt CRIS. Finally, the amendment reflects that corporate credit unions should submit notices of changes in officials or senior management to the Director of the Office of Corporate Credit Unions.

DATES: This rule is effective June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret E. McPartlin, Trial Attorney, Litigation Division, Office of General Counsel, telephone: (703) 518–6566 or David A. Shetler, Corporate Program Specialist, Office of Corporate Credit Unions, telephone: (703) 518–6646.

SUPPLEMENTARY INFORMATION:

Background

NCUA has a policy of periodically reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' IRPS 87–2, Developing and Reviewing Government Regulations. 52 FR 35231 (September 18, 1987). As part of its regulatory review program, NCUA reviewed § 701.14 of its regulations, 12 CFR 701.14, to determine whether the language of the regulation was clear and effective. Section 701.14 of NCUA's regulations requires that federally insured credit unions that have been

chartered less than two years or fall within the regulatory definition of a ''troubled credit union'' file a notice with NCUA prior to adding or replacing a member of the board of directors or a committee member, or employing or changing the responsibilities of an individual to a position as a senior executive officer. As a result of NCUA review and questions from credit unions, the Board proposed to clarify the language contained in § 701.14(d)(1) (63 FR 59742, November 8, 1998).

There has been confusion as to when the Regional Director accepts the notice of a proposed change in an official or senior officer; how long the Regional Office has to process the notice; and when the official or senior officer may commence work. The amendment clarifies the language in § 701.14(d)(1) to provide that the Regional Director, within 10 calendar days after receiving the notice package, will notify the credit union in writing either that the notice package is complete and ready for processing, or that specified additional information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a decision of approval or disapproval within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director's decision period is tolled for the amount of time taken by the credit union to provide the requested additional information. If the requested additional information is not submitted within 30 calendar days, the Regional Director may either disapprove the individual or review the notice based on the information submitted. Once a notice is complete, if the Regional Director does not issue a decision within the required period, the individual is approved.

The NCUA Board has adopted the new CRIS rating system for corporate credit unions. The amendment clarifies that a CRIS rating of 4 or 5 in either the Financial Risk or Risk Management composite rating will be one of the conditions that defines a ''troubled'' federal corporate credit union. As is the case for all federally insured state credit unions in the present rule, the rating assigned by the state supervisor is utilized in determining the definition of a ''troubled'' federally insured, state-chartered corporate credit union.

Language is added to clarify that a 4 or 5 CAMEL composite rating by the state supervisor will be a condition that defines a ''troubled'' federally insured, state-chartered corporate credit union in states that have not adopted the CRIS system. If the state has not adopted either system, NCUA will determine and apply a CRIS rating using the corporate credit union's core examination workpapers.

Also, the existing language of Section 701.14 does not indicate that corporate credit unions should submit notices of changes in officials or senior management to the Director of the Office of Corporate Credit Unions (OCCU). Language was added to the final rule to clarify that corporate credit unions will submit notices to the Director of OCCU and that the Director of OCCU will act on such notices.

Summary of Comments

The NCUA Board received four (4) comment letters regarding the proposal: three from national trade associations and one from a state-chartered credit union. Of the four (4) commenters, three expressed general support for the proposed language. The three commenters, however, did not support the time frames set forth in the latter part of § 701.14 (d)(1). The proposed time frames would have allowed the Regional Director or Director of OCCU ten business days to determine whether a credit union or corporate credit union's notice is complete. The Regional Director or OCCU Director would then have had an additional 30 days to approve or disapprove the proposed official or employee. Two commenters suggested that we allow the Regional Director or Director of OCCU only five (5) business days to determine whether the notice is complete and ready for processing. The same two commenters proposed that the 30 calendar day time frame begin on the day the agency receives the notice of the proposed action and not from the date that the RD or OCCU Director deems the notice complete. Both commenters stated that while the suggested change would limit the amount of time for agency approval, placement of new management would be expedited.

The fourth commenter urged NCUA to draft separate rules and regulations for federally insured state chartered credit unions. The commenter did not make a general or specific objection to the proposed language of § 701.14(d)(1).

As previously described, the amendment partially incorporates the suggestions contained in the comment letters. It allows the Regional Director 30 calendar days from the date the notice is received to approve or disapprove the official or senior officer. Within the first 10 calendar days, however, the Regional Director will send written notification that the notice package is complete and ready for processing. If the notice is incomplete, the Regional Director will notify the credit union in writing what additional information is needed and that the information must be submitted within 30 calendar days. This will prevent unreasonable delays on the part of the applicant, considering that pre-approved commencement of temporary service is permitted by Section 701.14(e) of the regulations. The Regional Director's 30 day time period from the date of receiving the notice will be tolled when additional information is requested and the Regional Director will suspend processing of the notice until the requested information is submitted. If the requested information is not received within 30 calendar days, the Regional Director may disapprove the proposed individual or may review the application based on the information provided.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the final rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

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

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. NCUA has determined that the final rule does not constitute a significant regulatory action for the purposes of the Executive Order.

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 reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement

Fairness Act of 1996 this is not a major rule.

List of Subjects in 12 CFR Part 701

Credit unions, Senior executive officials.

By the National Credit Union Administration Board on May 19, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C 4311–4312.

2. Section 701.14 is amended as follows.

a. Revise the introductory text of paragraph (b)(3) and add paragraph (b)(4).

b. Revise paragraph (c)(2).

c. Amend paragraph (d)(1) by adding two new sentences after the first sentence and by removing the last three sentences and adding five sentences. The revisions and additions to section 701.14 read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(b) * * *

(3) Except as provided in paragraph (b)(4) of this section for corporate credit unions, ''troubled condition'' means any insured credit union that has one or a combination of the following conditions:

* * * * *

(4) In the case of a corporate credit union, ''troubled condition'' means any insured corporate credit union that has one or a combination of the following conditions:

(i) Has been assigned

(A) A 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites, in the case of a federal corporate credit union, or

(B) An equivalent 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that has adopted the CRIS system, or an equivalent 4 or 5 CAMEL composite rating by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that uses the CAMEL system, or

(C) A 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does not use either the CRIS or CAMEL system. In this case, the state supervisor will be notified in writing by the Director of the Office of Corporate Credit Unions that the corporate credit union has been designated by NCUA as a troubled institution;

(ii) has been granted assistance as outlined under Sections 116 or 208 of the Federal Credit Union Act.

(c) * * *

(2) The credit union meets the definition of troubled condition as set forth in paragraph 701.14(b)(3) or (4).

* * * * *

(d) *Procedures for notice of proposed change in official or senior executive officer.*

(1) *Filing and acceptance.* * * * In the case of a corporate credit union, notice shall be filed with the Director of the Office of Corporate Credit Unions. Additional references herein to Regional Director will, for corporate credit unions, mean the Director of the Office of Corporate Credit Unions. * * * Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time taken by the credit union to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

* * * * *

[FR Doc. 99–13308 Filed 5–26–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is removing its rule governing safe deposit box service. This revision will eliminate an unnecessary section from the regulations.

DATES: Effective June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On December 17, 1998, the NCUA Board requested comments on the proposed rule to remove § 701.30 of its regulations. 64 FR 57 (January 4, 1999). Section 701.30 of NCUA's regulations provides that a federal credit union may lease safe deposit boxes to its members. The NCUA Board is removing this section to streamline the publication of the regulations. The deletion of § 701.30 does not affect the authority of federal credit unions to offer safe deposit box service.

NCUA has a policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Rulings and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. Review of § 701.30 of NCUA's regulations revealed that this section is an unnecessary provision. Under the Federal Credit Union Act, federal credit unions (FCUs) have the power to exercise incidental powers that are necessary or requisite to enable them to carry on effectively the business for which they are incorporated. 12 U.S.C. 1757(17). FCUs may lease safe deposit boxes to their members as part of the routine services they provide. The removal of § 701.30 does not affect this incidental authority.

B. Summary of Comments

The NCUA Board received three comments on the proposal: one from a credit union trade group and two from state leagues. All three commenters supported the removal of the regulation.

C. Regulatory Procedures

1. 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 credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility analysis is not required.

2. Paperwork Reduction Act

This final rule to remove § 701.30 does not involve a collection of information under the Paperwork Reduction Act. Accordingly, NCUA has determined that a Paperwork Reduction analysis is not required.

3. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule is to remove a current regulation that applies to federal credit unions, not federally insured state chartered credit unions. Therefore, NCUA has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

4. 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 reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

List of Subjects in 12 CFR Part 701

Credit unions, Safe deposit box service.

By the National Credit Union Administration Board on May 19, 1999.

Becky Baker,

Secretary of the Board.

Accordingly, the National Credit Union Administration amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.30 [Removed]

2. Part 701 is amended to remove and reserve § 701.30.

[FR Doc. 99–13306 Filed 5–26–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 713, and 741

Organization and Operations of Federal Credit Unions; Fidelity Bond and Insurance Coverage for Federal Credit Unions; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is issuing this rule to update, clarify, revise and redesignate its regulation that addresses the requirements for fidelity bond coverage for losses caused by credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union, e.g., losses due to theft, holdup or vandalism. The final rule recasts the rule in plain English format and adds several previously approved bond forms to the regulation.

DATES: This rule is effective July 26, 1999.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Telephone Number (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act sets forth statutory requirements for the bonding of credit union employees and appointed and elected officials. 12 U.S.C. 1761a, 1761b(2) and 1766(h). The NCUA Board is directed to promulgate regulations setting forth both the amount and character of bond requirements for employees and officials. The NCUA Board is also granted the following powers concerning bonding:

To approve bond forms;

To set minimum requirements for bond coverage;

To require such other fidelity coverage as the Board may determine to be reasonably appropriate;

To approve a blanket bond in lieu of individual bonds; and

To approve bond coverage in excess of minimum fidelity coverage.

In addition, NCUA's general rulemaking authority provides a statutory basis for both the bonding requirements of § 701.20 and the insurance coverage requirements related to losses caused by persons outside the credit union. 12 U.S.C. 1766(a), 1789(a)(11).

NCUA has a policy of periodically reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' IRPS 87–2, Developing and Reviewing Government Regulations. As part of its regulatory review program, NCUA reviewed § 701.20 to determine whether the language of the regulation was clear and effective. As a result of that review on December 17, 1998, the NCUA Board proposed changes to this regulation (64 FR 58, January 4, 1999) to increase regulatory effectiveness by making it easier for credit unions to understand the requirements regarding fidelity bonds and other insurance. The proposed rule also added a number of additional bond forms which have been approved by the NCUA for use by federal credit unions.

In addition, the proposed rule provided for an aggregate limit of liability no less than twice the single loss limit of liability stated in the fidelity bond. Most bond forms currently in use provide for such an aggregate liability limit.

B. Comments

Five comment letters were received. Of these, three were received from state credit union leagues, one from a national credit union trade association, and one from an insurance company. All five concurred with the final rule.

Two commenters noted that the proposal uses the terms surety and fidelity interchangeably, and suggest that for the sake of clarity the term fidelity be used throughout. The term surety has been eliminated from the final rule and the term fidelity used throughout.

One commenter suggested that NCUA clarify that the provision requiring that an aggregate limit of liability be twice the single loss limit of liability does not apply to optional coverages, but only to required fidelity coverage. Section 713.5(d) of the final rule has been modified to adopt this suggested change. Section 713.5(e) has also been clarified to provide that a credit union need only obtain prior written approval from the NCUA Board for a reduction in required fidelity bond coverage. A credit union board of directors may modify optional insurance coverage as business needs dictate.

One commenter suggested a clarification related to Section 713.2, which sets forth the responsibilities of a board of directors to annually review a federal credit union's insurance coverage to ensure its adequacy. This commenter suggested that either the regulation or preamble state that the board of directors may discharge its duties in this respect by requiring that management provide it with an annual report on the credit union's insurance coverage. The manner in which a board of directors chooses to discharge its responsibilities under Section 713.2 will differ from credit union to credit union. However it chooses to do so, the ultimate responsibility remains with the board of directors. Accordingly, the final rule remains as proposed.

With respect to the minimum bond limits and maximum deductibles set forth in the proposal, three commenters concurred with the proposed amounts. One commenter suggested that the maximum deductible for the largest credit unions be increased from $200,000 to $500,000. NCUA has continued these amounts as proposed.

One commenter noted that while the proposed rule was drafted in terms of requirements for individual credit unions, and while most fidelity bond policies are in fact purchased separately by credit unions, there have been instances where credit unions have jointly purchased fidelity bond policies. This commenter also noted that the majority of policies written today carry an aggregate limit of two times the single loss limit of liability, a limitation required under the final rule. The commenter was concerned that in these cases a loss suffered by one or two of the joint policy holders could reduce the amount of coverage available for the other joint policy holders below the required minimum amount, i.e. two losses equal to the single loss limit of liability would exhaust the coverage available for all credit unions to zero even though some of these credit unions would not have suffered a loss.

This commenter also noted a concern with the joint purchase of fidelity bond policies even when the policy purchased does not have an aggregate limit of liability. While it is true that a loss suffered by one credit union would not reduce the amount of coverage available to the other credit unions purchasing the policy, this commenter suggested that, when several credit unions purchase a policy in a group, they may not give adequate attention to providing for the specific risks faced by individual credit unions. Compromises might be made in coverage amounts that would not be made if the policy were purchased individually.

In addition, this commenter argued that the joint policy holders might not adjust coverages in a timely manner because of the difficulty of doing so in a group purchasing scenario. The Board notes that § 713.5 of the regulation requires that a credit union increase its bond coverage within thirty days of certain events having occurred. The Board also reserves the right, pursuant to § 713.7, to require a credit union to purchase additional coverage within thirty days if it deems current coverage to be inadequate. Both sections would be more difficult to implement for a credit union holding a jointly purchased fidelity bond policy.

In light of these concerns § 713.3 of the final rule has been clarified to provide that a fidelity bond must be individually purchased by each federal credit union.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA Board certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis was not required.

Paperwork Reduction Act

The final rule has no information collection requirements; therefore, no Paperwork Reduction Act analysis was required.

Executive Order 12612

The NCUA Board has determined that the final rule 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 various levels of government.

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 Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 713

Credit unions, Fidelity bonds.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board this 19th day of May, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR chapter VII is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.20 [Removed and Reserved]

2. Part 701 is amended by removing and reserving 701.20.

3. Part 713 is added to read as follows:

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

Sec.
713.1 What is the scope of this section?
713.2 What are the responsibilities of a credit union's board of directors under this section?
713.3 What bond coverage must a credit union have?
713.4 What bond forms may be used?
713.5 What is the required minimum dollar amount of coverage?
713.6 What is the permissible deductible?
713.7 May the NCUA Board require a credit union to secure additional insurance coverage?

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

§ 713.1 What is the scope of this section?

This section provides the requirements for fidelity bonds for Federal credit union employees and officials and for other insurance coverage for losses such as theft, holdup, vandalism, etc., caused by persons outside the credit union.

§ 713.2 What are the responsibilities of a credit union's board of directors under this section?

The board of directors of each Federal credit union must at least annually review its fidelity and other insurance coverage to ensure that it is adequate in relation to the potentials risks facing the credit union and the minimum requirements set by the Board.

§ 713.3 What bond coverage must a credit union have?

At a minimum, your bond coverage must:

(a) Be purchased in an individual policy from a company holding a certificate of authority from the Secretary of the Treasury; and

(b) Include fidelity bonds that cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members.

§ 713.4 What bond forms may be used?

(a) The following basic bonds may be used without prior NCUA Board approval:

Credit union form No.	Carrier
Credit Union Blanket Bond Standard Form 23 of the Surety Association of America (revised May 1950).	Various.
Extended Form 23	USFG.
100	CUMIS (only approved for corporate credit union use).
200	CUMIS.
300	CUMIS.
400	CUMIS.
AIG 23	National Union Fire Insurance Co. of Pitts., PA.
Reliance Preferred Form 23	Reliance Insurance Company.
Form 31	ITT Hartford.
Form 24 with Credit Union Endorsement	Continental (only approved for corporate credit union use).
Form 40325	St. Paul Fire and Marine.
Form F2350	Fidelity & Deposit Co. Of Maryland.
Form 9993 (6/97)	Progressive Casualty Insurance Co.
Credit Union Blanket Bond (1/96)	Cooperativas de Seguros Multiples de Puerto Rico.

(b) To use any of the following, you need prior written approval from the Board:

(1) Any other basic bond form; or

(2) Any rider or endorsement that limits coverage of approved basic bond forms.

§ 713.5 What is the required minimum dollar amount of coverage?

(a) The minimum required amount of fidelity bond coverage for any single loss is computed based on a Federal credit union's total assets.

Assets	Minimum bond
$0 to $10,000	Coverage equal to the credit union's assets.
$10,001 to $1,000,000	$10,000 for each $100,000 or fraction thereof.
$1,000,001 to $50,000,000	$100,000 plus $50,000 for each million or fraction over $1,000,000.
$50,000,001 to $295,000,000	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000.
Over $295,000,000	$5,000,000.

(b) This is the minimum coverage required, but a Federal credit union's board of directors should purchase additional coverage when circumstances, such as cash on hand or cash in transit, warrant.

(c) While the above is the required minimum amount of bond coverage, credit unions should maintain increased coverage equal to the greater of either of the following amounts within thirty days of discovery of the need for such increase:

(1) The amount of the daily cash fund, i.e. daily cash plus anticipated daily money receipts on the credit union's premises, or

(2) The total amount of the credit union's money in transit in any one shipment.

(3) Increased coverage is not required pursuant to paragraph (c) of this section, however, when the credit union temporarily increased its cash fund because of unusual events which cannot reasonably be expected to recur.

(d) Any aggregate limit of liability provided for in a fidelity bond policy must be at least twice the single loss limit of liability. This requirement does not apply to optional insurance coverage.

(e) Any proposal to reduce your required bond coverage must be approved in writing by the NCUA Board at least twenty days in advance of the proposed effective date of the reduction.

§ 713.6 What is the permissible deductible?

(a)(1) The maximum amount of allowable deductible is computed based on a Federal credit union's asset size, as follows:

Assets	Maximum deductible
$0–$100,000	No deductibles allowed.
$100,001–$250,000	$1,000.
$250,001–$1,000,000	$2,000.
Over $1,000,001	$2,000 plus 1/1000 of total assets up to a maximum deductible of $200,000.

(2) The deductibles may apply to one or more insurance clauses in a policy. Any deductibles in excess of the above amounts must receive the prior written permission of the NCUA Board.

(b) A deductible may not exceed 10 percent of a credit union's Regular Reserve unless a separate Contingency Reserve is set up for the excess. In computing the maximum deductible, valuation accounts such as the allowance for loan losses cannot be considered.

§ 713.7 May the NCUA Board require a credit union to secure additional insurance coverage?

The NCUA Board may require additional coverage when the Board determines that a credit union's current coverage is inadequate. The credit union must purchase this additional coverage within 30 days.

PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766 and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

5. Section 741.201(a) and (b) are amended by removing ''§ 701.20'' and adding ''Part 713'' in its place.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 722, 723 and 741

RIN 3133–AB91

Organization and Operation of Federal Credit Unions; Appraisals; Member Business Loans; and Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is updating, clarifying and streamlining its existing rules concerning member business loans and appraisals for federally insured credit unions, as well as implementing recent statutory limitations regarding member business loans.

The intended effect of this rule is to reduce regulatory burden, maintain safety and soundness, implement statutory limits and provide guidance on the statutory exception for qualifying credit unions from the statutory aggregate limit on a credit union's outstanding member business loans.

DATES: This rule is effective June 28, 1999.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540; or David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:

A. Background

On July 23, 1997, the Board issued proposed amendments to the regulation governing member business loans (Previous Section 701.21(h) and Proposed Part 723 of NCUA's Regulations) and appraisals (Part 722 of NCUA's Regulations) with a sixty-day comment period. 62 FR 41313 (August 1, 1997). The Credit Union Membership Access Act (the Act) was enacted into law on August 7, 1998. Public Law 105–219, 112 Stat. 913 (1998). Among other things, the Act imposed a new aggregate limit on a federally-insured credit union's outstanding member business loans. However, the Act also provided for three circumstances where a credit union could qualify for an exception from the aggregate limit. On September 23, 1998, the NCUA Board issued an interim final member business loan rule with a sixty-day comment period. 63 FR 51793 (September 29, 1998). The comment period was extended November 19, 1998, for an additional sixty days. 63 FR 65532 (November 27, 1998).

B. Comments

Eighty-seven comments were received. Comments were received from twenty-five federal credit unions, ten state-chartered credit unions, eleven state leagues, three national credit union trade associations, one association of state supervisors, one appraisal trade association, fifteen banks, eighteen bank trade associations, two law firms, and one government agency. Except for the bank and bank trade associations, the commenters were generally supportive of the interim final rule, although most commenters suggested ways they would modify the final rule. The bank and bank trade association comments are summarized in a separate section.

Section-by-Section Analysis and NCUA Board Decisions

Section 723.1(a)—What is a Member Business Loan?

This section provides a definition of a member business loan. The Act sets forth the definition of a member business loan, so NCUA can no longer define the term.

Therefore, a member business loan means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purposes. Section 107A(c)(1)(a) of the Act. The final rule clarifies that unfunded commitments are included in determining whether a loan is a member business loan.

Three commenters requested that loans made to churches or other religious organizations be exempt from the definition of a member business loan. These commenters stated that while churches may be organized as corporations, any loan to such a corporation would not be for a ''commercial'' purpose. These commenters stated that the term ''business'' implies for-profit activity. The NCUA Board disagrees with these commenters. In general, a loan to a non-

natural person will qualify as a member business loan. Although a loan to a church is not for a profit making purpose, it does have a ''corporate'' purpose as that term is generally understood. If the purpose of the loan is to benefit the institution, even a non-profit unincorporated association, then it has a corporate purpose. For example, a loan to build a new church has the same corporate purpose as a loan to a non-profit association to acquire a new headquarters building. Even though the purpose (functions) of the institutions differ, the purpose for the loan does not.

Section 723.1(b)—Exceptions to the General Rule

This section sets forth five exceptions to the general definition of a member business loan. The exceptions are established by the Act and are virtually identical to the exceptions in the previous member business loan rule. The following loans are excepted from the member business loan definition: (1) an extension of credit fully secured by a lien on a 1-to-4 family dwelling that is the primary residence of a member; (2) an extension of credit fully secured by shares in the credit union making the extension of credit or deposits in financial institutions; (3) an extension of credit that meets the member business loan definition made to a borrower or an associated member that has a total of all such extensions of credit in an amount equal to or less than $50,000; (4) an extension of credit where the repayment is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or of a state, or any political subdivision thereof; or (5) an extension of credit that is granted by a corporate credit union (as that term is defined by the Board) to another credit union.

Three commenters requested that the $50,000 limit be increased to $100,000. Another commenter also suggested an increase in the limit. The NCUA Board cannot increase the dollar threshold because the Act sets the dollar limit.

Two commenters recognized that NCUA does not have the authority to adopt a definition of a member business loan that is different from the one provided by the Act, but encouraged the agency to provide some guidance on the meaning of ''commercial'' loan or ''investment property.'' The NCUA Board believes that the interpretation given to these terms will depend on the facts of a particular case. However, in general, the NCUA Board interprets ''commercial'' as any loan that does not fit in the standard category of consumer lending. The NCUA Board interprets ''investment property'' as a property that is intended to produce income.

Two commenters stated that NCUA should specifically exclude vacation homes and other residences related to a member's professional mobility that are not for investment purposes from the definition of ''commercial.'' One commenter requested that a loan fully secured by a lien on a dwelling that is the member's secondary or vacation home should be added to the loans specifically excluded from the definition of member business loans. Two commenters requested that a second 1-to-4 family home should also be excluded from the definition. The NCUA Board believes that since Congress used the term ''primary residence,'' the exemption cannot be expanded to include other types of homes a member may use as collateral in obtaining a loan. However, a loan to purchase or refinance a vacation home or other residence that is not generally used for investment purposes does not meet the definition of a member business loan.

One commenter suggested that NCUA exempt retirement homes from the member business loan definition because such homes will eventually be a primary residence. This commenter also suggested defining ''primary residence'' in the definition section. Although the Board does not believe the term ''primary residence'' needs to be defined, to avoid any misunderstanding, the Board is once again reiterating that a federal credit union may finance a future retirement home under the long-term mortgage authority. If at the time the loan is made, the member's intent is to establish a new principal residence, either immediately or some time in the future, the federal credit union may grant a long-term mortgage secured by the second home. Under this analysis, since the member intends to occupy this residence as his or her primary residence, the credit union may grant a second home loan under the long-term mortgage authority and the loan is exempt from the definition of a member business loan as long as the source of repayment is not dependent on rental income involving the residence.

One commenter suggested that the final rule clarify that an advance commitment to purchase a loan by a federally chartered financial institution would be considered a commitment from a federal agency and be excluded from the definition of a business loan. The NCUA Board does not believe such an exemption is permissible under the Act and thus is not adopting this commenter's suggestion in the final rule. Of course, loans to credit unions by a corporate credit union are exempt from the definition of a member business loan.

One commenter requested that NCUA clarify that the amount of any loan fully guaranteed by the federal, state or local government is not included in determining whether the $50,000 threshold has been reached. The reason is that small business administration loan programs do not guarantee full repayment, only the amount of the loan that is not guaranteed should be considered in determining whether the threshold has been reached. The NCUA Board agrees and a credit union need not include that portion of a loan that is guaranteed toward the $50,000 threshold.

One commenter questioned whether the final rule applies to corporate credit unions, and specifically to corporate credit union loans to non-credit union members. The Act does not distinguish between corporate and natural person credit unions. Since the NCUA Board has not been provided any compelling reason on why this rule should not apply to corporate credit unions granting member business loans to entities other than credit unions, the final rule applies to all types of federally insured credit unions.

Section 723.2—What Are the Prohibited Activities?

This section sets forth who is ineligible to receive a member business loan. The interim final rule identified as ineligible the following persons: (1) Any member of the board of directors who is compensated as such; (2) the chief executive officer; (3) any assistant chief executive officers; (4) the chief financial officer; or (5) any associated member or immediate family member of anyone listed in 1–4. The interim final rule also added senior management employees to the provision prohibiting equity agreements or joint ventures.

Four commenters supported the prohibition on member business loans as set forth in this section. Six commenters requested that senior management officials, compensated directors, and immediate family members thereof, be able to receive member business loans. One commenter stated that associated members or immediate family members of anyone specifically prohibited should be eligible to receive a member business loan. One commenter stated that ten states allow compensation for the board of directors and the prohibition on compensated directors obtaining member business loans should not apply to state chartered credit unions.

The agency has historically included compensated directors as persons who were prohibited from receiving member business loans. In the past, the agency has believed that the compensated director might unduly influence the other directors to have the credit union grant questionable and/or risky member business loans to the compensated director and/or their family members. Recent agency experience in other lending areas has led the NCUA Board to believe that such influence would probably be minimal or non existent. Therefore, the NCUA Board is eliminating the prohibition on member business loans to the compensated director. However, to maintain proper internal controls, the board of directors must approve the loan to the compensated director and the compensated director must be recused from the decision to grant or deny the loan.

Section 723.3—What Are the Requirements for Construction and Development Lending?

This section sets forth the requirements for construction and development lending. NCUA clarified in the preamble to the interim final rule that construction and development loans below the dollar limits, individually and/or in the aggregate, are not considered to be member business loans for the purpose of this rule. Thus, if a member has a construction loan for $40,000, and no other outstanding business type loans, including unfunded business type lines of credit, then the construction loan is not a member business loan. No substantive comments were received on this section. The Board is adopting this section in final as set forth in the interim final rule, except the term ''reserves'' has been replaced by the term ''net worth'' and the word ''independent'' has been eliminated from paragraph (c) since most financial institutions use qualified employees to conduct draw inspections.

Section 723.4—What Are the Other Applicable Regulations?

This section merely describes the other NCUA lending rules credit unions must follow when granting member business loans to the extent they are consistent with this regulation. One commenter supported this section. Six commenters opposed applying these standards to federally insured credit unions. These commenters requested that NCUA, instead, clearly state that this section does not apply to federally insured state chartered credit unions except as may be specified in Part 741 of NCUA's Regulations. The NCUA Board agrees and the final rule incorporates this change.

Section 723.5—How Do You Implement a Member Business Loan Program?

This section sets forth the requirement that the board of directors adopt business loan policies and review them at least annually. This section also requires the board to use the services of an individual with at least two years direct experience in the type of lending in which the credit union will be engaging. The preamble to the interim final rule also clarified that NCUA does not necessarily require experience with business loans in general but, rather, the experience could also be with the type of loans the credit union intends to grant. The preamble also clarified that credit unions need not hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. Credit unions can meet the experience requirement through various approaches. For example, a credit union can use the services of a CUSO, an employee of another credit union or other financial institution, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

Nine commenters believe the two-year experience requirement is reasonable. Three commenters objected to the two-year experience requirement. One commenter stated that the employee should only be required to have general business lending experience and not direct experience with a certain type of loan or collateral. One commenter believed this section should be clarified to state that a credit union need only have at least two years experience in making loans secured by a particular class of collateral and not necessarily two years experience in making business loans.

The NCUA Board believes it crucial for a credit union to have experienced personnel involved in making decisions regarding business lending. Member business loans require special expertise in virtually all phases of origination and administration. The experience requirement can be met by either general business lending experience or experience with granting loans for a particular purpose or secured by a particular collateral. Therefore, the NCUA Board is adopting this section in the final rule as set forth in the interim final rule.

Section 723.6—What Must Your Member Business Loan Policy Address?

This section set forth those items that credit unions must address in their written business loan policies. The interim final rule used the term ''determination of value'' instead of ''appraisal'' in the discussion of written loan policies. One commenter stated that NCUA should use the term ''appraisal.'' The Board believes that the term ''determination of value'' is more appropriate since the term ''appraisal'' unduly emphasizes member business loans as real estate loans. The term ''determination of value'' clarifies that, whether a member business loan is collateralized by real estate or other types of collateral, credit unions must address the value of the collateral.

Two commenters requested that NCUA state that the maturity limit for member business loans applies only to federal credit unions and not state chartered credit unions. As stated in the preamble to the interim final rule, federally insured state-chartered credit unions can grant business loans with a maturity limit consistent with state law. The final rule does not impose any maturity limits for state-chartered credit unions.

One commenter stated that all the documentation listed in this section is not necessary for every member business loan. The NCUA Board agrees. The interim final rule, as well as the final rule, provides the board of directors with significant discretion to determine the documentation necessary to make the decision whether a member business loan should be granted.

One commenter stated that credit unions should be required to conduct a periodic review of financial statements. Agency experience has demonstrated that, in most cases, a credit union will ordinarily review the financial statements of its open-end business loans. The NCUA Board is not requiring in the final rule, a review of financial statements on all member business loans.

The NCUA Board is adopting this section in final as set forth in the interim final rule except the term ''reserves'' has been replaced by the term ''net worth.''

Section 723.7—What Are the Collateral and Security Requirements?

This section sets forth the remaining issues that written loan policies must address, including loan-to-value ratios and the requirement for the personal liability and guarantee of the member. As is the current practice, loan-to-value ratios apply to the entire loan that is in excess of $50,000.

Questions have been raised on loan-to-value ratios for multiple member business loans to the same borrower. If multiple loans are on the same

collateral, the loan-to-value limitation will apply to any loan where the aggregate amount of the loans exceed $50,000. For example, if a credit union makes a loan on a piece of real estate for $40,000 and subsequently makes another $40,000 loan on the same collateral, the loan-to-value limitation applies to the second loan. The NCUA will not allow a credit union to circumvent the loan-to-value ratios simply be making numerous loans for less than $50,000 on the same collateral. If the first member business loan to a borrower is unsecured and the second loan is secured the loan-to-value ratios apply to the second loan if the aggregate amount of both loans exceeds $50,000.

Three commenters supported including unfunded commitments when calculating the loan-to-value ratios. Two commenters objected to including unfunded commitments. The NCUA Board believes it is reasonable to include unfunded commitments when calculating the loan-to-value ratios because, if they were excluded, the loan-to-value ratios could be exceeded when the entire loan is funded.

Four commenters supported the second lien limitation at 80%. One commenter requested the number be raised. One commenter requested NCUA eliminate regulatory loan-to-value ratio requirements. One commenter stated that the regulation should allow for selected loans to exceed the proposed loan-to value ratios and/or occassionally be undersecured or unsecured. Five commenters stated that NCUA should be more flexible with respect to loan-to-value ratios for loans on personal property, vehicles and equipment. One commenter requested that the loan-to-value limitation be increased to 95%. The NCUA Board believes the specified loan-to-value ratios are appropriate for member business loans and although the exact wording has been modified, the same loan-to-value ratios are incorporated into the final rule. However, the NCUA Board is reiterating that, if there is a category of loans that a credit union believes should be allowed to exceed these ratios, the credit union can request a waiver from the appropriate Regional Director. For example, if a credit union regularly grants vehicle loans in excess of $50,000 that meet the definition of member business loans, the credit union would likely be a good candidate to receive a waiver from the loan-to-value ratio requirements for that category of loans.

One commenter requested that NCUA allow borrowers that are corporations and other business entities, such as limited liability companies, to borrow in the name of the corporation whereby the guarantor is the corporation. The NCUA Board does not agree with such a change because it would allow a corporation to be liable instead of the individual. Past experience with credit union losses with this type of loan structure indicates that such a change would not be in the best interest of credit unions or the National Credit Union Share Insurance Fund (NCUSIF).

One commenter recommended NCUA use the term ''principals'' instead of ''borrowers'' to avoid confusion when addressing the requirement for a personal guarantee since a borrower could be a non-natural person. The NCUA Board agrees this change would provide greater clarity and has incorporated it into the final rule.

Section 723.8—How Much May One Member or a Group of Associated Members Borrow?

This section sets forth the aggregate amount of outstanding member business loans credit unions may grant to one member or a group of associated members. Unless NCUA grants a waiver, the interim final rule limited the aggregate amount of outstanding business loans to any one member or group of associated members to 15% of the credit union's reserves (less the Allowance for Loan Losses account) or $100,000, whichever is higher. The NCUA Board, in the final rule, is replacing the term ''reserves'' with the term ''net worth.'' This change will not make the 15% limit more restrictive in gross dollar terms.

In the preamble to the interim final rule, the Board clarified how loan participations are treated in regard to business loan limits. In those situations where the credit union sold the participation without recourse, the amount sold would not be included when calculating the 15% limit for a single borrower. However, if the credit union sold the participation with recourse (that is, the selling credit union retains a contingent liability), it would include the amount sold when calculating the 15% limit.

Four commenters specifically approved of the aggregate loan limit to one member or group of associated members. One commenter stated that the restrictions on loan to one borrower should be deleted. One commenter supported the 15% limit but would eliminate the $100,000 limitation. One commenter stated that unfunded commitments should be included in the aggregate loan limit. One commenter stated that unfunded commitments should not be included in the aggregate loan limit. The NCUA Board has not been provided with a convincing rationale for changing the loan limits to one borrower or for excluding unfunded commitments from the loan limits. Therefore, the NCUA Board is adopting the limitations in the interim final rule in the final rule.

Section 723.9—How Do You Calculate the Aggregate 15% Limit?

This section sets forth how a credit union calculates the aggregate 15% limit. The interim final rule stated that, if any portion of a member business loan is secured by shares in the credit union or a deposit in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by any agency of the federal government or of a state or any of its political subdivisions, such portion is not used in calculating the 15% limit. No substantive comments were received on this section. Except for inserting the term ''net worth'' for the term ''reserves'' the NCUA Board is adopting in final this section as it was set forth in the interim final rule.

Section 723.10—What Loan Limit Waivers Are Available?

The interim final rule provided for a waiver from: (1) the maximum loan amount to one borrower or associated group of members; (2) loan-to-value ratios; and (3) construction and development lending. The interim final rule stated that the waiver is for a category of loans. Two commenters supported the loan limit waiver provisions. In the interest of making this section more informative, the NCUA Board is also referencing the waivers that are available for appraisals under Part 722 and the requirement for the personal liability in Section 723.7. Hence, this section is now retitled: ''What waivers are available?'' The NCUA Board has not made any other substantive changes to this section from the interim final rule.

Section 723.11—How Do You Obtain an Available Waiver?

This section described the information that a federal credit union must submit to the Regional Director with a waiver request. This section also provided a mechanism for state chartered federally insured credit unions to have the waiver request processed through the state supervisory authority. If the state supervisory authority approves the request, the state regulator forwards the request to the Regional Director. A waiver is not effective until it is approved by the Regional Director.

One commenter requested that NCUA specify that the state supervisory authority makes the decision whether or not to grant a waiver for a federally insured state chartered credit union and that state regulators may allow self-implementing waivers for categories of loans. The NCUA Board has not been provided any convincing rationale for not being part of the waiver process. Being part of the process allows NCUA, as the insurer of credit unions, to ensure that all waiver requests are properly reviewed.

Furthermore, permitting self-implementing waivers would result in NCUA abdicating its regulatory responsibility and potentially threatening the NCUSIF. Except for some minor editing changes, including a reference for corporate federal credit unions, the NCUA Board has not made any substantive changes to this section from the interim final rule.

Section 723.12—What Will NCUA Do With My Waiver Request?

This section sets forth what the Regional Director must consider in reviewing the waiver request and how the waiver is processed. The interim final rule stated that a Regional Director must act on a waiver request within 45 days (from receipt from the federal credit union or the state supervisory authority) and set forth an automatic waiver approval if a region does not take action on a request within the specified time frame.

Any waiver is revocable at NCUA's sole discretion. If a waiver is revoked, loans granted under the waiver authority are grandfathered.

Two commenters stated that NCUA should make the decision in 30 days. One commenter stated that NCUA should make a decision in less than 45 days if the waiver was processed first through the state regulator. The NCUA Board is maintaining 45 days as the time frame the agency has to approve or deny the waiver because of the increase in the number of available waivers for credit unions.

Section 723.13—What Options Are Available if the Regional Director Denies My Waiver Request or a Portion of It?

This section describes how a credit union may appeal the denial of its waiver request by the Regional Director to the NCUA Board. No substantive comments were received on this section. The NCUA Board is adopting this section in final as it was set forth in the interim final rule.

Section 723.14—How Do I Reserve for Potential Losses?

This section addresses the criteria for determining the classification of loans. One commenter stated that the title of this section should be modified to address the classification of loans. The NCUA Board agrees with this commenter and has changed the title of this section accordingly.

Section 723.15—How Much Must I Reserve for Potential Losses?

This section provides a schedule a credit union must use to reserve for classified loans. NCUA clarified the meaning of this section by stating that this is the minimum amount when establishing the reserve percentage. No substantive comments were received on this section. Except for a minor editing change, the Board is adopting this section in final as it was set forth in the interim final rule.

Section 723.16—What is the Aggregate Member Business Loan Limit for a Credit Union?

The Act imposes a new aggregate limit on a credit union's outstanding member business loans (including any unfunded commitments) of the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Net worth is all of the credit union's retained earnings. The definition of net worth should be determined under Generally Accepted Accounting Principles which includes retained earnings. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authority. The final rule has been modified to reflect this definition accurately.

If a credit union currently has business loans exceeding the aggregate loan limit and does not qualify for an exception, it has until August 7, 2001, to reduce the total amount of outstanding member business loans to below the aggregate loan limit. Furthermore, once the prompt corrective action provisions are implemented in a final regulation, an insured credit union that is undercapitalized may not make any increase in the total amount of member business loans until such time as the credit union becomes adequately capitalized as required by the prompt corrective action provisions of the Act. 12 U.S.C. 216(g)(2).

Four commenters opposed the statutory limitation. Two commenters objected to including unfunded commitments in determining the aggregate loan limit. Unfunded commitments are included in calculating the aggregate loan limit because to do otherwise could inadvertently place a credit union over the aggregate loan limit when the loan was fully funded. Such a result would violate the Act.

One commenter requested guidance on how loan participations are treated for purpose of the aggregate loan limit. Unless otherwise exempt, loan participations that are made without recourse are not part of the loan limit for the originating credit union. However, such loans are to be counted against the aggregate loan limit for the participating credit union, unless otherwise exempt.

Section 723.17—Are There Any Exceptions to the Aggregate Loan Limit?

The interim final rule set forth three exceptions to the aggregate loan limit: (1) credit unions that have a low-income designation or participate in the Community Development Financial Institutions program; (2) credit unions that have a ''a history of primarily making member business loans;'' or (3) credit unions that were chartered for the purpose of primarily making member business loans. A credit union that does not qualify for an exception must immediately stop making business loans that will exceed the aggregate loan limit.

Five commenters stated that the exceptions for credit unions should be self-certifying and the examiners could review whether the exception is justified during the examination. The NCUA Board believes it would be abandoning its regulatory responsibility if it were to allow credit unions to self-certify. This could result in a credit union making member business loans in excess of the amount permitted under the Act. The NCUA Board believes that the process has worked properly since it was adopted in September, and therefore, it is retained in the final rule. In fact, of the eighty-three credit unions that exceeded the aggregate loan limit as of August 7, 1998, sixty-five have been granted exceptions, six requests were denied, and twelve have not sought an exception. If a credit union is eligible for an exception but chooses not to seek one, the credit union has until August 7, 2001 to reduce the total amount of business loans to below the aggregate loan limit. If an exception is revoked, current loans are grandfathered but the credit union cannot make any new member business loan until the credit union's total amount of business loans is below the aggregate loan limit.

History of Primarily Making Member Business Loans

The NCUA Board defined ''a history of primarily making member business loans'' as either: (1) member business loans comprise at least 25% of the credit union's outstanding loans; or (2) member business loans comprise the largest portion of the credit union's loan portfolio.

Six commenters supported NCUA's definition of ''a history of primarily making member business loans.'' Two commenters stated that the 25% level was too high. One commenter recommended a percentage between 18–20% for determining whether a credit union has ''a history of primarily making member business loans.'' Another commenter suggested 17.5%. Four commenters suggested 15%. Two commenters stated that any credit union currently above the aggregate loan limit should be able to receive an exception. Two commenters requested a third category under this exception. These commenters believe an exception should also be granted to credit unions whose business loans have averaged 20% of total loans over a ten-year period. One commenter stated that NCUA should permit an exception if member business loans are the second largest category in the credit union's portfolio. One commenter stated that the Board should add a third criterion where loans are an integral part of the credit union's loan portfolio.

The language of the statute is ambiguous and leaves to NCUA's discretion the responsibility for defining when a credit union has a ''history of primarily making member business loan[s].'' The Board recognizes that only a limited number of credit unions will be eligible for this exception because the aggregate loan limit will prevent credit unions in the future from exceeding the cap. While the legislative history provides no definitive guidance, it does make clear that Congress intended that exceptions be crafted in a way that would allow those credit unions with a history of beneficial business lending to continue that practice. The Senate Report stated that the NCUA Board should

> interpret the exceptions under new section 107A(b), to permit worthy projects access to affordable credit union financing. Loans for such purposes as agriculture, self-employment, small business establishment, large up-front investments or maintenance of equipment such as fishing or shrimp boats, taxi cab medallions, tractor trailers, or church construction should not be unduly constricted as a result of the Board's actions.

S. Rep. No. 105–193, p. 9 (1998). Report of the Committee on Banking, Housing, and Urban Affairs.

The NCUA Board, believes that establishing the level at 25% of assets is consistent with congressional intent and permits credit unions with history and experience with member business loans to continue to engage in that activity. NCUA arrived at this number after reviewing the legislative history and other federal regulations and interpretations, including the ''principally engaged'' language in the Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities. 61 FR 68750 (December 30, 1996).

The second part of the Board's exception would apply when member business loans comprise the largest portion of a credit unions loan portfolio. For example, a credit union would meet this standard if it makes 23% member business loans, 22% first mortgage loans, 22% new automobile loans, 20% credit card loans and 13% other real estate loans.

This approach is consistent with the definition of primarily as ''being or standing first in a list [or] series.'' *See* Webster's II, New Riverside University Dictionary, 1994 Houghton Mifflin Company. It recognizes the primacy or state of being first when business loans form the largest type of lending in a credit union's portfolio. *See Id.* (Primacy defined as the state of being first or foremost) The Board also believes it is faithful to the intent of the legislative history, e.g., that those credit unions with a history of beneficial member business lending may continue that practice.

The NCUA Board is requiring that, for determining the categories of loans, a credit union must use loan categories that are similar to those set forth in the call report such as: unsecured credit card loans/lines of credit; all other unsecured loans/lines of credit; new vehicle loans; used vehicle loans; total first mortgage loans; total other real estate loans; and total member business loans. In no case could a credit union have more than seven categories of loans for the purpose of qualifying for this exception. The NCUA Board believes that the largest book exception is consistent with congressional intent and is not subject to manipulation since only seven categories of loans can be used to calculate the largest book of loans.

The NCUA Board believes that the two definitions of a ''history of primarily making member business loans'' are limited and carefully crafted. In fact, this exception is so narrowly tailored that less than ninety credit unions are even eligible for the exception.

The NCUA Board is also clarifying in the final rule what is acceptable evidence to demonstrate a ''history of primarily making member business loans.'' Call reports and financial statements from January 1995 to September 1998 are acceptable evidence to demonstrate the primacy of business lending in a credit union's portfolio. Three commenters stated that credit union should be able to use call report data after September 1998 to demonstrate that the credit union has a ''history of primarily making member business loans.'' The NCUA Board disagrees with these commenters. Under the Act, if a credit union exceeded the aggregate loan limit on September 30, 1998, and did not receive an exception, the credit union should not have granted any new member business loans, unless the credit union was pursuing an appeal.

Some have suggested that reliance on the call report is not a history of lending but simply a snapshot in time. The NCUA Board disagrees. Credit union loan portfolios fluctuate over time based on such things as economic cycles, changes in membership and the needs and desires of members. By allowing call reports and financial statements from 1995 to September 1998 to support qualification for an exception, the NCUA Board has adopted an approach which addresses these issues by establishing a reasonable time period during which a credit union may establish it qualifies for an exception. The period is in the recent past and is of limited duration. This will assure that the exception is available only to those credit unions with a demonstrated recent history of primacy in the area of business lending.

One commenter stated that NCUA should include unfunded commitments for purposes of calculating the amount of loans for the exception just as NCUA counts unfunded commitments in determining the number for the aggregate loan limit. The NCUA Board agrees and, therefore, unfunded commitments are included in calculating whether the credit union has a ''history of primarily making member business loans.''

Three commenters stated that credit unions should be allowed to count loans less than $50,000, as well as otherwise exempt loans, for purposes of qualifying for the ''history of primarily making member business loans'' exception. The NCUA Board disagrees. By definition, these loans are not member business

loans under the Act and therefore are not counted for either the aggregate loan limit or the exception from the limit. The final rule incorporates this interpretation in Sections 723.16 and 723.17.

Loan Participations

Six commenters stated that loan participations should be excluded from the calculation of a credit union's aggregate member business loan limit, except for the originating credit union. Most of these commenters stated that the Act refers to loans ''made'' by federally insured credit unions and since the originating credit union ''makes'' the loan, purchasing credit unions would not be ''making'' the loan, and therefore, it should not count toward the statutory limits. The NCUA Board is not adopting this recommendation since it would promote form over substance and result in a large block of member business loans suddenly vanishing from the books of credit unions for purposes of calculating the aggregate loan limit.

Eight commenters stated that NCUA should permit a credit union participating in a member business loan to classify the participation as an investment, rather than a member business loan. The NCUA Board disagrees since the authority for loan participations is located in the Federal Credit Union Act under the lending powers of credit unions and not the investment powers. 12 U.S.C. 1757(5) and 1757(7). In addition, NCUA, as well as credit unions, historically have classified loan participations as loans and not as investments. In certain limited circumstances the NCUA Board recognizes that a credit union can purchase a loan participation that is properly structured as a security. However, this does not mean that credit unions participating in a member business loan can classify the transaction as an investment.

Seven commenters recommended that NCUA should permit a credit union participating in a loan to exclude it from its total member business loan amount if it was originated by a credit union that is exempt under the Act from the member business loan regulation limits. The exception would, in effect, travel with the loan. The NCUA Board is not adopting this recommendation. The Act exempts credit unions and not loans from the aggregate loan limit. If NCUA adopted this recommendation, it could lead to absurd results. For example, a credit union could have half of its assets in member business loan participations without falling within the aggregate loan limit and without receiving an exception. Clearly, such a result was not intended by Congress and does not make sense within the statutory scheme.

One commenter stated that only the amount of the loan held by the originating credit union should be counted against the aggregate loan limit. The NCUA Board agrees as long as the loan participations are without recourse. One commenter stated that NCUA should exclude all loans to non-profits purchased through participation agreements, the proceeds of which are not used for commercial purpose. The NCUA Board does not believe there is any statutory authority to support such a position. Two commenters stated that a credit union that originates sufficient loans to meet NCUA's threshold requirements should qualify for the exception even if the credit union does not hold onto the loans. The NCUA Board is not sure that such an expansion of the exception is consistent with congressional intent.

Chartered for the Purpose of Making Member Business Loans

The NCUA Board also stated that an exception may also be granted for credit unions that were chartered for the purpose of primarily making member business loans. It is up to the credit union to provide sufficient documentation to demonstrate it meets this exception. Due to the nature of federal chartering, the NCUA Board believed it would be unlikely that many federal credit unions would qualify for this type of exception. However, the NCUA Board sought comment on how it could more fully define credit unions that were ''chartered for the purpose of primarily making member business loans'' for the purpose of this exception.

Four commenters stated that the interim final rule is more restrictive than the legislation by adding the word ''primarily'' to this exception. These commenters stated that the fact that Congress did not include the word ''primarily'' in the exception based on a credit union's charter but did add it to the exception regarding member business loan history is a strong indication that Congress did not intend for the NCUA Board to include the additional standard. After further review, the NCUA Board agrees with these commenters and the final rule has been changed accordingly.

One commenter stated that, for this exception, NCUA should define the exception as a product of the credit union's field of membership and its lending history. For example, this commenter stated that this would allow NCUA to exempt credit unions that serve farm cooperatives or groups of self-employed individuals, such as taxi drivers; or community credit unions with a history or providing small business loans, and others. The NCUA Board generally agrees with this commenter and has incorporated this suggestion into the final rule.

Two commenters stated that federal credit unions should be afforded the opportunity to prove, if they can, that they were chartered for the purpose of making member business loans. Two commenters suggested NCUA allow a broad range of evidence including historical documents such as original bylaws, articles of incorporation and the credit union's mission statement. One commenter recommended that NCUA state what the agency will consider as acceptable documentation to support such a showing. NCUA will consider any documentation from original charters, original bylaws, early business plans, mission statements, board minutes, original field of membership, early loan portfolios and any other appropriate evidence a credit union may submit to demonstrate that the credit union was chartered for the purpose of making a member business loan. The list of documentation that NCUA will consider in making this determination has been incorporated into the final rule.

One commenter stated that NCUA should review a credit union's service area and, if the service area is rural or agricultural, the credit union should qualify for the exception. Simply because a credit union is located in a rural or agricultural area does not demonstrate that a credit union was chartered for the purpose of making member business loans. Additional evidence would be necessary to permit a credit union to obtain this exception.

Nine commenters stated that this exception should be broadened so that an existing credit union can amend its charter to state that it is chartered for the purpose of making member business loans and thus qualify for the exception. The NCUA Board believes such a change would not generally be consistent with congressional intent. If any credit union simply could update its charter to state its purpose was to make business loans, and thereby be exempt, from the statutory limits, the result would be inconsistent with the entire statutory scheme. However, there may be certain circumstances, including safety and soundness reasons, that would require NCUA or the state supervisory authority to recommend to the credit union to amend its charter.

Section 723.18—How Do I Obtain an Exception?

To obtain the exception, a federal credit union must submit documentation to the Regional Director, demonstrating that it meets the criteria of one of the exceptions. A state chartered federally insured credit union must submit documentation to its state regulator to receive the exception. Although effective when granted by the state regulator, the state regulator should forward its decision to NCUA. The exception does not expire unless revoked by the Regional Director for a federal credit union or by the state regulator for a federally insured state chartered credit union. If an exception is revoked, loans granted under the exception authority are grandfathered.

One commenter stated that the preamble to the final rule should clarify that if a state regulator has approved an exception, NCUA cannot overturn the state regulator's decision. NCUA has no intention of overturning a state regulator's decision regarding the exception. The process simply requires the state regulator to notify NCUA that the exception has been granted.

Section 723.19—What Are the Recordkeeping Requirements?

This section required a credit union to identify member business loans separately in its records and financial reports. No substantive comments were received on this section. The Board is adopting this section in final as it was set forth in the interim final rule.

Section 723.20—How Can a State Supervisory Authority Develop and Implement a Member Business Loan Regulation?

The interim final rule allowed a federally-insured state-chartered credit union to obtain an exemption from NCUA's member business loan rule so that a state supervisory authority can enforce the state's rule instead of NCUA's rule. The NCUA Board must approve the state's rule before a federally-insured state-chartered credit union is exempt from NCUA's member business loan rule. The interim final rule identified the minimum requirements that a state regulation must address for a rule to be approved by the NCUA Board. Because of the new statutory requirements of the Act, no state rule is currently approved for use by federally-insured state-chartered credit unions. Therefore, states must seek a new determination from NCUA. In addition, the NCUA Board is reemphasizing that any state's rule must follow the new definitions and the statutory limits in the Act. That is, the definition of a member business loan, the exemptions from the definition of a member business loan, the aggregate loan limit, and the state's interpretation of the exceptions from the aggregate loan limit must mirror NCUA's Regulation.

One commenter specifically approved of this section. Three commenters requested that NCUA eliminate the words ''substantial equivalency determination'' from this section. Two commenters did not agree in eliminating the words ''substantial equivalency determination'' from this section. The final rule does not contain the term ''substantial equivalency'' because of the continuing objections expressed by some state supervisory authorities. The Board acknowledges the concerns of the state supervisory authorities, and the final rule recognizes that, in deciding whether to allow a state to implement its own rule, the NCUA Board is concerned, as insurer, with safety and soundness issues and not whether the language of the rule is virtually identical to NCUA's rule.

One commenter requested that the rule specify the time frame NCUA has to render a determination on a state's rule. Although no time frame is specified in the final rule, the NCUA Board has a goal of making a decision within 90 days of receiving a complete request for a determination.

Section 723.21—Definitions

NCUA proposed a general definition section at the end of the rule. One commenter did not object to NCUA's definition of ''associated member'' but did question how NCUA applies it. This commenter specifically requested that, in cases where there are related parties, loans will be aggregated only when assets of the related parties provide the income for the repayment of the loan. This commenter states that the proper test for determining the status of an associated member is the existence of a nexus between the success of the endeavor and the ability to repay the loan. The NCUA Board agrees and the agency will apply the definition accordingly.

In an attempt to make the regulation easier to understand, the NCUA Board has slightly modified the definition of ''construction or development loan'' and ''loan-to-value ratio'' and added a definition for ''net worth'' and deleted the definition of ''reserves.''

Miscellaneous

Six commenters requested that NCUA develop two distinct classes of member business loans—one for real estate and one for other types of member business loans. At this time, the NCUA Board believes it is not necessary to have separate rules because this final rule provides sufficient flexibility and guidance.

The interim final rule was written in a plain English, question and answer format. Two commenters approved of the plain English, question and answer format. Two commenters preferred the traditional regulatory style. The NCUA Board has not noted any problems with the plain English, question and answer format and believes the question and answer format is comprehensive and easy to understand. Therefore, the final rule is written in the plain English, question and answer format.

A few commenters requested that NCUA's Chartering Manual be amended to describe how a credit union can be chartered for the purpose of making member business loans. The NCUA Board will review this issue the next time it amends the Chartering Manual. In the meantime, a new charter can simply incorporate into its charter or bylaws a statement that its purpose is to make member business loans. Obviously, the credit union must incorporate this statement in good faith and the credit union's business plan will be reviewed to ensure that it reflects this stated purpose.

Part 722—Appraisals

Certain loans as specified in Section 722.3(a) do not require an appraisal. In addition, the interim final rule contains a waiver process from the appraisal requirement where the appraisal requirement is an unnecessary burden. Three commenters specifically approved of the waiver provision for appraisals. Two commenters requested more guidance on when a waiver would be granted for a category of loans. The NCUA Board believes a waiver on a category of loans should be granted whenever an appraisal would be virtually meaningless. For example, an appraisal on loans to construct churches is often unnecessary. Another example where an appraisal may be unnecessary is when the loan-to-value ratio is extremely low due to property ownership interests, such as borrowing a small amount to improve property that is already completely owned by the member.

C. Other Reductions In Regulatory Burden

Under the previous member business loan rule, all loans, lines of credit, or letters of credit that met the definition of a member business loan had to be separately identified in the records of

the credit union and be reported as such in financial and statistical reports required by the NCUA. NCUA believes that this information is already collected, and readily available, through the 5300 Call Report. The previous requirement imposed an unnecessary burden on credit unions and, therefore, the NCUA Board deleted this monitoring requirement in the interim final rule.

The previous member business loan rule required credit unions to provide periodic disclosures to credit union members on the number and aggregate dollar amount of member business loans. NCUA believed the language was ambiguous and did not serve any true safety or soundness issue purpose. Therefore, the NCUA Board deleted this requirement in the interim final rule.

Two commenters supported the elimination of these reporting requirements. The Board has not been provided any convincing rationale for reimposing these reporting requirements on credit unions, therefore, the final rule, like the interim rule, does not contain these reporting requirements.

D. Comments From Banks and Bank Trade Organizations

Briefly summarized, the bank commenters argued that NCUA did not interpret CUMAA correctly and some stated that federal credit unions should be subject to taxation like banks. In general, these commenters opposed: (1) NCUA's definition of a ''history of primarily making member business loans'' exception; (2) NCUA's addition of the word ''primarily'' to the exception regarding the chartering of the credit union for the purpose of making business loans; (3) NCUA's attempt to reduce regulatory burden, including revisions regarding loans-to-one borrower, employee lending experience, loan-to-value ratios, appraisal rules, review of financial statements, and state waiver authority; and (4) NCUA's elimination of some burdensome reporting requirements.

The Board has considered all issues raised by these commenters and has previously addressed the major issues in this preamble since other commenters also addressed many of the same provisions. As to the question of taxation, this issue was legislatively addressed in CUMAA at Section 2.(4), which states that ''[c]redit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer board of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.''

E. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). Aside from provisions mandated by the Act, the final member business loan rule would reduce existing regulatory burdens. In addition, most small credit unions do not grant member business loans. Therefore, the NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The reporting requirements in part 723 have been submitted to and approved by the Office of Management and Budget under OMB control number 3133–0101. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number will be displayed in the table at 12 CFR part 795.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule, as does the current rule, applies to all federally insured credit unions, including federally insured state chartered credit unions. However, since the final rule reduces regulatory burden, NCUA has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

Congressional Review

The Small Business Regulatory Enforcement Fairness Regulatory Enforcement Fairness Act of 1996 (Public Law 104–221) provides for Congressional review of agency rules.

The reporting requirements 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 this is not a major rule. A major rule is defined as being any final rule that the Office of Management and Budget finds has resulted in or is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Insurance, Mortgages, Reporting and recordkeeping requirements, Surety bonds.

12 CFR Part 722

Appraisals, Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 19, 1999.

Becky Baker,

Secretary of the Board.

Accordingly, the interim rule amending 12 CFR parts 701, 722, 723 and 741 which was published at 63 FR 51793, September 29, 1998, is adopted as a final rule with the following changes:

1. Part 723 is revised to read as follows:

PART 723—MEMBER BUSINESS LOANS

Sec.
723.1 What is a member business loan?
723.2 What are the prohibited activities?
723.3 What are the requirements for construction and development lending?
723.4 What are the other applicable regulations?
723.5 How do you implement a member business loan program?
723.6 What must your member business loan policy address?
723.7 What are the collateral and security requirements?
723.8 How much may one member, or a group of associated members, borrow?
723.9 How do you calculate the aggregate 15% limit?
723.10 What waivers are available?
723.11 How do you obtain a waiver?

723.12 What will NCUA do with my waiver request?
723.13 What options are available if the NCUA Regional Director denies my waiver request, or a portion of it?
723.14 How do I classify loans so as to reserve for potential losses?
723.15 How much must I reserve for potential losses?
723.16 What is the aggregate member business loan limit for a credit union?
723.17 Are there any exceptions to the aggregate loan limit?
723.18 How do I obtain an exception?
723.19 What are the recordkeeping requirements?
723.20 How can a state supervisory authority develop and enforce a member business loan regulation?
723.21 Definitions.

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

§ 723.1 What is a member business loan?

(a) *General rule.* A member business loan includes any loan, line of credit, or letter of credit (including any unfunded commitments) where the borrower uses the proceeds for the following purposes:

(1) Commercial;

(2) Corporate;

(3) Other business investment property or venture; or

(4) Agricultural.

(b) *Exceptions to the general rule.* The following are not member business loans:

(1) A loan fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;

(2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(3) Loan(s) to a member or an associated member which, when added together, are equal to or less than $50,000;

(4) A loan where a federal or state agency (or its political subdivision) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or

(5) A loan granted by a corporate credit union to another credit union.

§ 723.2 What are the prohibited activities?

(a) *Who is ineligible to receive a member business loan?* You may not grant a member business loan to the following:

(1) Your chief executive officer (typically this individual holds the title of President or Treasurer/Manager);

(2) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager);

(3) Your chief financial officer (Comptroller); or

(4) Any associated member or immediate family member of anyone listed in paragraphs (a) (1) through (3) of this section.

(b) *Equity agreements/joint ventures.* You may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(c) *Loans to compensated directors.* A credit union may not grant a member business loan to a compensated director unless the board of directors approves granting the loan and the compensated director is recused from the decision making process.

§ 723.3 What are the requirements for construction and development lending?

Unless the Regional Director grants a waiver, loans granted for the construction or development of commercial or residential property are subject to the following additional requirements.

(a) The aggregate of all construction and development loans must not exceed 15% of net worth. To determine the aggregate, you may exclude any portion of a loan:

(1) Secured by shares in the credit union;

(2) Secured by deposits in another financial institution;

(3) Fully or partially insured or guaranteed by any agency of the federal government, state, or its political subdivisions; or

(4) Subject to an advance commitment to purchase by any agency of the federal government, state, or its political subdivisions;

(b) The borrower must have a minimum of 35% equity interest in the project being financed; and

(c) The funds may be released only after on-site, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

§ 723.4 What are the other applicable regulations?

The provisions of § 701.21(a) through (g) of this chapter apply to member business loans granted by federal credit unions to the extent they are consistent with this part. Except as required by part 741 of NCUA's regulations, federally insured credit unions are not required to comply with the provisions of § 701.21(a) through (g).

§ 723.5 How do you implement a member business loan program?

The board of directors must adopt specific business loan policies and review them at least annually. The board must also utilize the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in.

Credit unions do not have to hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization, an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

§ 723.6 What must your member business loan policy address?

At a minimum, your policy must address the following:

(a) The types of business loans you will make;

(b) Your trade area;

(c) The maximum amount of your assets, in relation to net worth, that you will invest in business loans;

(d) The maximum amount of your assets, in relation to net worth, that you will invest in a given category or type of business loan;

(e) The maximum amount of your assets, in relation to net worth, that you will loan to any one member or group of associated members, subject to § 723.8;

(f) The qualifications and experience of personnel (minimum of 2 years) involved in making and administering business loans;

(g) A requirement to analyze and document the ability of the borrower to repay the loan;

(h) Receipt and periodic updating of financial statements and other documentation, including tax returns;

(i) A requirement for sufficient documentation supporting each request to extend credit, or increase an existing loan or line of credit (except where the board of directors finds that the documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies). At a minimum, your documentation must include the following:

(1) Balance sheet;

(2) Cash flow analysis;

(3) Income statement;

(4) Tax data;

(5) Analysis of leveraging; and

(6) Comparison with industry average or similar analysis;

(j) The collateral requirements must include:

(1) Loan-to-value ratios;
(2) Determination of value;
(3) Determination of ownership;
(4) Steps to secure various types of collateral; and
(5) How often the credit union will reevaluate the value and marketability of collateral;
(k) The interest rates and maturities of business loans;
(l) General loan procedures which include:
(1) Loan monitoring;
(2) Servicing and follow-up; and
(3) Collection;
(m) Identification of those individuals prohibited from receiving member business loans.

§ 723.7 What are the collateral and security requirements?

(a) Unless your Regional Director grants a waiver, all member business loans must be secured by collateral as follows:

Lien	Minimum loan to value requirements
All	LTV ratios for all liens cannot exceed 80% unless the value in excess of 80% is covered through private mortgage or equivalent insurance but in no case can it exceed 95%.
First with PMI or similar type of insurer.	You may grant a LTV ratio in excess of 80% only where the value in excess of 80% is covered through: acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union (where available); insurance or guarantees by, or subject to advance commitment to purchase by, an agency of the federal government; or insurance or guarantees by, or subject to advance commitment to purchase by, an agency of a state or any of its political subdivisions.
First	LTV ratios up to 80%.
Second	LTV ratios up to 80%.

(b) Principals, other than a not for profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501) or those where the Regional Director grants a waiver, must provide their personal liability and guarantee.

(c) Federally insured credit unions are exempt from the provisions of paragraphs (a) and (b) of this section with respect to credit card line of credit programs offered to nonnatural person members that are limited to routine purposes normally made available under those programs.

§ 723.8 How much may one member, or a group of associated members, borrow?

Unless your Regional Director grants a waiver for a higher amount the aggregate amount of outstanding member business loans (including any unfunded commitments) to any one member or group of associated members must not exceed the greater of:
(a) 15% of the credit union's net worth; or
(b) $100,000.

§ 723.9 How do you calculate the aggregate 15% limit?

(a) *Step* 1. Calculate the numerator by adding together the total outstanding balance of member business loans to any one member, or group of associated members. From this amount, subtract any portion:
(1) Secured by shares in the credit union;
(2) Secured by deposits in another financial institution;
(3) Fully or partially insured or guaranteed by any agency of the Federal government, state, or its political subdivisions;
(4) Subject to an advance commitment to purchase by any agency of the Federal government, state, or its political subdivisions.
(b) *Step* 2. Divide the numerator by net worth.

§ 723.10 What waivers are available?

You may seek a waiver for a category of loans in the following areas:
(a) Loan-to-value ratios under § 723.7;
(b) Maximum loan amount to one borrower or associated group of borrowers under § 723.8;
(c) Construction and development loan limits under § 723.3;
(d) Requirement for personal liability and guarantee under § 723.7; and
(e) Appraisal requirements under § 722.3.

§ 723.11 How do you obtain a waiver?

To obtain a waiver, a federal credit union must submit a request to the Regional Director (a corporate federal credit union submits the waiver request to the Director of the Office of Corporate Credit Unions). A state chartered federally insured credit union must submit the request to its state supervisory authority. If the state supervisory authority approves the request, the state regulator will forward the request to the Regional Director (or if appropriate the Director of the Office of Corporate Credit Unions). A waiver is not effective until it is approved by the Regional Director (or in the case of a corporate federal credit union the Director of the Office of Corporate Credit Unions). The waiver request must contain the following:
(a) A copy of your business lending policy;
(b) The higher limit sought (if applicable);
(c) An explanation of the need to raise the limit (if applicable);
(d) Documentation supporting your ability to manage this activity; and
(e) An analysis of the credit union's prior experience making member business loans, including as a minimum:
(1) The history of loan losses and loan delinquency;
(2) Volume and cyclical or seasonal patterns;
(3) Diversification;
(4) Concentrations of credit to one borrower or group of associated borrowers in excess of 15% of net worth;
(5) Underwriting standards and practices;
(6) Types of loans grouped by purpose and collateral; and
(7) The qualifications of personnel responsible for underwriting and administering member business loans.

§ 723.12 What will NCUA do with my waiver request?

Your Regional Director (or the Director of the Office of Corporate Credit Unions) will:
(a) Review the information you provided in your request;
(b) Evaluate the level of risk to your credit union;
(c) Consider your credit union's historical CAMEL composite and component ratings when evaluating your request; and
(d) Notify you whenever your waiver request is deemed complete. Notify you of the action taken within 45 calendar days of receiving a complete request from the federal credit union or the state supervisory authority. If you do not receive notification within 45 calendar days of the date the complete request was received by the regional office, the credit union may assume approval of the waiver request.

§ 723.13 What options are available if the NCUA Regional Director denies my waiver request or a portion of it?

You may appeal the Regional Director's (or the Director of the Office

of Corporate Credit Unions) decision in writing to the NCUA Board. Your appeal must include all information requested in § 723.11 and why you disagree with your Regional Director's (or the Office of Corporate Credit Union Director's) decision.

§ 723.14 How do I classify loans so as to reserve for potential losses?

Non-delinquent member business loans may be classified based on factors such as the adequacy of analysis and supporting documentation. You must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:

(a) *Substandard.* Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

(b) *Doubtful.* A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans.

(c) *Loss.* Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

§ 723.15 How much must I reserve for potential losses?

The following schedule sets the minimum amount you must reserve for classified loans:

Classification	Amount Required
Substandard	10% of outstanding amount unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.
Doubtful	50% of the outstanding amount.
Loss	100% of the outstanding amount.

§ 723.16 What is the aggregate member business loan limit for a credit union?

The aggregate limit on a credit union's outstanding member business loans (including any unfunded commitments) is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Net worth is all of the credit union's retained earnings. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

§ 723.17 Are there any exceptions to the aggregate loan limit?

There are three circumstances where a credit union qualifies for an exception from the aggregate limit. Loans that are excepted from the definition of member business loans are not counted for the purpose of the exceptions. The three exceptions are:

(a) Credit unions that have a low-income designation or participate in the Community Development Financial Institutions program;

(b) Credit unions that were chartered for the purpose of making member business loans and can provide documentary evidence (such evidence includes but is not limited to the original charter, original bylaws, original business plan, original field of membership, board minutes and loan portfolio);

(c) Credit unions that have a history of primarily making member business loans, meaning that either member business loans comprise at least 25% of the credit union's outstanding loans (as evidenced in any call report filed between January 1995 and September 1998 or any equivalent documentation including financial statements) or member business loans comprise the largest portion of the credit union's loan portfolio (as evidenced in any call report filed between January 1995 and September 1998 or any equivalent documentation including financial statements). For example, if a credit union makes 23% member business loans, 22% first mortgage loans, 22% new automobile loans, 20% credit card loans, and 13% total other real estate loans, then the credit union meets this exception.

§ 723.18 How do I obtain an exception?

To obtain the exception, a federal credit union must submit documentation to the Regional Director, demonstrating that it meets the criteria of one of the exceptions. A state chartered federally insured credit union must submit documentation to its state supervisory authority. The state supervisory authority will forward its decision to NCUA. The exception does not expire unless revoked by the state supervisory authority for a state chartered federally insured credit union or the Regional Director for a federal credit union. If an exception request is denied for a federal credit union, it may be appealed to the NCUA Board within 60 days of the denial by the Regional Director. Until the NCUA Board acts on the appeal, the credit union can continue to make new member business loans.

§ 723.19 What are the recordkeeping requirements?

You must separately identify member business loans in your records and in the aggregate on your financial reports.

§ 723.20 How can a state supervisory authority develop and enforce a member business loan regulation?

(a) The NCUA Board may exempt federally insured state chartered credit unions in a given state from NCUA's member business loan rule if NCUA approves the state's rule for use for state chartered federally insured credit unions. In making this determination, the Board is guided by safety and soundness considerations and reviews whether the state regulation minimizes the risk and accomplishes the overall objectives of NCUA's member business loan rule in this part. Specifically, the Board will focus its review on:

(1) The definition of a member business loan;

(2) Loan to one borrower limits;

(3) Written loan policies;

(4) Collateral and security requirements;

(5) Construction and development lending; and

(6) Loans to senior management.

(b) To receive NCUA's approval of a state's members business loan rule, the state supervisory authority must submit its rule to the NCUA regional office. After reviewing the rule, the region will

forward the request to the NCUA Board for a final determination.

§ 723.21 Definitions.

For purposes of this part, the following definitions apply:

Associated member is any member with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses.

Immediate family member is a spouse or other family member living in the same household.

Loan-to-value ratio is the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

Net worth is retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities.

PART 741—REQUIREMENTS FOR INSURANCE

2. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766 and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.203 [Amended]

3. Section 741.203 is amended in paragraph (a) by removing the second sentence and adding in its place a new sentence to read as follows: ''State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state supervisory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board or, in the case of the member business loan requirements, if the state supervisory authority adopts member business loan regulations that are approved by the NCUA Board pursuant to § 723.20.''

[FR Doc. 99–13310 Filed 5–26–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Conversion of Insured Credit Unions to Mutual Savings Banks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is issuing a final rule that revises its rules governing the conversion of insured credit unions to mutual savings banks or mutual savings associations. These revisions simplify the charter conversion process and reduce regulatory burden for insured credit unions that choose to convert. NCUA is making these revisions in compliance with federal legislation that mandates such revisions.

DATES: This rule is effective June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Public Law 105–21. Section 202 of CUMAA amends the provisions of the Federal Credit Union (FCU) Act concerning conversion of insured credit unions to mutual savings banks or mutual savings associations. 12 U.S.C. 1785(b). CUMAA requires the NCUA to promulgate final rules regarding charter conversions within six months of that date that are: (1) consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. Accordingly, NCUA issued an interim final rule with request for comments that was effective November 27, 1998. 63 FR 65532 (November 27, 1998).

Final Rule

With the benefit of having considered public comments on part 708a, NCUA issues this final rule and amends the interim final rule. As discussed more fully below, the changes from the interim final rule to the final rule consist of providing more flexibility to credit unions in choosing methods for delivering member notices, correcting an inadvertent, inconsistent use of language in the notice provision in § 708a.5(c), and clarifying the purpose and scope of the certification provision in § 708a.9(b). These amendments further reduce regulatory burden on converting credit unions, simplify the conversion process and provide continued consistent treatment of proposals to convert. NCUA finds it appropriate to allow credit unions to act immediately under this revised, less restrictive rule. Accordingly, pursuant to 5 U.S.C. 553(d)(1) and (3), the rule will be effective immediately and without 30 days advance notice of publication.

Summary of Comments

The NCUA Board received eleven comment letters regarding the interim final rule: three from banking trade associations, three from credit union trade associations, one from an association of state credit union supervisors, three from FCUs and one from a law firm. They offered the following comments.

General Comments

Three commenters approve of the interim rule as written and believe the rule is consistent with the provisions of CUMAA. As of the date of preparation of this final rule, three converting FCUs have opted to request NCUA review of their notice and other materials they intend to send to members in advance of the time frame required by part 708a. NCUA has reviewed these materials, had minor revisions, and the review has not delayed or unduly burdened the conversion process. The revisions incorporated into this final rule will further enhance part 708a.

One commenter contended generally that the rule is inconsistent with the charter conversion rules of other financial regulators. NCUA has reviewed the charter conversion rules of other financial regulators and has drafted this rule to be consistent with them. In contrast to the statutory and regulatory provisions governing conversions under the jurisdiction of other financial regulators, CUMAA imposes specific time frames and particular responsibilities on NCUA in the conversion process. Accordingly, because of this significant difference, this rule is not identical to those of the other financial regulators, but is nonetheless consistent with them.

One commenter noted that in the preamble to the interim final rule, NCUA stated that it ''does not interpret the [Credit Union] Membership Access Act to preclude state regulatory authorities from imposing more restrictive charter conversion rules on federally insured state-chartered credit unions.'' That commenter suggested the

following alternative language to make this point: ''NCUA does not interpret the [Credit Union] Membership Access Act to preempt state laws prohibiting conversions to thrift charter or imposing more restrictive requirements on the conversion of federally insured state chartered credit unions.'' This alternative language also reflects NCUA's interpretation of CUMAA.

Comments to § 708a.4—Voting Procedures

Two commenters recommended that NCUA permit methods of delivering member notices in addition to the United States Postal Service, including overnight couriers and in-hand delivery. One of these commenters stated that credit unions should be permitted to include the notices with other credit union mailings to reduce the cost of postage. NCUA agrees that credit unions should have more flexibility in choosing a method for delivering member notices than is provided in the interim final rule. The final rule provides that additional flexibility. Notice to members may not, however, be included with other credit union mailings. By requiring three separate deliveries of the notice to members 90, 60 and 30 days before the membership vote, NCUA believes that Congress indicated its intent for these notices to receive special attention. That level of attention would be lost if these notices were included with other mailings.

One commenter stated that it would be appropriate for a credit union to address the conversion proposal at a regularly scheduled annual meeting and noted that this would save the cost of convening a special meeting for this purpose. The requirement of having a special meeting to consider the conversion proposal tracks the provisions of CUMAA and is consistent with the voting procedures of other financial regulators.

Comments to § 708a.5—Notice to NCUA

Two commenters acknowledged that CUMAA gives NCUA the statutory authority to require a converting credit union to provide notice of that intent to NCUA. These commenters suggest, however, that NCUA has overstepped this authority by requiring notice be in the form of a letter that states the material features of the conversion or a copy of the application filing made with another financial regulator. These alternative methods of providing notice are borrowed directly from the Office of Thrift Supervision regulations. 12 CFR 563.22(h). They are practical and reasonable and are not overly burdensome to credit unions.

One commenter acknowledged that CUMAA specifically mandates NCUA to administer the member vote on conversion and review the methods by which the vote is taken and the procedures applicable to the membership vote. This commenter suggested, however, that NCUA has gone beyond this mandate by requiring a credit union to provide NCUA with copies of the written materials it has sent or intends to send to its members in connection with the conversion. This same commenter stated that NCUA has also gone beyond its statutory authority by reviewing whether notices to members are inaccurate or misleading and whether they are sent to members timely. NCUA believes a practical and unintrusive way to review the methods and procedures is to review the notice and other materials a converting credit union gives to its members. NCUA further believes it has the responsibility to ensure compliance with statutory time frames and the factual and legal accuracy of statements in those materials.

One commenter noted that CUMAA provides that a converting credit union is to submit its notice to NCUA during the 90-day period preceding the date of the ''completion of the conversion,'' but the regulation requires notice during the 90-day period preceding the date of the ''membership vote on the conversion.'' NCUA purposefully used this language in the regulation. The date of completion of the conversion is not a date certain. Numerous events must occur throughout the conversion process that involve action by the converting credit union, NCUA, and the regulator that will supervise the credit union after conversion. The timing of these events can vary from conversion to conversion and cannot be predicted with any degree of certainty. Therefore, it is not practically feasible to calculate the notice period in relation to the date of completion of the conversion. In other sections of CUMAA, notice periods have been stated in relation to the date of the membership vote which is fixed in time. Accordingly, NCUA calculates the notice period provided in this section in relation to the fixed date of the membership vote. This enables practical application of the rule and is consistent with the other notice provisions in CUMAA.

Three commenters noted that throughout the rule, notice periods are stated in relation to the date of the ''membership vote on the conversion,'' but in § 708a.5(c), the notice period is stated in relation to the date of the ''completion of the conversion''. This inconsistency is inadvertent and is revised in the final rule so that all notice periods are stated in relation to the date of the ''membership vote on the conversion.''

Comments to § 708a.6—Certification of the Membership Vote

One commenter suggested deleting the requirement that a converting credit union certify that the written materials sent to members are identical to those sent to NCUA for its review. Another commenter stated that converting credit unions should neither be required to provide copies to NCUA of new or revised materials sent to members that were not previously sent to NCUA, nor required to provide an explanation of the reasons for using new or revised documents. As noted above, reviewing the information that is provided to members by their credit union is central to administering the member vote on conversion and reviewing the methods by which the vote was taken and the procedures applicable to the member vote. Accordingly, the requirements of this section are necessary for NCUA to fulfill these statutory responsibilities.

Comments to § 708a.9—Completion of Conversion

Two commenters stated that NCUA does not have the authority to require the board of directors of the newly chartered mutual savings bank or mutual savings association to certify to NCUA that the conversion transaction has been completed. NCUA agrees. The purpose of this provision is to obtain notice of the completion of the conversion transaction so that NCUA may cancel the former credit union's insurance certificate, provide for the return of its 1% insurance deposit in accordance with 12 CFR 741.4(j), and if applicable, cancel its federal charter. The final rule reflects this change.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the notice and disclosure requirements

in part 708a constitute a collection of information under the Paperwork Reduction Act. NCUA submitted a copy of this rule to the Office of Management and Budget (OMB) for its review. OMB has assigned control number 3133–0153 to this information collection.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This rule applies to all federally insured credit unions, including federally insured state chartered credit unions. However, since the final rule reduces regulatory burden, NCUA has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order.

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 reviewed this rule and has determined that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on May 19, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR part 708a is amended as follows:

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

2. Section 708a.4 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 708a.4 Voting procedures.

* * * * *

(b) * * * The notice to members must be submitted 90 calendar days, 60 calendar days, and 30 calendar days before the date of the membership vote on the conversion and a ballot must be submitted not less than 30 calendar days before the date of the vote.

* * * * *

3. Section 708a.5 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 708a.5 Notice to NCUA.

* * * * *

(c) If it chooses, the credit union may provide the Regional Director notice of its intent to convert prior to the 90 calendar day period preceding the date of the membership vote on the conversion. * * *

4. Section 708a.9 is amended by revising paragraph (b) to read as follows:

§ 708a.9 Completion of conversion.

* * * * *

(b) Upon notification by the board of directors of the mutual savings bank or mutual savings association that the conversion transaction has been completed, the NCUA will cancel the insurance certificate of the credit union and, if applicable, the charter of the federal credit union.

[FR Doc. 99–13307 Filed 5–26–99; 8:45 am]

BILLING CODE 7535–01–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Recordkeeping

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission is adopting amendments to the recordkeeping obligations established in Regulation 1.31. Specifically, the amendments will allow recordkeepers to store most categories of required records on either micrographic or electronic storage media for the full five-year maintenance period, thereby harmonizing procedures for those firms regulated by both the Commission and the Securities and Exchange Commission. Recordkeepers will have the flexibility necessary to maximize the cost reduction and time savings available from improved storage technology while continuing to provide Commission auditors and investigators with timely access to a reliable system of records.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Edson G. Case, Counsel, or Lurie Plessala Duperier, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st. Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 5, 1998, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published a **Federal Register** Notice proposing several amendments to the recordkeeping requirements of Commission Regulation 1.31 (the ''Proposal'')[1] In light of the significant number of Commission registrants that are subject to the recordkeeping requirements of the Securities and Exchange Commission (''SEC''), the Proposal included many provisions similar to those adopted by the SEC in 1997.[2] The Proposal's overall design reflected the Commission's dual goals of ''maximiz[ing] the cost-reduction and time-savings arising from technological developments in the area of electronic storage media'' and maintaining the type of safeguards that ''ensure the reliability of the recordkeeping process.''[3] The comment period on the Proposal originally was due to expire on August 4, 1998. Upon request from the Futures Industry Association (''FIA''), the Commission extended the deadline to August 18, 1998, to encourage comment by interested persons.

The commission is publishing final rules that respond to comments expressed by industry participants and that track closely the SEC's recordkeeping requirements. While the final rules are similar to the Proposal in most respects, the Commission intends to modify certain staff practices in light of the comments received. The final rules and modifications to staff practices will provide recordkeepers with opportunities to reduce costs and improve both the efficiency and security of their recordkeeping systems by initiating a transition to electronic storage of Commission-required records.

[1] 63 FR 30668 (June 5, 1998).

[2] 62 FR 6469 (Feb. 12, 1997). The SEC's rulemaking involved reporting requirements for brokers or dealers under the Securities Exchange Act of 1934. The Commission has relied on these rules in addressing recordkeeping issues on prior occasions. *See, e.g.*, 62 FR 39104 (July 22, 1997) (interpreting Commission requirements affecting the use of electronic media by commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs'') and amending Part 4 of the Commission's Rules in light of the interpretation); 62 FR 31507 (June 10, 1997) (issuing guidance regarding a futures commission merchant's (''FCM's'') electronic delivery of confirmation, purchase-and-sale, and monthly statements to customers and the related recordkeeping requirements); 62 FR 7675 (February 20, 1997) (permitting the use of electronic records of customer orders generated by an electronic order-routing system).

[3] 63 FR at 30668.

The Commission recognizes the important role improved technology can play in the continued development of the futures industry. Minimizing unnecessary regulatory obstacles to the adopted of improved technology is a goal of the industry members, customers, and the Commission. Indeed, the pace of technological changes will require the Commission continually to review the standards articulated in this rule to ensure that the recordkeeping requirements reflect to the extent possible the reality of established technological innovation. The Commission therefore welcomes consultation with industry participants and specific proposals regarding how the regulations might be amended in the future to permit the futures industry to use available technology and to respond to the Commission's legitimate need to have access to complete and accurate records when necessary.

II. Nature of the Proposal

A. Current Rule 1.31

Commission Regulation 1.31 sets forth certain recordkeeping requirements imposed by the CEA and Commission regulations. Subsection (a) describes the general rule. It mandates that all records required to be kept by the Act or Commission regulations (''required records'') be maintained for five years and be kept ''readily accessible'' during the first two years. It also defines the inspection and production rights of representatives of the Commission and the Department of Justice.[4]

Subsections (b) and (c) establish alternative requirements for required records that are stored as reproductions. Recordkeepers that fulfill the conditions for alternative treatment may dispose of original required records. Eligibility for alternative treatment is limited to particular classes of records that are reproduced on microfilm, microfiche, or optical disk. Computer and machine generated records are immediately eligible for reproduction and storage on one of the alternative media. Most other required records become eligible after two years of storage. Trading cards and written customer orders are ineligible; originals must be maintained for the full five-year period. Subsection (c) describes the special inspection and production conditions applicable to recordkeepers that choose to store reproductions rather than original required records.[5]

B. Proposed Rules

The Proposal would eliminate the current requirement that the original of most required records be maintained for two years.[6] Immediate storage of reproductions maintained on micrographic or electronic storage media will enable recordkeepers to lower storage costs significantly by discarding original records following the successful storage of a reproduction. Moreover, the Proposal gave recordkeepers increased flexibility in selecting the advanced technology best suited to their business requirements by substituting the less restrictive category ''electronic storage media'' for ''optical disk'' in describing the storage media recordkeepers could employ.[7] As a result, recordkeepers may now take advantage of electronic storage technologies such as digital tape.[8]

In addition, consistent with both the SEC's approach and current Commission requirements, the Proposal set forth several conditions on recordkeepers who choose to meet their obligations by retaining reproductions rather than original records—including safeguards to endure timely access to the reproductions and the Commission's ability to maintain its access to required records despite catastrophic events.[9]

The Proposal articulated additional conditions on recordkeepers that choose to meet their obligations by retaining reproductions on electronic storage media rather than micrographic storage media. First, to ensure that there was an effective check on the reliability of the transfer process, the Proposal required electronic recordkeepers to maintain written operational procedures and controls that would provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any such records.[10] Second, due to practical limitations on the Commission's ability to process data stored in the full range of available formats and coding structures on the full range of storage media available to recordkeepers, the Proposal required recordkeepers to provide copies of requested records on ''Commission compatible machine-readable media'' with the format and coding structure specified in the request.[11] Third, like the SEC's rules, the Proposal required recordkeepers using electronic storage media to keep available for inspection ''all information necessary to access records and indexes maintained on electronic storage media * * *''[12]

[4] For example, Regulation 1.31(a) provides that all required records shall be open to inspection by such representatives. It also requires recordkeepers to provide copies of originals of any required record ''promptly,'' upon request.

[5] For example, persons maintaining reproductions must maintain indexes of the records and have facilities that permit representatives of the Commission and the Department of Justice to review and obtain hard copies of the records immediately. For records stored on optical disk, Regulation 1.31(c)(1)(iii) also mandates that a copy of each record be immediately provided ''on Commission compatible machine-readable media as defined in [Commission Regulation] 15.00(1) * * *.''

[6] The Proposal retained the current regulation's requirement that original trading cards and written customers orders be retained for the full five-year period. Proposal at 30669–70. It also sought to clarify the type of records ineligible for micrographic or electronic storage by referring to ''written orders'' rather than ''written customer orders'' and to ''documents on which trade information is originally recorded in writing'' rather than ''trading cards.'' The documents included in the Proposal's revised category are among the ''original source documents'' that Commission Regulation 1.35(a) requires to be retained and produced. Proposal at 30671.

[7] The current rule's definition of acceptable optical storage systems, for example, requires that the system write files in ASCII or EBCDIC format and use removable disks. The Proposal, however, permitted recordkeepers to employ any digital storage medium or system that meets four generic requirements: (1) preserves records exclusively in a non-rewritable, non-erasable format; (2) verifies automatically the quality and accuracy of the recording process; (3) serializes the units of storage media and creates a time-date whenever information is placed on the storage media; and (4) permits the immediate downloading of indexes and records maintained on the storage media to any of the media permitted by the regulation (paper, micrographic media or electronic media).

[8] The Proposal did not require Commission approval of plans to convert to a system that maintains records on electronic storage media. Recordkeepers, however, must submit a representation to the Commission that the selected electronic storage system meets the four generic requirements.

[9] Recordkeepers were required to: (1) maintain facilities that allow immediate production of both an easily readable image of the stored records and an easily readable hard-copy; (2) maintain an index of stored documents that permits immediate location of a particular document; and (3) waive any privilege, claim of confidentiality or other objection to disclosure of non-Commission-required documents stored on the same individual medium as Commission-required documents. In regard to catastrophic events, the Proposal noted that the Commission had lost access to required records due to a fire at a Chicago storage warehouse in 1996. Proposal at 30669 n.12. To avoid this problem in the future, the Proposal required recordkeepers to maintain a duplicate of both stored records and required indexes at a separate location.

[10] The Proposal indicated that the written operational procedures and controls should provide for the systematic collection of data that includes the identities of individuals inputting records and making changes as well as the identity of any new document created and record changed.

[11] Proposal at 30699. The Proposal noted that ''compatible machine-readable media'' would be defined in accordance with Commission Regulation 15.00(1).

[12] Proposal at 30674. This condition anticipated situations in which electronic recorkeepers had stored required records but were unable or unwilling to provide Commission representatives with an appropriate means to view and copy specified documents. The Proposal did recognize that the required information might not be freely available to recordkeepers that obtained their

The Proposal contained a final, additional condition on recordkeepers who stored all required records or all of a particular class of required records solely on electronic storage media. To address those situations in which such a recordkeeper was unable or unwilling to provide Commission representatives with an appropriate means to view and copy specified records and failed to maintain or permit inspection of the information necessary to access requested records, the Proposal required such recordkeepers to enter into an arrangement with a third-party Technical Consultant.[13]

III. Final Rules

The Commission received nine comments on the Proposal. Commenters included the National Futures Association (''NFA''), four designated futures exchanges, two commodity industry associations, and First Options of Chicago, Inc. (''FOC''), a registered futures commission merchant (''FCM''), which submitted two comments.[14] Most commenters praised the Commission for proposing revisions to its recordkeeping requirements. One commodity exchange praised the Proposal for giving recordkeepers ''flexibility to use technological advances in the electronic storage media to reduce the costs associated with record retention.'' [15] A commodity industry association commended the Commission for moving toward a more generic, performance-based approach to the definition of permissible record storage technology. Another commodity exchange agreed that aspects of the Proposal could lead to improvement in both the security and availability of required records. NFA characterized the Proposal as ''a significant step in the right direction * * *.[16]

In view of the significant number of firms subject to regulation under both the federal commodity and securities laws, the final regulations recognize the value of maintaining consistency, where possible, between the Commission's approach to recordkeeping and that of the SEC. The regulations do not reflect strict conformity with the regulations the SEC adopted in 1997, however, because the Commission concluded that there were significant differences between the commodities and securities industry that justified retaining certain of its current rules.[17]

The comments focused primarily on five areas, each of which is discussed below.

A. Maintaining Original Written Trading Cards and Order Tickets

The Proposal permitted recordkeepers to transfer most categories of records to micrographic or electronic storage media immediately, eliminating the need to keep original records for two years. However, original trading cards and customer order tickets were required to be maintained for the full five-year period. A majority of commenters cited cost, efficiency and security concerns in questioning why the Commission declined to permit written trading cards and customer orders to be stored electronically. Both commodity industry associations emphasized that firms incur significant costs organizing, indexing, and storing order tickets and trading cards. FOC noted that firms also incur significant costs to retrieve such records, and one exchange estimated that it expended $100,000 each year to retrieve records requested under Commission Regulation 1.31. Commenters also questioned why retention of original trading cards and order tickets is an important element of an effective audit trail for futures transactions, particularly since the SEC permits electronic storage of written trading cards and order tickets. One commodity industry association urged the Commission to ''consider whether the high cost and burden of maintaining original written orders and trading cards is disproportionate to the limited use of these documents in enforcement cases.'' [18]

The Commission recognizes that electronic storage of written trading cards and order tickets could reduce storage costs, increase the efficiency of the retrieval process, and help eliminate certain security problems attendant to the storage of paper records. Nevertheless, given the importance these original records continue to play in the futures industry, the Commission believes that it would be imprudent to rely solely on electronic versions of these records at this time. Although the SEC permitted electronic storage of these documents, it recognized the need for caution in this area and rested its decision to eliminate the requirement that recordkeepers maintain originals largely on the diminished role such written records play due to the prevalence of electronic order routing in the securities industry.[19]

Review of written trading records for differences in the instrument used to record apparently contemporaneous information remains a regular feature of investigations focusing on potential trade practice or allocation violations.[20] FOC contended that current technology can produce superb reproductions that make differences in hand writing and time stamps clearly visible. Even if we assume this to be true,[21] this argument does not address the full range of material information Commission auditors and investigators may gather by examining original written trading records. For example, the Commission's Division of Enforcement often examines these records in the context of a variety of alleged violations.[22] If only electronically stored records were available, errors in the scanning process, such as failing to process information on

storage technology from third-party vendors. As a result, the Proposal permitted recordkeepers to employ escrow agreements to protect the third-party vendor's proprietary rights.

[13] Such recordkeepers must provide the Technical Consultant with access to the storage media containing their required records, and the Technical Consultant must (1) have the ability to download information from the recordkeeper's storage media to any medium acceptable under Regulation 1.31 and (2) undertake to provide Commission representatives with access to the records stored on the recordkeeper's storage media including, as appropriate, arrangement for downloading the records in the format designated by Commission representatives.

[14] One of FOC's submissions was a petition to amend Regulation 1.31, which was received shortly before the Commission published its Proposal. To avoid undue delay, the Commission decided to publish the Proposal and to treat this submission as a general comment on the issues raised. FOC later filed a written submission responding more specifically to the issues raised in the Proposal.

[15] Chicago Board of Trade Comment at 1.

[16] NFA Comment at 1.

[17] In addition to the mandate that original written trading cards and order tickets be maintained for five years, these include requirements that recordkeepers: (1) maintain indexes of electronically stored records that are available for immediate examination and permit the location of any particular record to be immediately ascertained; (2) keep the information necessary to access electronically stored records and indexes available for immediate examination; and (3) provide copies of specified records on Commission-compatible machine-readable media with the format and coding structure specified in the request.

[18] FIA Comment at 4.

[19] 62 FR 6471.

[20] Indeed, Commission precedent indicates that such differences—usually detected by noting differences in the color of the ink on the document—can play an important evidentiary role in cases raising trade practice allegations. *See In re Russo,* [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) 27,133 at 45,303 n. 9 (CFTC Aug. 20, 1997).

[21] FOC submitted reproductions of two order tickets in support of its contention. The limited nature of FOC's sample raises significant questions about the validity of the broad inference it draws. Moreover, the information recorded on the order tickets is displayed in black and white. Aside from these limitations, FOC's comment does not address even straight-forward implementation problems such as ensuring that all material information is scanned and stored—including time stamps and written information on the back of order tickets.

[22] Such violations include wash trading, accommodation trading, direct or indirect trading ahead of or against customer orders, offsetting or matching customer orders, unauthorized trading, and inappropriate trade allocation.

both sides of a written order ticket, would deprive investigators of material information. Moreover, even properly scanned records could deprive investigators of currently available information. For example, it is unlikely that investigators could distinguish ink colors on scanned documents or detect either erasure or the use of products such as white out. This type of discrepancy may be important in establishing that a participant in the transaction inserted some information on a trading card or order ticket after the bulk of the information had already been recorded.[23]

Many commenters offered support for a compromise position suggested by the FIA. Under this proposal, original written trading records would be retained for one year. During this period, the written trading records would be stored on ''high-quality micrographic or electronic storage media that are reasonably able to detect alterations.'' [24] After the initial year, recordkeepers would be free to destroy original written trading records and to fulfill their obligations under Regulation 1.31 by producing reproductions of the stored records.

The FIA proposal rests on an assumption that is not necessarily correct. According to FIA, the experience of futures exchanges indicates that auditors or compliance investigators generally request access to written trading documents within one year of their creation. FIA's implicit assumption is that there is no practical need to retain original written trading documents for more than a year because the experience of Commission auditors and investigators is fully consistent with their exchange counterparts.

The Commission's experience with audits and investigations indicates that there is no reliable basis for predicting the period of time that any particular original written trading record will be needed. For example, investigations of trade practice allegations are frequently lengthy due to both the complexity of the underlying transactions and efforts by many participants to disguise their intent in entering the transactions. Information may not come to the Commission's attention within a year of the wrongdoing, and the suspicious activity often spans more than a one-year period. Moreover, review of written trading records from a multi-year period may reveal the type of pattern of suspicious trading that facilitates prosecution of trade practice violations.[25]

Given the legitimate needs of its auditors and investigators, the Commission cannot endorse the one-year retention period proposed by FIA. Nevertheless, the Commission is modifying staff audit and investigative practices in order to permit recordkeepers to take advantage of some of the benefits of electronic storage technology, yet protect the Commission's interest in maintaining access to original trading records. Under the revised practice, if a recordkeeper chooses to transfer trading cards and customer order tickets to electronic media, a recordkeeper initially may respond to a request for written trading cards and order tickets by producing reproductions maintained on electronic storage media unless the staff request specifically provides to the contrary. Staff generally will review these reproductions prior to requesting production of original written trading cards or order tickets.[26] If this review confirms that further investigation or examination of original trading records is unwarranted, the recordkeeper's original trading cards and order tickets may remain in storage.

While recordkeepers transferring original written trading documents to electronic storage media will incur some additional costs, they also may obtain substantial benefits from this change in policy. For example, recordkeepers should be able to reduce retrieval costs, to locate requested records more expeditiously, and to improve the security of their stored original records.[27] Commission auditors and investigators should also benefit by obtaining more expeditious and complete responses to their requests. Of course, the success of this process will depend on the ability of recordkeepers not only to select electronic storage systems that will produce high quality reproductions, but also to manage the implementation challenges likely to arise in transitioning from a paper-based system properly. In addition, Commission experience with recordkeepers who choose to make records available on electronic storage media pursuant to this policy should provide a basis for reassessing the continued need for retention of original trading cards and order tickets.[28]

B. Timeliness of Responses to Production Requests

Under current requirements, original records must be produced ''promptly'' and reproductions stored on micrographic media or optical disk must be produced ''immediately.'' Some commenters believed that ''immediately'' is an unduly vague standard. Commenters also emphasized that this standard does not acknowledge the relevance of practical circumstances that can delay production by even cooperative recordkeepers. Thus, many commenters urged the Commission to require that both original records and reproductions stored on micrographic or electronic storage media be produced ''promptly.''

There is no evidence that the current dual production standard has created any practical problems. While the rule grants Commission staff broad discretion in determining when specified records should be produced, none of the commenters has claimed that Commission staff have abused this discretion by establishing arbitrary deadlines that ignored relevant circumstances.[29] Indeed, FIA's

[23] For example, if information about the price, quantity and contract is recorded on a written order ticket in one color ink, and the number designating the identity of the customer is written in a different color ink, an investigator might suspect that the trade was allocated to a customer after it was executed and search for additional indications that orders were being improperly allocated.

[24] FIA Comment at 5. FIA indicates that the Commission could maintain a check on the quality of available reproductions by publishing a list of acceptable media or permitting recordkeepers to seek Commission approval of a particular record storage medium or system.

[25] Participants in a suspicious transaction often seek to undermine the significance of suspicious circumstances by claiming that they are the product of peculiar market forces at the time of the challenged transactions. Proof that the participants have been involved in a pattern of suspicious transactions undertaken under varying market conditions over a period of months or years is often the most effective rebuttal to such a claim.

[26] If staff is at a point in its review that indicates a request for original written trading records is inevitable, it need not waste either its own or the recordkeeper's resources by initially requesting reproductions.

[27] For example, if access to stored original records is rarely necessary, it will be less likely that records will be lost or misplaced in the process of locating requested records.

[28] Implementation of this policy change does not require any revision to the rules. By holding out the prospect of reduced retrieval costs, the policy encourages recordkeepers to begin the transition to electronic storage systems that promise greater efficiency and security. Nevertheless, recordkeepers will still be obliged to maintain the original version of trading cards, documents on which trade information is originally recorded in writing, and written orders required to be kept pursuant to Commission Regulation 1.35(a), (a–1)(1), (a–1)(2) and (d) for five years and to produce those records in response to a request by an appropriate Commission representative.

[29] The current standards do not describe a level of timeliness that staff auditors and investigators must invariably demand from recordkeepers. Indeed, Commission representatives frequently tailor the deadline applicable to a particular document request in light of the scope and nature of the request, as well as unusual or unforeseen circumstances affecting a recordkeeper's ability to respond quickly or completely. Nonetheless, because delay in the production of required records can sometimes represent an undue threat to the public interest, Regulation 1.31 grants Commission

comment stated that Commission staff ''typically exhibits flexibility when requesting documents to accommodate practical considerations.[30]

The ''immediately'' standard provides recordkeepers with notice of the highest level of timeliness Commission representatives may demand in seeking production. As indicated in the Proposal, Regulation 1.31 requires that reproductions stored on micrographic or electronic storage media be produced ''immediately'' rather than ''promptly'' because, in general, it is easier to locate and to produce such reproductions than to locate and to produce original records. The dual standards make it clear that Commission auditors and investigators are authorized to demand that reproductions be produced more quickly than original records. At the same time, they require auditors and investigators to weigh a recordkeeper's potentially more limited ability to locate and produce original records in establishing a deadline for their production.

The Commission recognizes that applicable deadlines should reflect an evaluation of factors such as the volume of documents covered by a request, competing requests from other regulators, or unusual and unforeseeable circumstances that prevent the recordkeeper from accessing electronically controlled records. Staff discretion, however, plays a necessary role in an effective production process, and there is no indication that staff has failed to exercise their discretion sensibly.[31] On the current record, there is no basis for imposing further limitations on the discretion exercised by Commission auditors and investigators.

C. Retention of a Consultant

As noted above, the Proposal, like the SEC rules, required recordkeepers who stored all required records or all of a particular class of required records solely on electronic storage media to enter into an arrangement with a third-party Technical Consultant.[32] Commenters criticized this aspect of the Proposal for imposing a costly burden that will discourage transition to electronic storage systems. Commenters also argued that this safeguard will threaten the confidentiality of information maintained by recordkeepers.

The Commission has decided to adopt this aspect of the Proposal without change. The SEC has required this type of safeguard since 1993.[33] A significant number of Commission registrants are subject to the SEC's recordkeeping requirements, and none of the comments on the Proposal describes any problems with the implementation of this safeguard under the SEC's rules. Recordkeepers are only required to enter an arrangement with a Technical Consultant if they choose to store all required records or all of a particular class of required records solely on electronic storage media. As a result, recordkeepers may protect themselves from costs related to retaining a Technical Consultant by maintaining backup copies of electronically stored records in either a hard copy or micrographic version. As to confidentiality concerns relating to a Technical Consultant's access to required records, recordkeepers may protect themselves by entering into appropriate confidentiality agreements with their Technical Consultants. In short, the objections that have been raised by commenters do not establish that there are circumstances unique to the futures industry that warrant a deviation from the SEC policy.[34]

D. Production on Commission Compatible Machine-Readable Media

The Proposal required recordkeepers using electronic storage media to provide copies of requested records on Commission compatible machine-readable media (as defined by Commission Regulation 15.00(l))[35] with the format and coding structure specified in the request. Two commenters stated that neither the Proposal nor Regulation 15.00(l) provides adequate notice of either the range of media that the Commission will deem compatible or the range of formats and coding structures that may be required. In response to these comments, the Commission has decided to provide guidance about the intent underlying this provision and to direct staff to take steps to provide recordkeepers with ongoing notice of the applicable requirements.[36]

The requirement that recordkeepers provide documents to the Commission in one of the many identified formats arises out of practical limitations on the Commission's ability to process data stored in the full range of available formats and coding structures on the full range of storage media available to recordkeepers. The Commission uses standard desktop tools including Microsoft Office Professional 97. Recordkeepers using storage systems with compatible format and coding structures should not experience significant problems providing Commission auditors and investigators with acceptable machine-readable media. Records that include data files and images will be acceptable if accompanied by appropriate

representatives the discretion to specify production deadlines sufficient to address such threats.

[30] FIA Comment at 8.

[31] One commenter indicated that the production process under Regulation 1.31 should be modeled on the discovery process in an adjudicatory proceeding. The Regulation 1.31 process, however, is specifically designed to avoid both the delay and diversion of resources common to such an adversarial process. As a result, Regulation 1.31 does not provide that a response can be delayed until a recordkeeper's counsel has had an opportunity to review requested records. Nor does it establish a process for settling objections over issues such as breadth or relevance. Moreover, recordkeepers are expected to manage their affairs in a manner that permits them to fulfill the duties described in Regulation 1.31. For example, recordkeepers using micrographic or electronic storage systems are expected to retain a sufficient number of expert personnel to meet their regulatory responsibilities. The absence of a single individual due to sickness or vacation should not make it impossible for the recordkeeper to make an immediate response to an auditor's or investigator's request in the infrequent circumstance when immediacy is a critical component of the request, *e.g.* in a financial crisis or where customer positions or other assets are at risk.

[32] Such recordkeepers must provide the Technical Consultant with access to the storage media containing their required records, and the Technical Consultant must (1) have the ability to download information from the recordkeeper's storage media to any medium acceptable under Regulation 1.31 and (2) undertake to provide Commission representatives with access to the records stored on the recordkeeper's storage media including, as appropriate, arrangement for downloading the records in the format designated by Commission representatives.

[33] As noted above, the SEC adopted this safeguard as part of its 1997 rulemaking. In June 1993, however, the SEC's Division of Market Regulation issued a no-action letter allowing broker-dealers to utilize optical storage technology for recordkeeping under certain conditions. The availability of a third-party backup was one of the conditions to this relief. *See* Letter from Michael A. Macciaroli, Associate Director, Division of Market Regulation, SEC to Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, Securities Industry Association (June 18, 1993), 1993 WL 246230 (SEC).

[34] The Commission does not intend that Commission investigators or auditors regularly seek required records from Technical Consultants. Indeed, staff will only seek performance of the Technical Consultant's undertaking with the Commission when the recordkeeper itself has shown that it is unable or unwilling to meet its regulatory obligations.

[35] Commission Regulation 15.00(l) provides that the term compatible data processing media means: [D]ata processing media approved by the Commission or its designee. The rule delegates the Commission's approval authority to the Executive Director and provides that the Executive Director may designate employees to exercise the approval authority on her behalf.

[36] When the Commission amended Regulation 15.00(l) in 1997, it deleted references to specific media in light of comments suggesting that a regulatory definition was impractical because electronic media are evolving at such a rapid pace. 62 FR 24026, 24028 (May 2, 1997).

information.[37] Where the records are from a relational data base management system, the Commission would prefer that the recordkeeper convert the records to an acceptable data file format. Under appropriate conditions, however, the Commission will also accept such records in another format.[38] Where the records are from a different source, providers will need to coordinate with the Commission to determine acceptability.

Recordkeepers can provide information to the Commission on a number of different media. Clearly, a small file can be placed on a diskette or set of diskettes. CD–ROM, 4mm tape, 30 GB DLT tape, nine-track tape and IBM 3490 cartridge tapes are also acceptable. Absent security concerns, email attachments and FTP transmitted files are acceptable. Providers will need to coordinate with the Commission if different media are contemplated.

Of course the Commission's capabilities in this regard will change over time. To provide affected recordkeepers with continuous notice of what is currently acceptable, the Commission is modifying current staff practice to require preparation of an updated list of formats and coding structures as changes are made. Notice of any changes to the list will be available both in writing and on the Commission's web page, and an updated list will be published in the **Federal Register**.

E. Waiver of Privilege

Consistent with current Commission requirements, the Proposal provided that recordkeepers employing micrographic or electronic storage systems must agree to waive any privilege, claim of confidentiality or other objection to the disclosure of non-Commission-required records stored on the same individual medium as Commission-required documents. Some commenters characterized this approach as inflexible and urged the Commission to adopt an approach modeled on ABA Op. No. 92–368 (Standing Committee on Ethics and Professional Responsibility, Nov. 10, 1992).[39]

The Commission has decided that the waiver language should be deleted from Regulation 1.31. While courts are not in agreement about the proper application of the ''inadvertent waiver'' theory discussed in the ABA's Opinion, the Commission does not believe that a recordkeeper should be precluded by rule from raising a question about privilege if a privileged document has been inadvertently stored and/or produced on the same medium as Commission-required documents.[40] In an effort to avoid this problem, the deleted waiver language will be replaced with the current Commission requirement that recordkeepers store Commission-required records on a separate individual medium from non-Commission-required records. Waiver, however, will no longer be a mandatory consequence of failing to fulfill this segregation requirement, at least by operation of regulation.

F. Other Issues

1. Generic standards

Several commenters urged the Commission to adopt generic standards of accessibility, security, and reliability that do not distinguish between original records and eligible substitutes. One of the commodity industry associations argued that the adoption of generic performance standards would increase flexibility and decrease the likelihood that the applicable standards would become ''outdated'' due to continued technological developments. One exchange commenter claimed that such a unitary approach would ensure consistency and lessen confusion.

A generic approach may have certain advantages in an area likely to be affected by rapid technological change. Some comments on the Proposal, however, illustrate the weaknesses of any approach that fails to provide sufficiently specific notice of the procedures the Commission considers necessary to a reliable system of records. These comments suggest that, absent specific guidance, many industry participants would interpret their recordkeeping duties in a manner the Commission views as incompatible with the public interest.[41]

More importantly, none of the commentators that urged adoption of more generic standards offered the type of specific proposal that would permit the Commission to make a reasoned evaluation of the practical costs and benefits of a more generic approach. Indeed, none of the commenters cited to generic standards adopted by a state or federal regulatory body with responsibilities comparable to those the CEA entrusts to the Commission. The absence of any specific proposals may be a product of the futures industry's limited experience with the design or implementation of large-scale electronic storage systems.[42] We emphasize that

[37] For records that include data files, the required information includes:

(1) how to identify individual records and record types;

(2) how to identify individual fields within records;

(3) how the individual fields and record types are defined; and

(4) the format of each quantitative field and the meaning of each field value for other fields.

For records that include images, the required information includes:

(1) how any data files are linked to images;

(2) how to identify individual images; and

(3) the format of the images.

The Commission uses ''Wang Imaging for Windows 95.'' The Commission will accept images in another format if:

(1) software is provided with the records that makes it feasible to view and print the images;

(2) this software will run under Windows NT or Windows 95/98;

(3) this software can be freely provided to the Commission under the terms of the provider's licensing agreements with the concerned software vendor(s); and

(4) information is provided on how individual images can be accessed.

[38] The applicable conditions include:

(1) the records are accompanied by software that makes it feasible to access the records using standard office tools,

(2) this software will run under Windows NT or Windows 95/98,

(3) this software can be freely provided to the Commission under the terms of the provider's licensing agreements with the concerned software vendor(s),

(4) information is provided on how the individual fields and record types are defined, and

(5) information is provided on the format of each quantitative field and the meaning of each field value for other fields.

[39] In that opinion, the American Bar Association Standing Committee on Ethics and Professional Responsibility addressed circumstances in which an attorney inadvertently sends another lawyer privileged or otherwise confidential materials belonging to an opposing party. The committee found that a lawyer receiving such confidential material has a professional obligation, when he or she recognizes opposing counsel's error, to avoid further review of the material. The committee also concluded that the affected lawyer should notify opposing counsel of the error and follow counsel's directions as to the disposition of the material.

[40] As is currently the case with all Commission-required records, recordkeepers may not deny authorized Commission representatives access to any individual storage medium that includes Commission-required records or delay production while the individual storage medium is reviewed for the presence of privileged material. The final rule merely eliminates the regulatory inference that the commingling of Commission-required records with non-Commissioned-required records necessarily amounts to a waiver of any privilege otherwise covering the latter category of records.

[41] FOC argued that any required record should be deemed accessible if produced within 10 days. One commodity industry association noted that Regulation 1.31 does not include any requirements for the security and integrity of paper records and argued that firms have no duty to supervise the security and reliability of hard copy records under the generic standard set forth in Commission Regulation 166.3. One exchange commenter indicated that it would be burdensome to require recordkeepers to maintain an accurate and complete index of records stored on micrographic or electronic storage media.

[42] Even if the capabilities of electronic storage systems meet the high expectations of their proponents, the Commission expects that the transition process from paper-based systems to electronic-based systems will involve implementation problems requiring significant

movement toward more generic standards may well be appropriate as industry experience and expertise develop. Indeed, as part of its ongoing evaluation of developments warranting additional amendments to its recordkeeping requirements, the Commission encourages the submission of specific proposals for generic standards that both provide recordkeepers with the flexibility necessary to maximize the cost reduction and time savings available from improved storage technology and ensure that Commission auditors and investigators maintain timely access to a reliable system of records.

2. Format of Storage Media

One exchange commenter noted that one of the Proposal's four characteristics for defining electronic storage media could be misconstrued as requiring that the storage system itself exclusively preserve records in a non-rewritable, non-erasable format. It suggests that such an interpretation could disqualify CD–ROM storage systems with rewritable CD–ROM capabilities. The Commission agrees that the medium, not the storage system itself, must exclusively preserve records in a non-rewritable, non-erasable format.

3. Escrow Agreements

Two exchange commenters opposed the Proposal's requirement that recordkeepers using electronic storage media keep available for inspection all information necessary to access records and indexes maintained on electronic storage media or, in the alternative, place such information in escrow and, as necessary, update the information. These commenters raised the possibility that third-party vendors may be unwilling to enter into source code escrow agreements. As noted in the Proposal, however, such escrow agreements are a common feature of software licensing agreements. There is no indication that the similar safeguard in the SEC's rules has resulted in problems with third-party vendors. Given the speculative nature of the information provided by the commenters, modification of this safeguard is not warranted.

4. Written Procedures

Several commenters objected to the Proposal's requirement that electronic recordkeepers maintain written operational procedures and controls that would provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any such records. As noted in the Proposal, the Commission believes that all recordkeepers must have and enforce procedures to keep their required records from being altered or destroyed.[43] The Proposal's specific requirements for electronic storage systems reflect the special security/integrity concerns that attend the transition process from paper-based recordkeeping systems. While experience may prove these special precautions unnecessary, the arguments raised by the commenters do not warrant their deletion at this time.

5. Adjusting Requirements in Response to Technological Change

Several commenters noted that some of the Proposal's requirements may quickly become outdated due to rapid developments in the technology underlying electronic storage media. These commenters observed that addressing the necessary adjustments through the rulemaking process may prove unduly slow, costly and inflexible.

The rulemaking process can play an important role in identifying and removing such obstacles. While the notice and comment process that underlies rulemaking can result in limited delays, this process helps ensure that the Commission's deliberations are informed by the perspectives of a broad range of interested parties. Moreover, as in this instance, the rulemaking process can play an important rule in harmonizing the approach different regulators take to common areas of concern, thereby minimizing the regulatory burden imposed on firms subject to dual regulation.

The Commission has adequate tools to address short-term inefficiencies in the regulatory process. On several occasions during the past two years, the Commission has provided interim relief from the current requirements of Rule 1.31 to Commission registrants using advanced technology.[44] This relief has helped minimize obstacles to the adoption of new technology while the Commission addressed the need for final amendments to Rule 1.31. If circumstances warrant, similar relief can be made available in the future.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601, *et seq.*, 611, requires that, in adopting rules and regulations, all federal agencies consider their impact on small entities. In accordance with Section 601(3) of the RFA, the Commission published a ''Policy Statement of Definitions of Small Entities for Purposes of the Regulatory Flexibility Act,'' 47 FR 18618 (Apr. 30, 1982). In that statement,[45] the Commission indicated that some classes of persons were excluded from the definition of small entities. These include: futures commission merchants registered or required to be registered; floor brokers employed by registered futures commission merchants; commodity pool operators registered or required to be registered; and large traders in the futures market. The Commission considers other entities to be small under particular facts and circumstances. These include: futures commission merchants exempt from registration; commodity pool operators exempt from registration; introducing brokers; floor brokers not employed by futures commission merchants; floor traders; and commodity trading advisors. Because the rules discussed herein will affect the full spectrum of Commission registrants, it is likely that small entities within the meaning of the RFA will be affected.

The final rules would generally expand the category of record storage systems permissible under the Commission's rules. The Commission anticipates that these rules will increase small entities' freedom to tailor their record storage systems to the overall needs of their businesses. The final rules will have no impact on a small entity chooses to maintain a paper-based record storage system. However, if a small entity chooses to use micrographic storage media, it may incur costs related to creation of the duplicate record and storage at a location separate from the micrographic record. Costs can be reduced by moving the hard copies of the records to a separate location.

adjustments. If the security, reliability, and accessibility of the recordkeeping process are to be protected during this period of learning and adjustment, it is important that recordkeepers have clear notice of their ongoing obligations under Regulation 1.31. It is equally important that recordkeepers keep the Commission informed of the experience gained during this period so that the Commission can develop a reliable basis for making necessary adjustments to its rules.

[43] Proposal at 30672.

[44] The Commission has permitted these registrants to substitute compliance with the SEC's recordkeeping requirements for compliance with the current requirements of Rule 1.31. *See* note 2, *supra*.

[45] The Commission subsequently clarified some of the definitions *See* 48 FR 35276 (Aug. 3, 1983); 55 FR 13550 (Apr. 11, 1990); 58 FR 40347 (Jul. 28, 1993).

The final rules will permit small entities that choose to use electronic storage media for their storage record systems to select systems that may be less costly and simpler to manage. The final rules will impose limited additional burdens on these entities, including requirements that the recordkeeper: (1) provide a representation that the system meets pertinent regulatory requirements prior to converting to an electronic storage system; (2) create a duplicate of both required records and an index of those records and maintain the duplicate at a separate location; (3) create and maintain an audit system for transferring records to electronic storage media; (4) take steps to ensure Commission access to information necessary to download records from the electronic storage media; and (5) provide an independent source for the downloading of records that are maintained solely on electronic storage media. The Commission anticipates that small entities will not convert their recordkeeping systems to electronic storage media unless the accompanying burdens are outweighed by the financial savings and operational efficiency that would result from the change to electronic storage media.

The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 [46] (''PRA'') imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, these final rules and/or their associated information collection requirement inform the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact 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 current valid OMB control number.

The Commission previously submitted these rules in proposed form and their associated information collection requirement to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules on October 24, 1998, and assigned OMB control number 3038–0022, Rules Pertaining to Contract Markets and Their Members, to these rules. The burden associated with this entire collection 3038–0022, including these final rule amendments, is as follows:

Average burden hours per response: 3,609,89.

Number of respondents: 15,893.

Frequency of response: On occasion.

The burden associated with the final rule amendments, is as follows:

Average burden hours per response: 17.50

Number of respondents: 3,412.

Frequency of response: On occasion.

Persons wishing to comment on the information required by these final rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street N.W., Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 1

Recordkeeping requirements.

Accordingly, 17 CFR part 1 is amended as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.31 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 1.31 Books and records; keeping and inspection.

* * * * *

(b) Except as provided in paragraph (d) of this section, immediate reproductions on either ''micrographic media'' (as defined in paragraph (b)(1)(i) of this section) or ''electronic storage media'' (as defined in paragraph (b)(1)(ii) this section) may be kept in that form for the required time period under the conditions set forth in this paragraph (b).

(1) For purposes of this section:

(i) The term ''micrographic media'' means microfilm or microfiche or any similar medium.

(ii) The term ''electronic storage media'' means any digital storage medium or system that:

(A) Preserves the records exclusively in a non-rewritable, non-erasable format;

(B) Verifies automatically the quality and accuracy of the storage media recording process;

(C) Serializes the original and, if applicable, duplicate units of storage media and creates a time-date record for the required period of retention for the information placed on such electronic storage media; and

(D) Permits the immediate downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium acceptable under this paragraph upon the request of representatives of the Commission or the Department of Justice.

(2) Persons who use either micrographic media or electronic storage media to maintain records in accordance with this section must:

(i) Have available at all times, for examination by representatives of the Commission or the Department of Justice, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images;

(ii) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any easily readable hard-copy image that representatives of the Commission or Department of Justice may request;

(iii) Keep only Commission-require records on the individual medium employed (e.g., a disk or sheets of microfiche);

(iv) Store a duplicate of the record, in any medium acceptable under this regulation, at a location separate from the original for the period of time required for maintenance of the original; and

(v) Organize and maintain an accurate index of all information maintained on both the original and duplicate storage media such that:

(A) The location of any particular record stored on the media may be immediately ascertained;

(B) The index is available at all times for immediate examination by

[46] Pub. L. 104–13 (May 13, 1995).

representatives of the Commission or the Department of Justice;

(C) A duplicate of the index is stored at a location separate from the original index; and

(D) Both the original index and the duplicate index are preserved for the time period required for the records included in the index.

(3) In addition to the foregoing conditions, persons using electronic storage media must:

(i) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such approved machine-readable media as defined in § 15.00(1) of this chapter which any representative of the Commission or the Department of Justice may request. Records must use a format and coding structure specified in the request.

(ii) Develop and maintain written operational procedures and controls (an ''audit system'') designed to provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any original or duplicate record maintained on the electronic storage media such that:

(A) The results of such audit system are available at all times for immediate examination by representatives of the Commission or the Department of Justice;

(B) The results of such audit system are preserved for the time period required for the records maintained on the electronic storage media; and

(C) The written operational procedures and controls are available at all times for immediate examination by representatives of the Commission or the Department of Justice.

(iii) Either

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission or Department of Justice all information necessary to access records and indexes maintained on the electronic storage media; or

(B) Place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained on the electronic storage media and the source code, documentation, and information necessary to access the records and indexes maintained on the electronic storage media.

(4) In addition to the foregoing conditions, any person who uses only electronic storage media to preserve some or all of its required records (''Electronic Recordkeeper'') shall, prior to the media's use, enter into an arrangement with at least one third party technical consultant (''Technical Consultant'') who has the technical and financial capability to perform the undertakings described in this paragraph (b)(4). The arrangement shall provide that the Technical Consultant will have access to, and the ability to download, information from the Electronic Recordkeeper's electronic storage media to any medium acceptable under this regulation.

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:

With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission or the United States Department of Justice (the ''Representative''), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

(ii) [Reserved]

(c) Persons employing an electronic storage system shall provide a representation to the Commission prior to the initial use of the system. The representation shall be made by the person required to maintain the records, the storage system vendor, or another third party with appropriate expertise and shall state that the selected electronic storage system meets the requirements set forth in paragraph (b)(1)(ii) of this section. Persons employing an electronic storage system using media other than optical disk or CD–ROM technology shall so state. The representation shall be accompanied by the type of oath or affirmation described in § 1.10(d)(4).

(d) Trading cards, documents on which trade information is originally recorded in writing, and written orders required to be kept pursuant to § 1.35(a), (a–1)(1), (a–1)(2) and (d) must be retained in hard-copy for the required time period.

Issued in Washington, DC on May 21, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–13514 Filed 5–26–99; 8:45 am]

BILLING CODE 6351–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1603

RIN 3046–AA45

Procedures for Previously Exempt State and Local Government Employee Complaints of Employment Discrimination Under the Government Employee Rights Act of 1991

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is adopting as final an interim rule establishing procedures for implementing Title III of the Civil Rights Act of 1991, entitled the Government Employee Rights Act of 1991, which extends the protections against employment discrimination based on race, color, religion, sex, national origin, age and disability to previously exempt state and local government employees.

DATES: This rule will become effective on May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Nicolas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel, or Stephanie D. Garner, Senior Attorney, at (202) 663–4669 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: On April 10, 1997, at 62 FR 17542–17548, the Equal Employment Opportunity Commission published an interim rule to implement Section 321 of the Civil Rights Act of 1991. 2 U.S.C. 1220. That section provided new equal employment opportunity protections for previously exempt state and local

government employees, and designated the Equal Employment Opportunity Commission as the enforcement authority.

The interim rule sets out the Commission's procedures for handling complaints brought by individuals covered by section 321 of the Act. The filing and investigative procedures for complaints followed established Commission procedures for charges published at 29 CFR Part 1601. The hearing process and the other procedures were different from EEOC's normal charge resolution procedures.

Comments on the interim rule were invited from the public, to be received on or before June 9, 1997. The sole comment received suggested that the time period for filing a complaint under this Part in those jurisdictions which have fair employment practices agencies be extended to 300 days. Unlike section 706(e) of the Civil Rights Act of 1964, section 321 of the Civil Rights Act of 1991 does not provide an extended filing period for cases arising in jurisdictions which have fair employment practices agencies. The Commission is bound by the plain language of the statute which provides a uniform 180-day period for filing a complaint.

After the interim regulation was published in the **Federal Register** on April 10, 1997, the Commission's Office of Program Operations was renamed the Office of Field Programs. Therefore, ''Office of Field Programs'' is being substituted wherever the name ''Office of Program Operations'' appeared in the interim regulation. With this exception of this change the interim rule is adopted as final.

In promulgating the final rule implementing section 321 of the Act, the Commission has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. In addition, it has been determined that this regulation is not a significant regulatory action within the meaning of section 3(f) of the Executive Order. As required by the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities because it establishes procedures for complaints of discrimination by formerly exempt state and local government employees.

Finally, this rule does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 29 CFR Part 1603

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations, Investigations, State and local governments.

Accordingly, the interim rule amending 29 CFR part 1603 which was published at 62 FR 17542 on April 10, 1997, is adopted as a final rule with the following change:

PART 1603—[AMENDED]

1. Authority citation for part 1603 continues to read as follows:

Authority: 2 U.S.C. 1220.

§ 1603.107 [Amended]

2. In part 1603, in § 603.107(d) revise the reference to ''Office of Program Operations'' to read ''Office of Field Programs.''

Dated: May 20, 1999.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 99–13341 Filed 5–26–99; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–173]

RIN 2115–AE47

Drawbridge Operation Regulations: Fort Point Channel, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating rules governing the Northern Avenue Bridge, mile 0.1, across Fort Point Channel in Boston, Massachusetts. This final rule removes the tow time periods Monday through Friday when the Northern Avenue Bridge was not required to open for vessel traffic. Motor vehicles no longer use the Northern Avenue Bridge to cross Fort Point channel. It is expected that this final rule will better meet the needs of navigation.

DATES: This final rule is effective June 28, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

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

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Fort Point Channel, Massachusetts, in the **Federal Register** (64 FR 12797) on March 15, 1999. The Coast Guard received no letters commenting on the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The Northern Avenue Bridge has a vertical clearance at mean high water (MHW) of 7 feet and at mean low water (MLW) of 17 feet. The Northern Avenue Bridge is presently required to open on signal from 6 a.m. to 8 p.m., except during the two vehicular traffic rush hours, 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. From 8 p.m. to 6 a.m. the draw need not open for vessel traffic.

The present use of the Northern Avenue Bridge is by pedestrians only. Vehicular traffic no longer uses the Northern Avenue Bridge. The roadway, Northern Avenue, has been relocated to align with the new replacement bridge which has been constructed upstream from the old bridge. Bridges normally open on signal for vessels at all times except when there is a demonstrated offsetting benefit to traffic crossing the bridge. In this case the traffic cross the bridge no longer exists. Motor vehicles no longer cross over this bridge to cross Fort Point Channel. Retention of the exception in the regulations to allow the bridge to not open for vessel traffic during the two vehicular traffic rush hours is not longer necessary because it restricts the passage of vessels unnecessarily. The present waterway usage is primarily construction barges working on several projects upstream of the bridge and some recreational vessels docked along the Fort Point Channel waterfront.

The Coast Guard granted a temporary deviation from the operating regulations for a period of 60 days effective until January 6, 1999, to provide for the speedy repair of the bridge protective fender system. Increased barge traffic has made the repair of the fender system essential.

The period the bridge was closed to vessel traffic, 8 p.m. to 6 a.m., will remain unchanged. This final rule will require the bridge to open on signal from 6 a.m. to 8 p.m., daily, and from

8 p.m. to 6 a.m., the bridge need not open for the passage of vessels.

The Coast Guard has also removed from the regulations the provision for opening the bridge as soon as possible for the passage of state and local vessels used for public safety. This provision is now included under the general operating regulations for bridges at § 117.31.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the notice of proposed rulemaking and no changes have been made to the final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that this final rule is simply removing unnecessary language that allows the bridge not to open during vehicular traffic rush hours. Vehicles no longer pass over the Northern Avenue Bridge to cross Fort Point Channel. This change to the regulations will economically benefit navigational interests that use this waterway by no longer delaying their transits. The Coast Guard believes that the added cost to crew the bridge is not significant because the bridge owner must crew the bridge during the daytime hours 6 a.m. to 8 p.m. anyway and the additional cost to crew the bridge during the two rush hour periods is offset by the benefit to navigation using this waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.599 is revised to read as follows:

§ 117.599 Fort Point Channel.

The Northern Avenue Bridge, mile 0.1, shall open on signal from 6 a.m. to 8 p.m., daily. From 8 p.m. to 6 a.m. the bridge need not open for the passage of vessels.

Dated: May 13, 1999.

R.M. Larrabee,

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

[FR Doc. 99–13435 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI74–01–7303; FRL–6336–8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: The purpose of this action is a final rulemaking on the State of Wisconsin's Prevention of Significant Deterioration (PSD) rules, Natural Resources (NR) 405.01 through NR 405.17, as a revision to the Wisconsin State Implementation Plan (SIP). The State developed these rules as Wisconsin's plan to prevent significant deterioration of air quality in areas designated as unclassifiable or attainment of the National Ambient Air Quality Standards (NAAQS), and to satisfy the requirements of part C of the Clean Air Act (Act).

The Environmental Protection Agency (EPA) is approving these rules because they meet EPA's regulations governing State PSD programs (40 CFR 51.166). In addition to the PSD rules, Wisconsin has submitted rules as a revision to the SIP to establish breathable particulates (PM–10) as a basis for the determination of particle concentrations for permitting purposes under the PSD program and, therefore, tie the new source permit evaluations directly to human health standards. Finally, Wisconsin submitted revisions to its existing SIP that are intended to correct errors in content and style, to improve consistency, and to clarify existing policy and procedures.

DATES: This rule will be effective June 28, 1999.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the revision are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Constantine Blathras at (312) 886–0671 to arrange a time if inspection of these materials is desired.

Copies of the submittal are also located at the Bureau of Air Management, Wisconsin Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The 1977 Amendments to the Act added part C to Title I, which required implementation of a PSD program. On June 19, 1978, EPA promulgated the Federal PSD program, 40 CFR 52.21, which contains the procedures and requirements which EPA itself follows when it carries out the mandates of part C. EPA approved the section 52.21 requirements into those State SIPs where a State did not have an approvable plan in place. Section 52.21 provides that its requirements and authorities, or part thereof, can be delegated to State and local air programs if EPA determines that they have the ability and authority to carry out its mandates.

On June 19, 1978, (43 FR 26410), EPA approved the Federal PSD program, 40 CFR 52.21 (b) through (w), into the Wisconsin SIP at 40 CFR 52.2581 because Wisconsin had not submitted an approvable PSD program. On August 19, 1980, EPA gave Wisconsin partial delegation to run the Federal PSD program and on November 13, 1987, gave Wisconsin full delegation of the program, except for sources in Indian country. EPA did not explicitly delegate to the State the program for any area of Indian country.

Wisconsin's PSD and PM–10 rules which are finalized do not apply in Indian country as defined at 18 U.S.C. 1151. Section 301(d) of the Act authorizes the Administrator to determine which provisions are appropriate for Tribes to administer and to promulgate regulations as to how Tribes can assume these authorities. EPA proposed such regulations on August 25, 1994 (59 FR 43956). The Tribal authority rule was promulgated on February 12, 1998 (63 FR 7254). The preamble to this rule clarifies that, under the authority of several Act provisions including section 301(d)(4), EPA will continue to implement Act programs throughout Indian country until and unless such time as a Tribe has met the requirements to be treated in the same manner as a State for purposes of developing and implementing one or more of its own air quality programs under the Act.

On March 16, 1987, the Wisconsin Department of Natural Resources (WDNR) submitted to the Regional Administrator Chapter NR 405 of the Wisconsin Administrative Code for approval and inclusion as part of its SIP to meet the requirements of part C of the Act and as a replacement for EPA's delegated program. Rule NR 405 deals exclusively with PSD permitting requirements. On January 4, 1994, EPA proposed to disapprove Wisconsin's PSD SIP revision, NR 405.01 through NR 405.17. The deficiencies in the proposal were addressed by the WDNR in comments on March 8, 1994, and, to avoid having the SIP revision formally disapproved, the WDNR withdrew the original submittal.

On November 6, 1996, the WDNR submitted a request for approval of its revised PSD program. More specifically, the submittal addresses the deficiencies listed in the January 4, 1994 **Federal Register** document in which EPA had proposed to disapprove the State of Wisconsin's PSD rules as a revision to the Wisconsin SIP. On December 18, 1996, EPA sent a letter to the WDNR deeming the revised submittal complete and initiating the processing of the request.

The EPA reviewed the revisions made to NR 405 and determined that, combined with the remainder of NR 405, which was not changed, they meet the Act's part C requirements.

On December 10, 1997, EPA proposed approval of Wisconsin's PSD rules as a revision to the Wisconsin SIP. (62 FR 65046). EPA received no comments on the proposal.

Chapter NR 405 presumes to apply PSD regulation within the total area of the State of Wisconsin. As stated above, EPA is approving this rule for all portions of the State of Wisconsin except for those sources in Indian country. EPA will continue to issue PSD permits, as needed, to all sources located in Indian country. EPA also will continue to implement throughout the entire State of Wisconsin the authorities vested in the Administrator by section 164(e) of the Act and 40 CFR 52.21(t) regarding resolution of disputes between States and Indian Tribes.

II. Final Action

The EPA is approving as a revision to the Wisconsin SIP rules submitted on November 6, 1996. EPA has determined that these rules meet the requirements of part C of the Act.

Copies of the State's submittal and other information that forms the basis for this approval are contained in a rulemaking file maintained at the EPA Region 5 office. The file is a record of all information submitted to, or otherwise considered by, EPA in the development of this final approval. The file is available for public inspection at the Chicago Region 5 office listed under the **ADDRESSES** section of this document.

III. Administrative Review

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal

governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

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. This final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 110 do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, 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 Act preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions on such grounds. *Union Electric Co.*, v. *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 annual 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.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual 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 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. 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 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 the 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 1999. 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, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting, and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

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

Dated: April 21, 1999.

William E. Muno,

Acting Regional Administrator.

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. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(98) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(98) On November 6, 1996, the State of Wisconsin submitted rules pertaining to requirements under the Prevention of Significant Deterioration program. Wisconsin also submitted rule packages as revisions to the state implementation plans for particulate matter and revisions to the state implementation plans for clarification changes.

(i) Incorporated by reference. The following sections of the Wisconsin Administrative Code (WAC) are incorporated by reference. Both rule packages, AM–27–94 and AM–9–95, were published in the (Wisconsin) Register in April 1995, No. 472, and became effective May 1, 1995. AM–27–94 modifies Chapter NR, Sections 400.02(39m), 404.05, 405.02, 405.07, 405.08, 405.10, 405.14, and 484.04 of the WAC. AM–9–95 modifies Chapter NR, Sections 30.03, 30.04, 400 Note, 400.02, 400.03, 401.04, 404.06, 405.01, 405.02, 405.04, 405.05, 405.07, 405.08, 405.10, 406, 407, 408, 409, 411, 415, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 429, 436, 438, 439, 445m, 447,

448, 449, 484, 485, 488, 493, and 499 of the WAC.

3. § 52.2581 paragraphs (a), (b), and (c) are deleted and reserved, and pargraphs (d) and (e) are added as follows:

§ 52.2581 Significant deterioration of air quality.

(a)–(c) [Reserved]

(d) The requirements of sections 160 through 165 of the Clean Air Act are met, except for sources seeking permits to locate in Indian country within the State of Wisconsin; and sources with permits issued by EPA prior to the effective date of the state's rules.

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby incorporated and made a part of the applicable state plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

[FR Doc. 99–13386 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–9916; FRL–6343–3]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the Commonwealth of Kentucky that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the State agency and approved by EPA.

This format revision will affect the ''Identification of Plan'' sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review remain unchanged.

EFFECTIVE DATE: This action is effective May 27, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460;

and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard Schutt, Regional SIP Coordinator at (404) 562–9033, or Karla McCorkle at (404) 562–9043. Address all written comments to the Region 4 address listed above.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What is a SIP?
How EPA enforces SIPs.
How the State and EPA update the SIP.
How EPA compiles the SIPs.
How EPA organizes the SIP Compilation.
Where you can find a copy of the SIP Compilation.
The format of the new Identification of Plan Section.
When a SIP revision become federally enforceable.
The historical record of SIP revision approvals.
What EPA is doing in this action.
How this document complies with the Federal Administrative Requirements for rulemaking.

What Is a SIP?

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the SIP to EPA.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is ''incorporated by reference.'' This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements the SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

How the State and EPA Update the SIP

The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and OFR.

EPA began the process of developing:

1. A revised SIP document for each state that would be incorporated by reference under the provisions of 1 CFR part 51;

2. A revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and

3. A revised format of the ''Identification of Plan'' sections for each applicable subpart to reflect these revised IBR procedures.

The description of the revised SIP document, IBR procedures and ''Identification of Plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The federally-approved regulations and source specific permits (entirely or portions of), submitted by each state agency have been compiled by EPA into a ''SIP Compilation.'' The SIP Compilation contains the updated regulations and source specific permits approved by EPA through previous rule making actions in the **Federal Register**. The compilations are contained in 3-ring binders and will be updated, primarily on an annual basis.

How EPA Organizes the SIP Compilation

Each SIP Compilation contains two parts. Part 1 contains the regulations

and part 2 contains the source specific requirements that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for each state. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

The Region 4 EPA Office developed and will maintain the compilation for the Commonwealth of Kentucky. A copy of the full text of each State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the ''Identification of Plan'' section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of plan section contains five subsections:

(a) Purpose and scope

(b) Incorporation by reference

(c) EPA approved regulations

(d) EPA approved source specific permits

(e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraph (c), (d), or (e) of the applicable identification of plan found in each subpart of 40 CFR part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures, and will decide whether or not to retain the Identification of Plan appendices for some further period.

What EPA Is Doing in This Action

Today's rule constitutes a ''housekeeping'' exercise to ensure that all revisions to the State programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rule Making

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, 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 annual 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 annual 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 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. 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**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Alabama compilation has previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

List of Subjects in 40 CFR Part 52

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: March 18, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920 is redesignated as § 52.939 and the heading and paragraph (a) are revised to read as follows:

§ 52.939 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the Commonwealth Kentucky'' and all revisions submitted by Kentucky that were federally approved prior to March 1, 1999.

* * * * *

3. A new § 52.920 is added to read as follows:

§ 52.920 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State Implementation Plan for Kentucky under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraph (c) of this section with an EPA approval date prior to March 1, 1999, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c) of this section with EPA approval dates after March 1, 1999, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP Compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of March 1, 1999.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

(c) EPA approved regulations.

EPA-APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	State effective date	EPA approval date	Federal Register Notice
	Chapter 50 General Administrative Procedures			
401 KAR 50:005	General application	06/06/79	07/12/82	47 FR 30059
401 KAR 50:010	Definitions and abbreviations	06/06/96	01/21/97	62 FR 2916
401 KAR 50:012	General application	11/12/97	07/24/98	63 FR 39739
401 KAR 50:015	Documents incorporated by reference	09/26/88	02/07/90	55 FR 4169
401 KAR 50:020	Air quality control regions	06/06/79	07/12/82	47 FR 30059
401 KAR 50:025	Classification of counties	06/01/83	04/02/96	61 FR 14489
401 KAR 50:030	Registration of sources	06/06/79	07/12/82	47 FR 30059
401 KAR 50:035	Permits	09/28/94	08/27/95	60 FR 49775
401 KAR 50:040	Air quality models	06/06/79	07/12/82	47 FR 30059
401 KAR 50:042	Good engineering practice stack height	06/10/86	09/04/87	52 FR 33592
401 KAR 50:045	Performance test	06/06/79	07/12/82	47 FR 30059
401 KAR 50:047	Test procedures for capture efficiency	06/24/92	06/23/94	59 FR 32343
401 KAR 50:050	Monitoring	06/06/79	07/12/82	47 FR 30059
401 KAR 50:055	General compliance requirements	08/22/82	05/04/89	54 FR 19169
401 KAR 50:060	Enforcement	06/06/79	07/12/82	47 FR 30059
401 KAR 50:065	Conformity of general federal actions	09/11/95	07/27/98	63 FR 40044
	Chapter 51 New Source Requirements; Non-Attainment Areas			
401 KAR 51:001	Definitions and abbreviations of terms used in title 401, chapter 51	06/06/96	01/21/97	62 FR 2916
401 KAR 51:005	Purpose and general provision	06/06/79	07/12/82	47 FR 30059
401 KAR 51:010	Attainment status designations	11/12/97	07/24/98	63 FR 39739
401 KAR 51:017	Prevention of significant deterioration of air quality	03/12/97	07/24/98	63 FR 39741
401 KAR 51:052	Review of new sources in or impacting upon nonattainment areas	02/08/93	06/23/94	59 FR 32343
	Chapter 53 Ambient Air Quality			
401 KAR 53:005	General provisions	04/14/88	02/07/90	55 FR 4169
401 KAR 53:010	Ambient air quality standard	04/14/88	02/07/90	55 FR 4169
	Chapter 55 Emergency Episodes			
401 KAR 55:005	Significant harm criteria	04/14/88	02/07/90	55 FR 4169
401 KAR 55:010	Episode criteria	04/14/88	02/07/90	55 FR 4169
401 KAR 55:015	Episode declaration	06/06/79	01/25/80	45 FR 6092
401 KAR 55:020	Abatement strategies	06/06/79	01/25/80	45 FR 6092
	Chapter 59 New Source Standards			
401 KAR 59:001	Definitions & abbreviations used in title 401, chapter 59	06/06/96	01/21/97	62 FR 2916
401 KAR 59:005	General provisions	12/01/82	12/04/86	51 FR 43742
401 KAR 59:010	New process operations	04/14/88	02/07/90	55 FR 4169
401 KAR 59:015	New indirect heat exchangers	01/07/81	03/22/83	48 FR 11945
401 KAR 59:020	New incinerators	01/07/81	07/12/82	47 FR 30059
401 KAR 59:046	Selected new petroleum refining processes and equipment	06/29/79	07/07/81	46 FR 40188
401 KAR 59:050	New storage vessels for petroleum Liquids	02/04/81	03/30/83	48 FR 13168
401 KAR 59:080	New kraft (sulfate) pulp mills	06/06/79	01/25/80	45 FR 6092
401 KAR 59:085	New sulfite pulp mills	06/06/79	07/12/82	47 FR 30059
401 KAR 59:090	New ethylene producing plants	06/06/79	07/12/82	47 FR 30059
401 KAR 59:095	New oil-effluent water separators	06/06/79	08/07/81	46 FR 40188
401 KAR 59:101	New bulk gasoline plants	09/28/94	06/28/96	61 FR 33674
401 KAR 59:105	New process gas steams	04/07/82	03/22/83	48 FR 11945
401 KAR 59:174	Stage II controls at gasoline dispensing facilities	01/12/98	12/08/98	63 FR 67586
401 KAR 59:175	New service stations	02/08/93	06/23/94	59 FR 32343
401 KAR 59:185	New solvent metal cleaning equipment	06/24/92	06/23/94	59 FR 32343
401 KAR 59:190	New insulation of magnet wire operations	06/24/92	06/23/94	59 FR 32343
401 KAR 59:210	New fabric, vinyl and paper surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 59:212	New graphic arts facilities using rotogravure and flexography	06/24/92	06/23/94	59 FR 32343
401 KAR 59:214	New factory surface coating operations of flat wood paneling	06/24/92	06/23/94	59 FR 32343
401 KAR 59:225	New miscellaneous metal parts and products surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 59:230	New synthesized pharmaceutical product manufacturing operations	06/24/92	06/23/94	59 FR 32343
401 KAR 59:235	New pneumatic rubber tire manufacturing plants	02/04/81	03/30/83	48 FR 12168
401 KAR 59:240	New perchloroethylene dry cleaning systems	06/24/92	06/23/94	59 FR 32343
401 KAR 59:315	Specific new sources	06/24/92	06/23/94	59 FR 32343
	Chapter 61 Existing Source Standards			
401 KAR 61:001	Definitions & abbreviations of terms used in 401KAR chapter 61	06/06/96	06/19/97	62 FR 2916
401 KAR 61:005	General provisions	12/01/82	05/04/89	54 FR 19169

EPA-APPROVED KENTUCKY REGULATIONS FOR KENTUCKY—Continued

Regulation	Title/subject	State effective date	EPA approval date	Federal Register Notice
401 KAR 61:010	Existing incinerators	06/06/79	05/04/89	54 FR 19169
401 KAR 61:015	Existing indirect heat exchangers	04/01/84	04/02/96	61 FR 14489
401 KAR 61:020	Existing process operations	04/14/88	02/07/90	55 FR 4169
401 KAR 61:025	Existing kraft (sulfate) pulp mills	06/06/79	05/26/82	47 FR 22955
401 KAR 61:030	Existing sulfuric acid plants	06/06/79	03/22/83	48 FR 11945
401 KAR 61:035	Existing process gas streams	04/07/82	03/22/83	48 FR 11945
401 KAR 61:040	Existing ethylene producing plants	06/06/79	01/25/80	45 FR 6092
401 KAR 61:045	Existing oil-effluent water separators	06/29/79	08/07/81	46 FR 40188
401 KAR 61:050	Existing storage vessels for petroleum liquids	06/24/92	06/23/94	59 FR 32345
401 KAR 61:055	Existing loading facilities at bulk gasoline terminals	08/24/82	03/30/83	48 FR 13168
401 KAR 61:056	Existing bulk gasoline plants	09/28/94	06/28/96	61 FR 33674
401 KAR 61:060	Existing sources using organic solvents	06/29/79	01/25/80	45 FR 6092
401 KAR 61:065	Existing nitric acid plants	06/06/79	06/12/82	47 FR 30059
401 KAR 61:070	Existing ferroalloy production facilities	06/06/79	05/03/84	49 FR 18833
401 KAR 61:075	Steel plants and foundries using existing electric arc furnaces	12/01/82	05/04/89	54 FR 19169
401 KAR 61:080	Steel plants and using existing basic oxygen process furnaces	04/01/84	05/04/89	54 FR 19169
401 KAR 61:085	Existing service stations	02/08/93	06/23/94	59 FR 32343
401 KAR 61:090	Existing automobile and light-duty surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:095	Existing solvent metal cleaning equipment	06/24/92	06/23/94	59 FR 32343
401 KAR 61:100	Existing insulation of magnet wire operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:105	Existing metal furniture coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:110	Existing large appliance surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:120	Existing fabric, vinyl and paper surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:122	Existing graphic arts facilities using rotogravure and flexography	06/24/92	06/23/94	59 FR 32343
401 KAR 61:124	Existing factory surface coating operations of flat wood paneling	06/24/92	06/23/94	59 FR 32343
401 KAR 61:125	Existing can surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:130	Existing coil surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:132	Existing miscellaneous metal parts and products surface coating operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:135	Selected existing pertroleum refining processes and equipment	06/29/79	01/25/80	45 FR 6092
401 KAR 61:137	Leaks from existing petroleum refinery equipment	06/24/92	06/23/94	59 FR 32343
401 KAR 61:140	Existing by-product coke manufacturing plants	09/04/86	01/08/88	53 FR 501
401 KAR 61:145	Existing petroleum refineries	01/07/81	03/22/83	48 FR 11945
401 KAR 61:150	Existing synthesized pharmaceutical product manufacturing operations	06/24/92	06/23/94	59 FR 32343
401 KAR 61:155	Existing pneumatic rubber tire manufacturing plants	06/24/92	06/23/94	59 FR 32343
401 KAR 61:160	Existing perchloroethylene dry cleaning systems	06/24/92	06/23/94	59 FR 32343
401 KAR 61:165	Existing primary aluminum reduction plants	06/04/85	12/02/86	51 FR 43395
401 KAR 61:170	Existing blast furnace casthouses	04/14/88	02/07/90	55 FR 4169
401 KAR 61:175	Leaks from existing synthetic organic chemical and polymer manufacturing equipment.	06/24/92	06/23/94	59 FR 32343
	Chapter 63 General Standards of Performance			
401 KAR 63:001	Definitions & abbreviations of terms used in 401 KAR chapter 63	06/06/96	01/01/97	62 FR 2916
401 KAR 63:005	Open burning	01/12/98	12/08/98	63 FR 67586
401 KAR 63:010	Fugitive emissions	06/06/79	07/12/82	47 FR 30059
401 KAR 63:015	Flares	06/06/79	12/24/80	45 FR 84999
401 KAR 63:020	Potentially hazardous matter or toxic substances	06/06/79	12/24/80	45 FR 84999
401 KAR 63:025	Asphalt paving operations	06/24/92	06/23/94	59 FR 32343
401 KAR 63:031	Leaks from gasoline tank trunks	02/08/93	06/23/94	59 FR 32343
	Chapter 65 Mobile Source Related Emissions			
401 KAR 65:001	Definitions & abbreviations of terms used in 401 KAR chapter 65	06/19/96	01/21/97	62 FR 2916
401 KAR 65:005	Liquefied petroleum gas carburetion systems	06/06/79	01/25/80	45 FR 6092
401 KAR 65:010	Vehicle emission control programs	01/12/98	12/08/98	63 FR 67586

(d) EPA-approved source specific requirements.

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
Bubble action at Kentucky Utilities Green River Plant.	N/A	12/01/80	06/15/81	46 FR 31260
Bubble action at Corning Glassworks	N/A	05/18/81	10/29/81	46 FR 53408
Bubble action at National Distillers Company's, Old Crow Plant.	N/A	12/24/80	09/14/81	46 FR 45610
Bubble action at General Electric in Louisville	N/A	08/07/81	01/12/82	47 FR 1291

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
Bubble action at Borden Chemical CO. in Jefferson CO.	N/A	03/05/82	05/11/82	47 FR 20125
Variance for seven perchloroethylene dry cleaners.	N/A	08/04/82	05/02/83	48 FR 19176
Variance for two dry cleaners	N/A	01/27/83	05/05/83	48 FR 20233
Variance for Jiffy and Hiland Dry Cleaners	N/A	04/25/84	04/18/85	50 FR 15421
TVA Paradise Permit	KDEPDAQ Permit 0–87–012	06/29/87	08/25/89	54 FR 35326
Opacity variance for boiler Units 1 and 2 of TVA's Paradise Steam Plant.	KDEPDAQ Permit 0–86–75	07/24/96	08/17/88	53 FR 30998
Operating Permits for nine presses at the Alcan Foil Products facility—Louisville.	APCDJC Permits 103–74, 104–74, 105–74, 103–74, 110–74, 111–74.	02/28/90	05/16/90	55 FR 20269
Operating Permit requiring VOC RACT for Calgon CO.	KYDEPDAQ Permit 0–94–020	11/17/94	05/24/95	60 FR 27411
Reynolds Metals Company	APCDJC Permits 103–74, 104–74, 016–74, 110–74, 111–74.	04/16/97	01/13/98	63 FR 1929

(e) EPA-approved nonregulatory provisions.

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	Federal Register Notice
1	1979 revisions for Part D requirements for ozone NAA	06/29/79	01/25/80	45 FR 6092
2	1979 revisions for Part D requirements for SO_2 NAA	06/29/79	10/31/80	45 FR 72153
3	1979 revisions for Part D requirements for total suspended particulate NAA	06/29/79	12/24/80	45 FR 84999
4	Corrections in 1979 ozone revisions required by conditional approval of 1/25/80	05/18/80	08/07/81	46 FR 40188
5	1979 Revisions for Part D requirements for the Jefferson CO NAA	06/29/79	08/07/81	46 FR 40186
6	Air Quality surveillance plan	11/15/79	11/16/81	46 FR 56198
7	Boone CO I/M ordinance and transportation control measures	11/19/80	11/30/81	46 FR 58080
8	Lead SIP	05/07/80	11/30/81	46 FR 58082
9	Miscellaneous non-Part D revisions	06/29/79	07/12/82	47 FR 30059
10	Corrections in 79 Part D revisions for SO_2 NAA Boyd CO	09/24/82	03/22/83	48 FR 13168
11	1982 Revisions to Part D Plan for the Jefferson CO ozone and CO NAA	02/09/83 06/15/83	10/09/84	49 FR 39547
12	Protection Visibility in Class I Areas	08/31/97	07/12/88	53 FR 26253
13	Maintenance Plan for Owensboro and Edmonson County areas	12/28/92	11/03/94	59 FR 55058
14	Maintenance Plan for Pudach Area	01/15/93	02/07/95	60 FR 38707
15	SBAP	07/15/93	06/19/95	60 FR 31915
16	Lexington Maintenance Plan	01/15/93	09/11/95	60 FR 47094
17	Ashland-Huntington Maintenance Plan	05/24/95	06/29/95	60 FR 33752
18	Maintenance Plan Revision for Owensboro & Edmonson CO	04/14/98	09/03/98	63 FR 46898
19	Northern Kentucky 15% Plan & I/M	09/11/98	12/08/98	63 FR 67591

[FR Doc. 99–13385 Filed 5–26–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 073–1073; FRL–6350–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Missouri State Implementation Plan (SIP). Full approval is contingent upon Missouri's submission of additional, enforceable control measures.

The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Missouri submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Missouri portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

In a separate **Federal Register** document published today, EPA is also conditionally approving a similar plan submitted by the Kansas Department of Health and Environment to address the Kansas portions of the ozone maintenance area.

EFFECTIVE DATE: This rule will be effective June 28, 1999.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas

66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Missouri Department of Natural Resources (MDNR) revised the ozone SIP for the Missouri portion of the Kansas City area to recognize the area's attainment status. EPA published final approval of the Missouri SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to David Shorr, MDNR Director, on January 31, 1996, EPA informed the MDNR of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the ozone standard on July 11, 12, and 13, 1995, at the Liberty monitoring site in Kansas City. The highest recorded value for each day was 0.128 ppm, 0.161 ppm, and 0.131 ppm, respectively. These exceedances, in combination with the measured exceedance of 0.128 ppm recorded on July 29, 1993, constitute a violation of the standard.

As a result of this violation, Missouri was required to implement the contingency measures identified in the approved SIP. In response to a request by Roger Randolph (Missouri Air Pollution Control Program Director) to William Spratlin (Air, RCRA, and Toxics Division Director), EPA stated in an August 17, 1995, letter that Missouri and Kansas could substitute other contingency measures for those in the approved SIP, provided that the substitute measures were submitted through the SIP revision process, were designed to achieve substantially equivalent emission reductions, and were implemented expeditiously to address the violation. It must be emphasized that this flexibility was extended to both Kansas and Missouri.

To address the short-term need to control emissions, Missouri promulgated an emergency rule to limit the summertime Reid Vapor Pressure (RVP) of gasoline sold within the KCMA to 7.2 pounds per square inch (psi) (10 CSR 10–2.330). The emergency rule was to expire on October 27, 1997. Prior to its expiration, the state promulgated a permanent regulation. The permanent rule was published in the Code of State Regulations (CSR) on September 30, 1997, and became effective October 30. On October 9, 1997, EPA published a rule, which conditionally approved the state emergency rule. The state fulfilled the requirements of the conditional approval by submitting a permanent Missouri rule on November 13, 1997. EPA published full approval of Missouri's permanent RVP rule on April 24, 1998 (63 FR 20318). The approval became effective on May 24, 1998.

To address the longer-term need to reduce VOC and nitrogen oxides (NO_X) emissions, the Mid-America Regional Council's Air Quality Forum (AQF), comprised of representatives from local governments, business, health, and environmental organizations, agreed to examine various alternative control strategies and recommend a suite of viable measures to Missouri and Kansas. The AQF recommended: (1) expanding public education efforts; (2) low RVP gasoline; (3) motor vehicle I/M; (4) seasonal no-fare public transit; (5) a voluntary clean fuel fleets program; and (6) additional transportation control measures. The AQF also recommended a group of supplemental measures aimed at reducing ozone levels. The emissions reductions associated with the voluntary measures, specifically clean fuel fleets and transportation control, cannot be quantified due to their voluntary nature.

The MDNR presented a maintenance SIP, with the AQF recommendations, to the Missouri Air Conservation Commission (MACC) on June 24, 1997. At that time, the MACC recommended inclusion of a more timely and less politically sensitive control measure in place of the I/M provision. As a result, on October 7, 1997, the AQF recommended the implementation of a reformulated gasoline (RFG) program in the KCMA. In response, Missouri has committed to pursuing, among other options, petitioning EPA to require the sale of RFG in the KCMA under the provisions of the Federal RFG program.

The final state submittal provides for continued monitoring, emissions inventory updates, a summertime RVP limit, and several programs for which emissions reductions cannot be quantified, including completion of a stationary source study, voluntary clean fuel fleets, seasonal low-fare transit, air quality conscious land use planning, and bicycle and pedestrian friendly transportation planning. In addition, the revised plan contains commitments to adopt either the Federal RFG Program, a state fuel regulation, or a Stage II regulation.

If violations continue to occur after implementation of the above measures, the state will adopt further regulations as necessary, selected from a list including, but not limited to, Stage II vapor recovery, enhanced I/M, emissions offsets from new or modified sources, and mandatory clean fuel fleets.

According to state estimates, limiting the summertime RVP of gasoline to 7.2 psi achieves VOC emissions reductions of only 4.0 tons per day. As such, additional reductions are necessary to provide for reductions substantially equivalent to those (8.4 tons per day) obtainable by implementing the contingency measures approved in the 1992 maintenance plan SIP. The implementation of an RFG or equivalent emission reduction program is therefore critical to meeting Missouri's obligation to achieve the reductions called for in the maintenance plan.

II. Evaluation Criteria

To evaluate the maintenance plan revision, EPA referred to requirements of section 175A of the Act. EPA also reviewed guidance issued specifically to address applicable procedures for handling redesignation requests, including maintenance plan provisions entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, to EPA Regional Division Directors, dated September 4, 1992. In addition, EPA reviewed the maintenance plan for evidence that the substitute control measures provide for emissions reductions which are substantially equivalent to those approved in the 1992 SIP, pursuant to guidance given in the August 17, 1995, letter, from William Spratlin to Roger Randolph. Finally, EPA evaluated the revised maintenance plan with respect to the ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS'' from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators.

III. Review of Submittal

According to the September 4, 1992, memo from John Calcagni regarding ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' a maintenance plan must provide for maintenance of the ozone NAAQS for at least ten years after redesignation. Section 175A of the CAA defines the general framework of a maintenance plan. The Calcagni memo identifies the following list of core provisions necessary to ensure maintenance of the ozone NAAQS: emission inventory, maintenance demonstration (including control measures), air monitoring network, verification of continued attainment, and a contingency plan. Missouri's revised maintenance plan adequately addresses each of the required core measures as detailed in EPA's January 26, 1999, proposed rule (64 FR 3901).

IV. Response to Comments

The American Petroleum Institute (API) submitted written comments regarding the Agency's January 26, 1999, notice of proposed rulemaking (64 FR 3901). API's comments and EPA's responses are discussed below.

API stated that despite EPA's September 29, 1998, rule which allows former nonattainment areas to opt in to the Federal RFG program, EPA does not have the authority to allow Missouri to opt in for the Kansas City area. API contends that section 211(k)(6) of the CAA authorizes opt-ins for currently classified nonattainment areas, and does not allow attainment areas to opt in. API also attached its comments on the proposal for the September 1998 rule. API stated that the rule is contrary to the plain language of the Act, and is currently being challenged in the Court of Appeals for the District of Columbia. Finally, API stated that Missouri and EPA ''should wait until the court rules on EPA's rule before moving forward with an effort to opt the Kansas City area into the RFG program.'' Response: EPA's authority to promulgate the underlying opt-in rule is not at issue in this action. EPA fully responded to comments regarding the agency's authority to promulgate the revisions to the opt-in rule in the September 29, 1998, rulemaking, and the issues raised in that rulemaking are not raised in today's action on the KCMA maintenance plan revisions. The rule is in effect, notwithstanding the pending petition for review. In addition, this conditional approval of the revised maintenance plan will not necessarily result in Missouri opting into the RFG program. As described above, Missouri could fulfill the condition by adopting and submitting appropriate alternative regulations which ensure that VOC emissions are reduced by an amount that is substantially equivalent to that required under the 1992 SIP.

When Missouri submits a SIP revision to comply with the condition of this approval, EPA will act on that submission through notice-and-comment rulemaking. At that time, EPA will consider comments on what action it should take on the specific alternative selected by Missouri.

V. Conclusion

In today's document, EPA conditionally approves Missouri's 1998 revisions to the Kansas City SIP for control of ozone. This includes the VOC control measures described above, the emission reduction credits identified by the state, and the commitment to implement the additional reductions as expeditiously as practicable.

Full approval of the SIP is conditioned upon receipt of one of the following: (1) a letter from the Governor of Missouri requesting that EPA require the sale of Federal RFG within the Missouri portion of the KCMA; (2) an alternative state fuel regulation; or (3) a regulation requiring Stage II vapor recovery systems at retail gasoline stations. If the state fails to submit one of the above, the conditional approval converts to a disapproval one year from the effective date of the final rule conditionally approving the state's 1998 submittal.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments; a summary of the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local, or tribal governments. This rule does not impose any enforceable duties on these entities. The rule merely approves submissions made by the state, and establishes a schedule for submitting additional measures. However, the schedule is not judicially enforceable. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 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 E.O. 12866, and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The 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. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Also, EPA will evaluate the RFA implications of any requirements which may be established by subsequent state submissions in response to the conditional approval when EPA takes rulemaking action on those submissions. Therefore, because the Federal SIP approval does not create any new requirements, 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 CAA, preparation of flexibility analyses would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect the applicability of state requirements. Moreover, EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, I certify that this conditional approval will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

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 annual costs to state, local, or tribal governments in the aggregate, or to the 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 annual 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 preexisting requirements under state or local law, and imposes no new requirements. The schedule established by the conditional approval is not judicially enforceable, and any subsequent state submissions to meet the conditions will be analyzed at that time to determine applicability of the Unfunded Mandates Act. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. In addition, Section 203 does not apply to this action because it affects only the state of Kansas, which is not a small government.

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

H. Petitions for Judicial Review

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 July 26, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 20, 1999.

William Rice,

Acting Regional Administrator, Region VII.

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. Section 52.1319 is added to read as follows:

§ 52.1319 Identification of plan—Conditional approval.

(a) Elements of the maintenance plan revision to the State Implementation Plan (SIP) submitted by the Governor's designee on March 23, 1998, which address contingency measures for the Kansas City Ozone Maintenance Area are conditionally approved. This includes a commitment to implement the additional reductions as expeditiously as practicable.

(b) Full approval of the SIP is conditioned upon receipt of one of the following by June 28, 1999: a letter from the Governor of Missouri requesting that EPA require the sale of Federal reformulated gasoline within the Missouri portion of the KCMA beginning April 15, 2000; an equivalent alternative state fuel regulation; or a regulation requiring Stage II vapor recovery systems at retail gasoline stations in the Missouri portion of the KCMA. If the state fails to submit one of the above requirements within the time specified, the conditional approval automatically converts to a disapproval without further regulatory action.

[FR Doc. 99–13381 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 072–1072; FRL–6350–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Kansas State Implementation Plan (SIP). Full approval is contingent upon Kansas' submission of additional, enforceable control measures.

The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Kansas submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Kansas portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

In a separate **Federal Register** document published today, EPA is also conditionally approving a similar plan submitted by the Missouri Department of Natural Resources (MDNR) to address the Missouri portions of the ozone maintenance area.

EFFECTIVE DATE: This rule will be effective June 28, 1999.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Kansas Department of Health and Environment (KDHE) revised the ozone SIP for the Kansas portion of the Kansas City area to recognize the area's attainment status. EPA published final approval of the Kansas SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to James J. O'Connell, KDHE Secretary, on January 31, 1996, EPA informed the KDHE of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the ozone standard on July 11, 12, and 13, 1995, at the Liberty monitoring site in Kansas City. The highest recorded value for each day was 0.128 ppm, 0.161 ppm, and 0.131 ppm, respectively. These exceedances, in combination with the measured exceedance of 0.128 ppm recorded on July 29, 1993, constitute a violation of the standard.

As a result of this violation, Kansas was required to implement the contingency measures identified in the approved SIP. However, in response to a request by Roger Randolph (Missouri Air Pollution Control Program Director) to William Spratlin (Air, RCRA, and Toxics Division Director), EPA stated in an August 17, 1995, letter that Missouri and Kansas could substitute other

contingency measures for those in the approved SIP, provided that the substitute measures were submitted through the SIP revision process, were designed to achieve substantially equivalent emission reductions, and were implemented expeditiously to address the violation. It must be emphasized that this flexibility was extended to both Kansas and Missouri.

To address the short-term need to control emissions, Kansas promulgated a rule to limit the Reid Vapor Pressure (RVP) of the gasoline sold during the summer months in the KCMA to 7.2 pounds per square inch (psi) (K.A.R. 28–19–79). This regulation became effective May 2, 1997. EPA published final approval of Kansas' RVP rule on July 7, 1997 (62 FR 36212). The approval became effective on August 6, 1997.

To address the longer-term need to reduce VOC and nitrogen oxides (NO_X) emissions, the Mid-America Regional Council's Air Quality Forum (AQF), comprised of representatives from local governments, business, health, and environmental organizations, agreed to examine various alternative control strategies and recommend a suite of viable measures to Missouri and Kansas. The AQF recommended: (1) expanding public education efforts; (2) low RVP gasoline; (3) motor vehicle I/M, (4) seasonal no-fare public transit; (5) a voluntary clean fuel fleets program; and (6) additional transportation control measures. The AQF also recommended a group of supplemental measures aimed at reducing ozone levels. The emissions reductions associated with the voluntary measures, specifically clean fuel fleets and transportation control, cannot be quantified due to their voluntary nature.

While Kansas was developing its plan revisions, the MDNR presented a maintenance SIP, with the AQF recommendations, to the Missouri Air Conservation Commission (MACC) on June 24, 1997. At that time, the MACC recommended inclusion of a more timely and less politically sensitive control measure in place of the I/M provision. As a result, on October 7, 1997, the AQF recommended the implementation of a reformulated gasoline (RFG) program in the KCMA. In response, Kansas intends to include RFG as a control measure option, which, if selected, would be in place prior to the beginning of the 2001 ozone season. Kansas reserves the option to use gasoline blends other than the Federal RFG blend or other equivalent measures, provided their use achieves similar VOC and NO_X emission reductions.

The final state submittal includes an emissions inventory; the two creditable control strategies—7.2 RVP gasoline, RFG; additional unquantifiable measures including voluntary clean fuel fleets and seasonal low-fare transit; continued monitoring; verification of continued attainment; and a contingency plan.

According to state estimates, limiting the summertime RVP of gasoline to 7.2 psi achieves VOC emissions reductions of only 4.0 tons per day. As such, additional reductions are necessary to provide for reductions substantially equivalent to those (8.4 tons per day) obtainable by implementing the contingency measures approved in the 1992 maintenance plan SIP. The implementation of an RFG or equivalent emission reduction program is therefore critical to meeting Missouri's obligation to achieve the reductions called for in the maintenance plan.

II. Evaluation Criteria

To evaluate the maintenance plan revision, EPA referred to requirements of section 175A of the Act. EPA also reviewed guidance issued specifically to address applicable procedures for handling redesignation requests, including maintenance plan provisions entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, to EPA Regional Division Directors, dated September 4, 1992. In addition, EPA reviewed the revised maintenance plan for evidence that the substitute control measures provide for emissions reductions which are substantially equivalent to those approved in the 1992 SIP, pursuant to guidance given in the August 17, 1995, letter, from William Spratlin to Roger Randolph. Finally, EPA evaluated the revised maintenance plan with respect to the ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS'' from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators.

III. Review of Submittal

According to the September 4, 1992, memo from John Calcagni regarding ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' a maintenance plan must provide for maintenance of the ozone NAAQS for at least ten years after redesignation. Section 175A of the CAA defines the general framework of a maintenance plan. The Calcagni memo identifies the following list of core provisions necessary to ensure maintenance of the ozone NAAQS: emissions inventory, maintenance demonstration (including control measures), air monitoring network, verification of continued attainment, and a contingency plan. Kansas' revised maintenance plan adequately addresses each of the required core measures as detailed in EPA's January 26, 1999, proposed rule (64 FR 3896).

IV. Response to Comments

The KDHE and the American Petroleum Institute (API) submitted written comments regarding the Agency's January 26, 1999, notice of proposed rulemaking (64 FR 3896). These comments and EPA's responses are discussed below.

KDHE

Comment: In section VI, Proposed Action, of the **Federal Register** document, EPA proposes to establish a deadline of one year from the effective date of the final conditional rule within which Kansas is to submit one of the options upon which final approval is conditioned. EPA stated it was seeking comment on whether a shorter deadline should be established. Due to the length of time required to fully evaluate the listed alternatives, develop draft regulations, ensure effective public participation, provide the required public notice, hold public hearings and respond to public comments, adopt the necessary rules, and develop and submit the SIP revision to EPA, the state of Kansas submits that a shorter time period would be inappropriate. Any lesser period would have the primary impact of limiting public involvement to the legal minimum. For the reasons specified and to ensure a SIP revision which accomplishes its intended purpose with the thorough involvement of all stakeholders, Kansas requests that EPA not shorten the deadline in its final rulemaking.

Response: Pursuant to section 110(k)(4) of the CAA, the Administrator may approve a SIP revision based on a commitment of the state to adopt specific enforceable measures by a date certain, but not later than one year after the approval of the revised SIP. In consideration of the state's concerns and having received no comments requesting that the statutory time frame be shortened, EPA has determined that a one-year deadline for meeting the condition is appropriate. Kansas must meet the conditions set forth in this rule within one year of its effective date.

Comment: Kansas wishes to point out that much of the planning referred to in section I, Background, of the **Federal Register** document (64 FR 3896) was

conducted prior to the Western portion of Missouri being included in the NO_X SIP call. The ramifications of this unexpected turn of events relating to control strategies and timing need to be fully explored to ensure effective control strategies are developed to address ozone in Kansas City.

Response: EPA agrees that much of the planning occurred prior to promulgation of the NO_X SIP call which requires substantial NO_X reductions in the western portion of Missouri; however, these reductions will not be fully realized until mid 2002. As such, the control measures in the amended plan will provide for critical air quality improvements during the interim. In addition, these control measures, as explained previously, are a substitute for control measures previously required to be implemented, and they are needed regardless of the outcome of future planning activities. EPA's review of the measures is limited to a determination that they will achieve emission reductions and equivalent to those from the preexisting measures, and that they will be implemented expeditiously.

Comment: Finally, even though EPA states that the 1996 through 1998 data demonstrating attainment with the 1-hour standard do not relieve Kansas of the need to implement RFG or one of the other conditional contingency measures, Kansas would remind EPA that 7.2 RVP gasoline has been required in the Kansas City area in response to the 1995 1-hour violation, that the Kansas City area has demonstrated compliance with the 1-hour standard as of 1998, that the 1-hour standard has been revoked in other areas which have demonstrated compliance with the 1-hour standard during that same period, and those areas are free to concentrate on attaining the new 8-hour standard. The Kansas City area now needs to close the books on the 1-hour standard and, with the rest of the country, move forward and concentrate on meeting the new 8-hour standard.

Response: The issue of the potential for revocation of the 1-hour standard in the KCMA is not the subject of this action. In 1992, Kansas submitted and EPA approved a maintenance plan pursuant to section 175A(a) of the CAA. This plan was to provide for maintenance of the 1-hour NAAQS for ozone for ten years following the redesignation of the KCMA from nonattainment to attainment. As required by section 175A(d)of the Act, the approved plan provided for the implementation of specific contingency measures to promptly correct any violation that occurred after the redesignation of the area as an attainment area. These measures were designed to achieve a minimum VOC reduction of 8.4 tons per day. A violation of the standard was recorded in 1995, triggering the implementation of these measures. A second violation was recorded in 1997, the first year that 7.2 RVP gasoline was required in the Kansas City area. This action conditionally approves amendments to the plan to ensure that the required reductions are achieved. As explained previously, Kansas is obligated to address implementation of contingency measures which have previously been triggered with respect to the 1-hour standard.

API

API stated that despite EPA's September 29, 1998, rule which allows former nonattainment areas to opt in to the Federal RFG program, EPA does not have the authority to allow Kansas to opt in for the Kansas City area. API contends that section 211(k)(6) of the CAA authorizes opt-ins for currently classified nonattainment areas, and does not allow attainment areas to opt in. API also submitted its comments on the proposal for the September 1998 rule. API stated that the rule is contrary to the plain language of the Act, and is currently being challenged in the Court of Appeals for the District of Columbia. Finally, API stated that Kansas and EPA ''should wait until the court rules on EPA's rule before moving forward with an effort to opt the Kansas City area into the RFG program.''

Response: EPA's authority to promulgate the underlying opt-in rule is not at issue in this action. EPA fully responded to comments regarding the agency's authority to promulgate the revisions to the opt-in rule in the September 29, 1998, rulemaking, and the issues raised in that rulemaking are not raised in today's action on the KCMA maintenance plan revisions. The rule is in effect, notwithstanding the pending petition for review. In addition, this conditional approval of the revised maintenance plan will not necessarily result in Kansas opting into the RFG program. Kansas could fulfill the condition by adopting and submitting appropriate alternative regulations which ensure that VOC emissions are reduced by an amount that is substantially equivalent to that required under the 1992 SIP.

When Kansas submits a SIP revision to comply with the condition of this approval, EPA will act on that submission through notice-and-comment rulemaking. At that time, EPA will consider comments on what action it should take on the specific alternative selected by Kansas.

V. Conclusion

In today's document, EPA conditionally approves Kansas' 1998 revisions to the Kansas City Ozone Maintenance Plan. This includes the VOC control measures described above, the associated emissions reductions, and the commitment to implement the additional reductions as expeditiously as practicable. Full approval of the SIP is conditioned upon receipt of one of the following within one year of final conditional approval: (1) a request from the Governor of Kansas to require the sale of Federal RFG within the Kansas portion of the KCMA; (2) adopted regulations implementing the contingency measures identified in the 1992 maintenance plan, i.e., Stage II Vapor Recovery or an Enhanced Inspection and Maintenance Program; or (3) any combination of adopted regulations that will achieve the minimum VOC reductions (8.4 tons per day) required by the contingency measures identified in the 1992 SIP. In the case of options 2 or 3, upon receipt of regulations implementing these provisions and a request to amend the maintenance plan accordingly, EPA will initiate a rulemaking on this subsequent revision. If the state fails to submit one of the above, the conditional approval converts to a disapproval one year from the effective date of the final rule conditionally approving the state's 1998 submittal.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If

EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments; a summary of the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local, or tribal governments. This rule does not impose any enforceable duties on these entities. The rule merely approves submissions made by the state, and establishes a schedule for submitting additional measures. However, the schedule is not judicially enforceable. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The 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. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Also, EPA will evaluate the RFA implications of any requirements which may be established by subsequent state submissions in response to the conditional approval, when EPA takes rulemaking action on those submissions. Therefore, because the Federal SIP approval does not create any new requirements, 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 CAA, preparation of flexibility analyses would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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).

If the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect the applicability of state requirements. Moreover, EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, I certify that this conditional approval will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

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 annual costs to state, local, or tribal governments in the aggregate, or to the 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 annual 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 preexisting requirements under state or local law, and imposes no new requirements. The schedule established by the conditional approval is not judicially enforceable, and any subsequent state submissions to meet the conditions will be analyzed at that time to determine applicability of the Unfunded Mandates Act. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. In addition, Section 203 does not apply to this action because it affects only the state of Kansas, which is not a small government.

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

H. Petitions for Judicial Review

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 July 26, 1999. 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, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 20, 1999.

William Rice,

Acting Regional Administrator, Region VII.

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 R—Kansas

2. Section 52.869 is added to read as follows:

§ 52.869 Identification of plan—Conditional approval.

Elements of the maintenance plan revision to the State Implementation Plan (SIP) submitted by the Governor's designee on May 21, 1998, which address contingency measures for the Kansas City Ozone Maintenance Area are conditionally approved. This includes a commitment to implement the additional reductions as expeditiously as practicable. Full approval of the SIP is conditioned upon receipt of one of the following by June 28, 1999: a request from the Governor of Kansas to require the sale of Federal reformulated gasoline within the Kansas portion of the Kansas City Maintenance Area; adopted regulations implementing the contingency measures identified in the 1992 maintenance plan, i.e., Stage II Vapor Recovery or an Enhanced Inspection and Maintenance Program; or any combination of adopted regulations that will achieve the minimum volatile organic compound reductions (8.4 tons per day) required by the contingency measures identified in the 1992 SIP. In the case of options 2 or 3, upon receipt of regulations implementing these provisions and a request to amend the maintenance plan accordingly, EPA will initiate a rulemaking on this subsequent revision. If the state fails to submit one of the above requirements within the time specified, the conditional approval automatically converts to a disapproval without further regulatory action.

[FR Doc. 99–13382 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.950427117–9138–08; I.D.051999A]

RIN 0648–AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

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

ACTION: Temporary rule.

SUMMARY: NMFS is closing for 2 weeks all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR part 80), bounded by 33° N. lat. and 34° N. lat. within the leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an NMFS' approved escape opening large enough to exclude leatherbacks. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 21, 1999 through 11:59 p.m. (local time) on June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570–5312, or Barbara A. Schroeder (301) 713–1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS, laboratory by phone (228) 762–4591 or by fax (228) 769–8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the leatherback conservation zone, NMFS is required to close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to 50 CFR 223.206(d)(2)(iv)(A) through (C).

NMFS announced a 2-week closure on May 7, 1999 (64 FR 25460, May 12, 1999), affecting the portion of the leatherback conservation zone between 32° N. lat. and 33° N. lat. The boundaries of the closure correspond to those of shrimp fishery statistical zone

32. The closure was based on high concentrations of leatherbacks off the South Carolina coast, observed during aerial surveys conducted on April 27 and May 3. During those surveys, the highest concentrations were noted in waters off the southern half of the state between Hilton Head Island, SC, and at Kiawah Island, SC. After a May 11 aerial survey reconfirmed the continued high abundance of leatherback turtles in that closed zone, NMFS extended the closure for an additional week, through May 28, 1999 (64 FR 27206, May 19, 1999). That survey also showed that the leatherbacks were continuing to move slowly northward, as expected. Concentrations of leatherbacks were noted between Murrels Inlet and Myrtle Beach.

An aerial survey conducted on May 14, 1999, along a portion of the South Carolina coast sighted 10 leatherback turtles over an approximately 15 nm (28 km) trackline, beginning at approximately 33°23' N. lat., 079°07' W. long. (offshore Pawleys Island, SC) and ending at approximately 33°35' N. lat., 078°57' W. long. (offshore Surfside Beach, SC). A repeated survey along the same trackline documented 12 leatherbacks on May 18, 1999. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), is closing, for 2 weeks, all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 33° N. lat., within the leatherback conservation zone, to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an NMFS' approved escape opening large enough to exclude leatherbacks, as set forth at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. The boundaries of the closed zone correspond to those of shrimp fishery statistical zone 33.

This action does not affect the current closure in zone 32. The May 18 aerial survey sighted 19 leatherbacks along two tracklines greater than 50 nm (92.6 km) parallel to the South Carolina coast, south of 33° N. lat. NMFS is therefore taking no action at this time to extend the current closure beyond May 28, 1999, nor to re-open the area closure.

NMFS will continue to monitor the the Georgia and South Carolina coasts for the presence of leatherback sea turtles through weekly aerial surveys. Continued high abundance of leatherbacks greater than 10 turtles per 50 nm (92.6 km) of trackline will require further closure action, as per 50 CFR 223.206(d)(2)(iv)(B). If leatherback sightings fall to 5 or fewer turtles per 50 nm (92.6 km) of trackline in repeated surveys, then the AA may modify the closure or re-open the area, as per 50 CFR 223.206(d)(4)(ii). NMFS will consult with the appropriate state natural resource officials in the closed area in making a determination to modify this closure or re-open the area, as per 50 CFR 223.206(d)(4)(iv). Fishermen should monitor NOAA weather radio for announcements.

The regulations at 50 CFR 223.206(d)(2)(iv) state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call Charles Oravetz (see **FURTHER INFORMATION CONTACT**) for updated area closure information.

Classification

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

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and from drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to be provided with prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore, notice and opportunity to comment on this action were provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, the additional closure has been announced on the NOAA weather radio, in newspapers, and other media, allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 21, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–13394 Filed 5–21–99; 3:40 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 102
Thursday, May 27, 1999

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

Food and Nutrition Service

7 CFR Part 274

[Amendment No. 345]

RIN 0584–AC44

Food Stamp Program, Regulatory Review: Electronic Benefit Transfer (EBT) Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This rule proposes to implement the Electronic Benefit Transfer provisions found in Section 825 of this law which affect the Food Stamp Program. These provisions are meant to encourage implementation of Electronic Benefit Transfer systems to replace food stamp coupons.

DATES: Comments on this rulemaking must be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mr. Cohen at (703) 305–0232. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, the Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Food Stamp Program.

Paperwork Reduction Act

This rule does not contain additional reporting or recordkeeping requirements other than those that have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB control numbers 0584–0083 and 0505–0008.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, the Food and Nutrition Service 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, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

On April 1, 1992, the Department issued a final rule establishing standards for operation of the Food Stamp Electronic Benefit Transfer System (EBT) as an alternative to coupons. Those regulations were promulgated in accordance with section 1729 of the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Leland Act) (title XVII, Pub. L. 101–624) as part of a package of items aimed at improving the efficiency and effectiveness of program operations. With the exception of some minor corrections issued September 29, 1992,

these regulations have not been amended since their promulgation though other proposed changes are being considered through separate publications.

FNS is proposing this rule to implement the provisions of section 825 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) on August 22, 1996, which amends Section 7 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2016(i)) (the Act). The specific provisions are discussed below.

Mandate EBT

The Leland Act established EBT systems as operational issuance systems to provide food stamp benefits to eligible households. The PRWORA goes further by mandating that each State agency implement EBT for issuance of food stamp benefits no later than October 1, 2002, unless the Secretary provides a waiver for a State agency that faces unusual barriers to implementing an EBT system. Each State agency is encouraged to implement an EBT system as soon as practicable.

In order to meet the requirement, State agencies must be issuing EBT benefits for food stamps statewide by October 1, 2002. Currently, all but a very few State agencies have submitted planning documents for the eventual implementation of EBT systems. Therefore, we expect that only a small pool of States or territories will be forced to take action as a result of this provision or request a waiver from the Secretary for timely implementation of EBT under the law. This rule proposes adding language in Section 274.12 (a), to mandate that each State agency implement an EBT system by the specified date unless a waiver is granted to the State. Any State agency that is not granted a waiver and is not fully implemented by October 1, 2002, will be out of compliance with these rules and may be subject to disallowance of administrative funds pursuant to the provisions of 7 CFR 276.4.

Off-Line Technology

7 CFR 274.12 established rules for the approval, implementation and operation of on-line EBT systems for food stamps. The Leland Act did not authorize the utilization of off-line EBT technology in which a self-contained benefit access device, such as a microprocessor card, commonly known as a smartcard, is used to access benefits. Off-line systems could only be approved under the waiver authority of section 17 of the Act (7 U.S.C. 2026) as a demonstration project.

The term ''on-line'' is deleted from the Act by section 825 of PRWORA, thereby eliminating the requirement that EBT systems be on-line systems. This rule proposes to amend 7 CFR 274.3 to define an off-line EBT system as a benefit delivery system in which a benefit allotment can be stored on a card and used to purchase authorized items at a point-of-sale terminal without real-time authorization from a central processor.

The system architecture and functionality of off-line payment systems differs from that of on-line applications. As such, some of the technical standards codified in the existing rule may require revisions to relax or broaden language, supplement stated standards, or introduce new standards and requirements. Because industry standards for off-line electronic payment systems are still evolving, the Department is not in the position to propose standards specific to off-line systems in this rulemaking. However, we are interested in soliciting comments from the public at this time to provide input into our decision regarding what changes we should propose in the future as standards for off-line systems. We will also be looking at the experience gained in off-line demonstration projects in Ohio and Wyoming as we assess the need for further standards.

In the meantime, this rule proposes the regulations be amended to simply allow for the implementation of off-line EBT systems by adding language to that effect. Pending publication of new off-line standards, proposals from State agencies to implement off-line systems will be evaluated on a case-by-case basis. The Department will base approvals on the on-line standards currently in our rules where they apply, on the most current off-line industry information available and on knowledge gained from off-line EBT systems operating at the time.

Cost Neutrality

This section proposes several changes to the regulations. First, we are removing the requirement that EBT systems be cost neutral in any one year, since the requirement that cost neutrality be measured on an annual basis was removed from the Act by PRWORA. Section 7(i)(2)(A) of the Act prior to the PRWORA stated that EBT systems must be cost neutral to the Federal government. The regulations require State agencies to calculate a coupon issuance cap and at 7 CFR 274.12(c)(3)(vi)(B) require that State agencies be responsible for the post-EBT implementation issuance costs that exceed the coupon issuance cap in any one year. Section 825 of PRWORA amends the Act to strike the language, ''in any 1 year'', effectively providing more flexibility in the determination and tracking of cost neutrality. The regulations are being modified to reflect this change. The State agencies will, however, still be required to submit an issuance cost cap, and the Federal Government will still be required to verify the cost cap submitted.

National Cap. As a discretionary change, the Department is also proposing to amend the regulations at 7 CFR 274.12(c)(3)(i) to establish a national issuance cost cap figure. The Department would calculate the national issuance cost cap based on the State issuance costs that have been approved by FNS and on the direct Federal costs that are attributable to coupon issuance. The rule would allow State agencies to use the National issuance cost cap instead of conducting their own cap analysis. State agencies would still have the option of calculating their own cost cap if they wanted to do so. The current regulations at 7 CFR 274.12(c)(3)(i) through (vi), which specifically delineate the cost neutrality guidelines and the procedures for calculating the State coupon issuance cap, have been a repeated source of misunderstanding for States. Therefore, in the interest of clarifying these provisions, this section has been redrafted and reorganized to be more explicit.

Prospective Certification. Finally, the Department is proposing a second discretionary provision to assess whether State agencies have met Federal cost neutrality requirements through prospective certification at the time the cap is submitted, eliminating the need to track operational costs throughout the life of the system. Currently, at the end of the EBT contract period, the State agencies are required to compare the actual EBT operational costs for the life of the EBT system to the coupon issuance cost cap to see that the actual costs do not exceed the cap. Prospective cost neutrality certification for EBT would follow the same approach that has been used for State eligibility systems, whereby the EBT cost projections are compared to a coupon issuance cap before system implementation to assess the cost neutrality of the system. If the comparison demonstrates the proposed system will cost less than the coupon system, no further measurement will be required for the life of the EBT system unless there is a substantial increase in system costs due to contract re-negotiation or some other change. Any such cost increase will require prior

approval and submittal of an Implementation APD Update. Cost neutrality will be reassessed for any significant cost increases during system life, and for any subsequent EBT systems the State agency may develop and implement. This method will significantly simplify the process used to determine a State's EBT system cost neutrality.

Differentiate Food Stamp Eligible Items

The PRWORA requires, to the extent practicable, the establishment of system approval standards for measures that permit a system to differentiate items of food that may be bought using food stamps from items that may not. This resulted in a study to determine to what extent optical scanner technology, the only technology currently able to differentiate between eligible and non-eligible items, could be used in tandem with EBT to meet this requirement. A report of the study was delivered to Congress in August 1998, explaining there must also be a linkage of the scanner to an electronic cash register at the point-of-sale (POS) so that the information from scanned and eligible items can be passed to the EBT system. Technically, this is feasible in about 95 percent of all authorized retailers. However, this would be cost prohibitive, requiring the introduction of hardware and software in all Food Stamp authorized stores at an estimated initial cost of $4.60 billion, of which $3.30 billion is for the estimated 68 percent of program authorized stores that do not currently scan. To maintain this functionality, an additional $752 million annually is estimated. Based on this information, no regulatory change is being proposed.

Replacement Card Fee

The PRWORA amends the Act to allow a State agency to collect a charge for replacement of an EBT card by reducing the monthly allotment of the household receiving the replacement card. Prior to the enactment of the PRWORA, the EBT regulations allowed for approval of a card replacement fee; however, the fee could not be collected from a household's food stamp benefit allotment. This rule proposes to amend current regulations at 7 CFR 274.12 (f)(5)(v) to add this provision.

State agencies with currently operating EBT systems need to inform FNS if they intend to institute a process for collection of replacement card fees from client households' allotments. If a State agency is in the process of developing an EBT system and intends to charge households for replacement cards, they must include the procedure for collection of the fees in their EBT system design documents. FNS will need to know how replacement card fees will be accounted for by the State agencies.

If FNS is already sharing in the cost for replacement cards with the State agency through an existing contract, the amount collected must be reported as program income on the SF–269 report. Alternatively, the State agency's EBT processor may handle collection of the replacement card fee and reduce the billing to the State by the amount collected. At the State agency's request, FNS can establish a special authorization number in the FNS retailer database to be utilized by the State agency for the purpose of reconciling the funds drawn for the replacement fees.

Photograph on EBT Card

The PRWORA specifies that State agencies may require that EBT cards contain a photograph of one or more members of a household. This does not change what is allowable under current regulations. However, the language in the PRWORA further specifies that the State agency must establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may utilize the EBT card if a photo is used. Any State agency wishing to use photos on the EBT cards should specify in their plans how they intend to address this concern of the Agency. This rule proposes to amend the current regulations accordingly by adding paragraph (iv) at CFR 274.12(h)(6).

Anti-Tying Restrictions

Section 825 of the PRWORA includes the following provision: A company may not sell or provide EBT services, or fix or vary the consideration for EBT services, on the condition or requirement that the customer obtain some additional point-of sale service from the company or an affiliate of that company; or not obtain some additional point-of-sale service from a competitor of the company or competitor of any affiliate of the company. The law also states that the Department must consult with the Board of Governors of the Federal Reserve System before promulgating any regulations regarding this provision. After consultation with the Federal Reserve, the Department has determined that this provision serves no purpose in the EBT environment.

It is the Department's understanding that this anti-tying provision was intended to prevent large EBT contractors that might underprice their commercial service offerings from squeezing smaller banks out of the point-of-sale marketplace. Some had hoped this language would diminish the competitive advantage of a State agency's chosen EBT contractor to provide these other commercial point-of-sale services at retail locations for which they were already providing EBT services. However, the legislative language states that the cost of EBT services cannot be varied, rather than the cost of commercial services cannot be varied. In fact, there is already no way to tie EBT services to receiving additional commercial point-of-sale services when EBT is provided by the Government at no cost to authorized retailers. Anti-tying prevents the conditioning of any service on the purchase of another service or product. Since EBT is non-conditioned, the Federal Reserve agrees that the existing anti-tying laws are not relevant in the EBT environment. Therefore, the Department is not proposing any regulation change at this time, but does welcome any comments on the anti-tying provision.

System Compatibility

PRWORA included that it is the sense of Congress that States operate EBT systems in a manner that is compatible with one another. The Department is not proposing any changes since the current regulations already require system compatibility. EBT regulations at 7 CFR 274.12(h) Performance and Technical Standards, require that States ensure EBT systems comply with point of sale (POS) technical standards as established by the American National Standards Institute (ANSI) or International Organization for Standardization (ISO), where applicable. FNS has further worked to develop a technical specification for EBT food stamp transactions from a POS by bringing together a Technical Specification Committee comprised of EBT processors in association with the Electronic Funds Transfer Association (EFTA) EBT Operating Rules Committee. The purpose of creating this specification was to provide a standard POS/EBT system interface that retailers could use in multi-state retail operations and to allow for interstate transactions.

Also, 7 CFR 274.12(h)(5) Third Party Processors, requires State agencies to afford retailers the opportunity to use third party processors and to provide interface specifications and certification standards in order for the third party processors to participate in the EBT system. Because most third party processors operate in more than one State, we are supporting compatibility

by requiring access for third party processors. FNS also supports compatibility by working with the National Automated Clearing House Association (NACHA) EBT Council on issues related to interoperability including the recent implementation of a test to determine the volume and cost of interstate transactions.

Regulation E

Section 907 of the PRWORA amends Section 904 of the Electronic Funds Transfer Act, commonly known as Regulation E, to exempt from coverage government EBT accounts held for recipients of State-administered needs-tested assistance programs, including the Food Stamp Program. This provision does not amend the Food Stamp Act and therefore, there is no change proposed to our current regulations.

Implementation

The Department is proposing that the provisions of this rulemaking become effective no later than 30 days after publication of the final rule. State agencies may implement the provisions anytime after publication, however, EBT systems must be in place no later than October 1, 2002, unless the State is granted a waiver by the Department.

List of Subjects in 7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, 7 CFR part 274 is proposed to be amended as follows:

PART 274—ISSUANCE AND USE OF COUPONS

1. The authority citation for 7 CFR part 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 274.3, a new paragraph (a)(5) is added to read as follows:

§ 274.3 Issuance systems.

(a) * * *

(5) An off-line Electronic Benefit Transfer system in which benefit allotments can be stored on a card and used to purchase authorized items at a point-of-sale terminal without real-time authorization from a central processor.

* * * * *

3. In § 274.12:

a. Paragraph (a) is revised.

b. Paragraph (b)(1) is amended by removing the second sentence and removing the word ''However,'' from the third sentence.

c. Paragraphs (c)(3)(i) through (c)(3)(vi) are removed.

d. Paragraphs (e), (f), (g), (h), (i), (j), (k), (l), and (m) are redesignated as paragraphs (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively, and a new paragraph (e) is added.

e. Newly redesignated paragraph (g)(5)(v) is revised.

f. In newly redesignated paragraph (i), a new paragraph (i)(6)(iv) is added.

The revisions and additions read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

(a) General. This section establishes rules for the approval, implementation and operation of Electronic Benefit Transfer (EBT) systems for the Food Stamp Program as an alternative to issuing food stamp coupons. State agencies must implement EBT systems no later than October 1, 2002, unless the Secretary provides a waiver for a State agency that faces unusual barriers to implementing an EBT system. In general, these rules apply to both on-line and off-line EBT systems, unless stated otherwise herein, or unless FNS determines otherwise for off-line systems during the system planning and development process.

* * * * *

(e) Cost Neutrality. The State agency must operate its EBT system in a cost-neutral manner, whereby the Federal cost of issuing benefits in the State after implementation of the EBT system does not exceed the Federal cost of delivering coupon benefits under the previous coupon issuance system. The amount up to which the State agency may consider its EBT system cost neutral is defined by the coupon issuance cap. The issuance cost cap is expressed in terms of a cost per case month derived by dividing the annual total cost of issuance by the total number of households issued food stamp benefits during the year the costs were incurred. In determining its coupon issuance cap, the State agency shall use either the national issuance cap, as determined by FNS, or calculate a coupon issuance cap based on the State agency's statewide issuance costs under the current coupon issuance system.

(1) The National Coupon Issuance Cap is a case-month issuance amount, as calculated by FNS. The national issuance cost cap is based on nationwide Federal coupon issuance costs, as validated by FNS, and includes the issuance costs identified in paragraphs (e)(2)(i) and (e)(2)(ii) of this section. FNS will make the national cost cap figure available to State agencies who opt for this method of determining the cost neutrality of their EBT systems.

(2) A State Coupon Issuance Cap is based upon individual States' statewide coupon issuance costs, multiplied by the percentage of Federal financial participation, plus Federal-only coupon issuance costs. Such costs, to be represented as a cost per case-month, shall be calculated using State issuance costs for the four consecutive Federal fiscal quarters preceding the submission of the EBT Implementation APD. An alternative base period may be used with approval from FNS, if the State agency can demonstrate that the alternative period would be more accurate or other circumstances prevent the use of the required base period. A State agency may also request approval from FNS to develop coupon issuance caps based on costs from individual counties, selected project areas, or other subdivision of the State operating EBT which will then be combined into a blended statewide coupon issuance cap prior to statewide EBT implementation.

(i) State coupon issuance costs shall include, but not be limited to, direct allowable costs for personnel, fringe benefits, travel, equipment, supplies, contracts, construction and other direct costs associated with coupon issuance. Such costs may be direct charges to the State agency for Food Stamp Program administration that have been allocated from a larger cost pool to the Food Stamp Program and to the coupon issuance function. Indirect costs, defined as costs which are included in the State agency's indirect cost proposal and approved for cost charging through an indirect cost rate, shall not be included in determining the cap.

(ii) Federal coupon issuance costs associated with coupon issuance in the State agency that shall include:

(A) Costs for coupon printing, shipping, processing and reconciliation. The case-month figure associated with these costs is provided by FNS;

(B) Monthly mail issuance losses up to the tolerance limit approved by FNS;

(C) Monthly duplicate issuance losses, except for mail issuance losses, absorbed by FNS; and

(D) Allowable State coupon issuance costs multiplied by the applicable percentage rate of Federal financial participation.

(iii) The State agency shall provide narrative explanations and satisfactory supporting documentation to clarify each cost item and how it was calculated. When allocated costs are included in the coupon issuance cap, the State agency must provide a narrative explanation of how the charge was allocated to the Food Stamp Program and to coupon issuance. The allocation method must be objective,

demonstrate a reasonable cause and effect relationship between the type of cost and the basis for the allocation, and represent consistent application for all similar costs. If time studies are used as the basis for allocation of costs to issuance, FNS must approve the definition of issuance used in the instructions to study participants.

(iv) All issuance costs included in the coupon issuance cap are subject to validation by FNS prior to FNS approval. Validation entails the review of the State's accounting system and applicable source documentation to determine that the costs were actually incurred, were reasonable, were allocated properly to the Food Stamp Program and to the issuance functional category, and were reported to FNS on the standard financial Status Report (Form SF–269).

(3) The State agency should submit its coupon issuance cap or indicate it has opted to use the national coupon issuance cap as part of the Implementation APD process. The coupon issuance cap must be approved prior to implementation of the pilot, and shall be effective from the first date benefits are issued to households through the EBT system during the pilot project.

(4) Coupon Issuance Cap Inflation. Each State's approved issuance cap and the national cost cap will be adjusted each Federal fiscal year based on the percentage change in the most recently published Gross Domestic Product Implicit Price Deflator Index (GDP Price Deflator) calculated from the percentage change in the index between the first quarter of the current calendar year and the first quarter of the previous year, as published each June by the Bureau of Economic Analysis. FNS will compute the inflated cap for each State each year and provide the revised cap to State agencies annually.

(5) Calculating Cost Neutrality. The determination of cost neutrality will be assessed on a prospective basis; that is, FNS will make a determination prior to system implementation whether the proposed EBT system will be cost neutral based on a comparison of the coupon issuance costs to the projected costs of the EBT system as proposed in the Implementation APD. The State Agency may choose how they determine coupon issuance costs; either according to paragraph (e)(1) or paragraph (e)(2) of this section. After approval of its coupon cost cap and prior to system implementation, the State agency shall submit to FNS an analysis comparing the coupon issuance costs to the projected EBT costs over the seven years of system operation or other specified period of time defining the life of the system. The State shall project the statewide issuance costs including EBT system design, development, start-up and operations through the defined life of the system. For cost per case month comparisons, the projection will include the same caseload estimates as the coupon cap calculation. Statewide cost projections for issuance costs after EBT implementation must include all of the direct EBT costs, and projections for all categories of allocated costs which were included in the coupon cost cap calculation using the same allocation methodology as in the cost cap calculation. The State agency may request approval to limit the issuance cost comparison for cost neutrality purposes to only the costs incurred for the area served by EBT and to not include residual coupon issuance costs; that is, costs associated with issuing coupons to recipients in areas not yet converted to EBT. Cost neutrality would then be measured by comparing the coupon issuance cap multiplied by the number of EBT cases to the EBT cost of operation. With the addition of each new area served by EBT, the State agency would then be required to recalculate a blended State cap figure, incorporating the coupon issuance costs of the newly added area with the previously approved issuance cap, for use in comparison to the EBT costs for the areas served by EBT. The projection shall include any costs allocated to an EBT cost pool if applicable.

(i) EBT planning costs are to be excluded from the cost neutrality assessment and shall include costs attributed to the preparation of the Planning APD, all activities leading to the development of the EBT implementation plan and the completion of the documentation contained in the FNS approved Implementation APD.

(ii) The cost neutrality assessment must include system design and development and start-up costs . For assigning the costs to start-up, the start-up period for the EBT project shall begin from the approval date of the Implementation APD or with the ratification of a contract for EBT services, whichever is earlier and end with the first EBT benefit issuance in the pilot area.

(iii) The operations phase is defined as beginning with the first EBT issuance in the pilot area. The State agency shall identify the allowable EBT operational costs which include, as appropriate, but are not limited to: labor hours and costs by job category and by program for each unit, direct non-labor costs by program for each agency, vendor charges, if any, computer usage (CPU, disk storage, tapes, printing), the equipment amortization/lease and maintenance (including POS hardware and installation costs), telecommunications installations, recurring telecommunications costs, benefit card stock and equipment, supplies, printing and reproduction, travel, postage, automated clearinghouse charges, wire transfer fees and other such settlement fees, and other direct costs. Indirect costs, as defined in paragraph (e)(2)(i) of this section, shall not be included as EBT system operational costs.

(iv) For the purposes of claiming Federal financial participation in State capital expenditures and for the purposes of projecting the cost to EBT, costs for EBT equipment purchased directly by the State agency shall be charged from the time operations begin in accordance with § 277.18(i)(3) of this chapter and § 277.18, Appendix A of this chapter. Equipment costs shall include the cost of installation and shall be separate from those transaction costs identified in the EBT contract. Costs for EBT equipment purchased directly by the State agency shall be identified in the EBT system budget as a separate component, both for the pilot and the fully operational system and shall be applied to the issuance funding cap as amortized.

(6) FNS must review and approve the cost neutrality analysis submitted by the State.

(i) If the comparison demonstrates the proposed system will cost less than the coupon issuance system, no further measurement will be required for the life of the system unless there is a substantial increase in system costs requiring prior approval as described in § 277.18(c)(2)(ii)(C) of this chapter and the submittal of an Implementation APD Update as outlined in the FNS Handbook 901 (APD Handbook).

(ii) Any State agency that cannot show cost neutrality will be required to track EBT costs throughout the life of the system and reimburse FNS for any excess at the end of the defined system life.

(iii) Any subsequent EBT systems developed or implemented will require an updated cost neutrality assessment incorporating the revised costs of the new system.

* * * * *

(g) * * *

(5) * * *

(v) The State agency may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card, however the fee may not exceed the cost to

replace the card. If the State agency intends to collect the fee by reducing the monthly allotment, it must follow FNS reporting procedures for collecting program income. States agencies currently operating EBT systems must inform FNS of their proposed collection operations. States in the process of developing an EBT system must include the procedure for collection of the fee in their system design document. All plans must specify how the State agency intends to account for card replacement fees and include identification of the replacement threshold, frequency and circumstances in which the fee shall be applicable.

* * * * *

(i) * * *

(6) * * *

(iv) State agencies may require the use of a photograph of one or more household members on the card. If the State agency does require the EBT cards to contain a photo, it must establish procedures to ensure that all appropriate household members or authorized representatives are able to access benefits from the account as necessary.

* * * * *

Dated: May 17, 1999.

Shirley R. Watkins,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 99–13554 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–30–U

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket R–1038]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend its Regulation A to establish a special lending program under which Federal Reserve Banks will extend credit at a rate above the Federal Open Market Committee's targeted federal funds rate to eligible institutions to accommodate liquidity needs during the century date change period. Unlike adjustment credit, borrowers would not be required to seek credit elsewhere first, uses of funds would not be limited, and the loans could be outstanding for a considerable period.

DATES: Comments must be submitted on or before July 2, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1038, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: James A. Clouse, Chief, Monetary and Financial Market Analysis Section (202/452–3922), or William R. Nelson, Economist (202/452–3579), Division of Monetary Affairs; Oliver I. Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Counsel (202/452–3198), Legal Division. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board is requesting comment on proposed amendments to its Regulation A (12 CFR part 201), Extensions of Credit by Federal Reserve Banks, to provide an additional mechanism under which Federal Reserve Banks will make discount window credit available to depository institutions in the months surrounding the century date change. The Board expects that, with advance planning, depository institutions will be able to meet their liquidity needs during the century date change period relying on their usual sources of funds, including adjustment credit at the discount window. The Board recognizes, however, that uncertainty surrounds potential developments over the period. The proposed Special Liquidity Facility is intended to provide that an assured source of funds is available to relieve unusual liquidity pressures that depository institutions may experience.

Background

Depository institutions and their customers are now making plans to meet possible credit needs in the period surrounding the century date change. Uncertainty exists, however, as to the extent of demands and the cost and availability of credit in the market during the year-end period. Furthermore, banks are handicapped in playing their traditional role as lenders to non-banks by the possibility that the banks themselves will be under some liquidity pressure at that time. Liquidity pressure could come from conversion of deposits to currency and shifting of credit demands to banks from markets. Moreover, the incidence of credit demands is extremely difficult to predict and could involve pressures on small or medium-sized depository institutions that are customarily suppliers of funds to larger institutions and markets and hence would not have well-established borrowing relationships.

To a considerable extent, Federal Reserve open market operations can meet liquidity demands in reserve markets, such as the large seasonal increase in demand for currency in November and December of each year. During the century date change period, however, demands for and supplies of reserves will be very difficult to predict. The unusual funding situations of institutions and uncertainty about the status of potential borrowers may disrupt the normal distribution of reserves and liquidity through markets. Volatility in the demand for reserves could be compounded by a drop in required reserve balances at the Reserve Banks as depository institutions increase vault cash holdings to meet potential customer demands.

Banking supervisors have urged depository institutions to make firm contingency plans for meeting unexpected liquidity demands during the century date change period. Supervisors have encouraged depository institutions to make the Federal Reserve's discount window part of those plans. Although borrowing through the usual adjustment credit facility of the discount window should be adequate to meet most unusual needs and alleviate possible pressures on money markets, in practice depository institutions have been reluctant in the past to take advantage of such credit. Moreover, adjustment credit requires borrowers to seek funds elsewhere first, limits uses of such credit, and is usually limited in duration.

Special Liquidity Facility

The proposed Special Liquidity Facility would make collateralized Federal Reserve Bank credit more freely available, albeit at an interest rate somewhat above depository institutions' normal cost of funds. By assuring the availability of Reserve Bank credit, the Facility should enable depository institutions and their customers to commit to meeting possible credit needs with greater confidence. The Facility

should also help to damp any tendency for money markets to tighten owing to transitory imbalances in the supply and demand of reserves.

Rate and Duration

Credit under the Special Liquidity Facility would be available from November 1, 1999, to April 7, 2000, at a spread over the Federal Open Market Committee's targeted federal funds rate. The Board tentatively proposes that the spread be set at 1.5 percentage points, but the Board specifically requests comment on whether the size of the proposed spread is appropriate. The Board would like the spread to be high enough to encourage institutions to continue to make private-sector arrangements to meet potential funding needs, but low enough to provide a reasonable backstop should, contrary to the Board's expectations, concerns about the century date change or the change itself begin to put strains on funding and credit markets. The Board also requests comment on how long the facility should be open, in particular whether it should begin earlier so that loans under the facility would be available as one means to fund the build-up in the vault cash inventories expected to occur in the early fall.

Depository institutions will not be expected to make portfolio adjustments to repay loans promptly. Special Liquidity Facility loans may be outstanding for a considerable period—until the program expires. This is in contrast to adjustment credit, which is generally expected to be repaid expeditiously. Institutions that anticipate a very short-term need for Federal Reserve credit (such as meeting reserve requirements on the last day of a maintenance period), including institutions that have loans outstanding under the Special Liquidity Facility, could continue to obtain regular adjustment credit at the basic discount rate.

Collateral

The collateral requirements for Special Liquidity Facility credit would be identical to those for other discount window loans, all of which must be fully collateralized to the satisfaction of the Reserve Bank. Borrowing institutions must have pre-positioned collateral (as well as have the necessary authorizations signed) to have access to credit the day it is requested. Reserve Banks accept a wide range of loans and securities as collateral, but unless the collateral is traded in active markets, such as a Treasury or Agency security, Reserve Banks must have time to determine the lendable value.

Eligible Borrowers

Although many normal discount window conditions would not apply, credit under the Special Liquidity Facility would remain discretionary. The Special Liquidity Facility would be available only to depository institutions in sound financial condition. For example, it would not be available to depository institutions that are undercapitalized or critically undercapitalized. Reserve Bank discounts for and advances to such institutions are limited by § 201.4 of Regulation A. That section implements amendments to section 10B of the Federal Reserve Act,[1] which discourages the Reserve Banks from making relatively long-term loans to inadequately capitalized institutions. Similarly, in the case of credit unions, credit under the Special Liquidity Facility would be available only to institutions with a net worth ratio (as defined in section 216 of the Federal Credit Union Act)[2] of at least six percent, which qualifies a credit union as adequately capitalized under that Act.[3] With respect to branches and agencies of foreign banks, credit under the Special Liquidity Facility would be available only to a branch or agency that is subject to reserve requirements under Regulation D and where the borrowing bank meets the equivalent of the Basle Capital Accord's minimum standards for capital and is otherwise considered to be in sound financial condition.

Even where an institution meets these minimum requirements, a Reserve Bank may determine that the institution is not in sound financial condition and therefore is ineligible to borrow under the Special Liquidity Facility. As a part of making such determinations, the Board or Reserve Bank may discuss an institution's financial condition or other matters related to the loan with its U.S. supervisor or, in the case of a foreign bank, its home country supervisor or central bank.

Exhaustion of Alternative Liquidity Sources

Although lending under the Special Liquidity Facility would continue to be discretionary, credit under the Facility would not be subject to the Regulation A requirement, applicable to adjustment credit, that the borrower exhaust alternative liquidity sources before coming to the discount window. This requirement is intended to assure that Reserve Banks are the lenders of last resort and that discount window adjustment credit, available at a subsidy to the market, does not substitute for or interfere with market mechanisms for distributing liquidity. In the case of Special Liquidity Facility credit, the elevated rate is expected to be sufficient to discourage most use except when market mechanisms are under stress.

Permissible Uses of Funds

Similarly, credit under the Special Liquidity Facility is not subject to restrictions on use as is adjustment credit, which is intended to be used for temporary shortfalls of funds. Depository institutions could use Special Liquidity Facility credit to meet funding shortfalls caused, for example, by customers drawing down deposits to obtain currency, but they could also use such credit to make loans or investments.

Monitoring

To assure compliance with the conditions for adjustment credit, Reserve Banks monitor the activities of borrowing institutions, especially when adjustment credit is outstanding longer than overnight or when the institution has become a relatively frequent borrower. Depository institutions supply balance sheet data to discount window officers to facilitate this process. Such monitoring and reporting usually would not occur under the Special Liquidity Facility. Supervisory authorities may need to assess the condition of the borrowing institution if the reliance on Reserve Bank credit is accompanied by signs of financial trouble. Borrowing by itself, however, will not be taken as an indication of underlying problems and will not trigger intensified oversight.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that proposed amendments to Regulation A will not have a significant adverse economic impact on a substantial number of small entities. The rule would not impose any additional requirements on entities affected by the regulation but rather would make an additional lending facility available to meet depository institutions' liquidity needs related to the century date change.

[1] 12 U.S.C. 347b(b).

[2] 12 U.S.C. 1790d(o)(3).

[3] Section 216 of the Federal Credit Union Act will take effect on August 7, 2000, except for special provisions regarding risk-based net worth requirements, which take effect on January 1, 2001. The National Credit Union Administration has initiated rule-making procedures to adopt rules to implement the Act, but no final rules are yet in place. *See* 64 FR 27090, May 18, 1999.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is proposed to be amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. In § 201.2, new paragraphs (j) and (k) are added to read as follows:

§ 201.2 Definitions.

* * * * *

(j) *Eligible institution* means—

(1) A depository institution as defined in paragraphs (c)(1) (i) through (iii), (v), or (vi) of this section that is in sound financial condition and is not subject to the borrowing limitations in § 201.4(a) and (b); or

(2) A depository institution that is a credit union defined in paragraph (c)(1)(iv) of this section that is in sound financial condition and has a net worth ratio as defined in section 216 of the Federal Credit Union Act (12 U.S.C. 1790d(o)(3)) of not less than 6 percent.

(k) *Targeted federal funds rate* means the federal funds rate targeted by the Federal Open Market Committee.

3. In § 201.3, new paragraph (e) is added to read as follows:

§ 201.3 Availability and terms.

* * * * *

(e) *Special liquidity facility for century date change.* Federal Reserve Banks may extend credit between and including November 1, 1999, and April 7, 2000, under a special liquidity facility to ease liquidity pressures during the century date change period. This type of credit is available only to eligible institutions. This type of credit is granted at a special rate above the basic discount rate and other market rates for funds, is available for the entire length of the period, and is not subject to the conditions regarding specific use or exhaustion of other liquidity sources as is adjustment credit under paragraph (a) of this section.

4. In § 201.7, the introductory text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 201.7 Branches and agencies.

* * * * *

(b) This part applies to a United States branch or agency of a foreign bank in the same manner and to the same extent as an eligible institution if the foreign bank is in sound financial condition and holds capital equivalent to the minimum levels that would be required under the Capital Accord of the Basle Committee on Banking Supervision.

5. In § 201.52, a new paragraph (c) is added to read as follows:

§ 201.52 Extended credit for depository institutions.

* * * * *

(c) *Special liquidity facility.* The rate for credit extended to eligible institutions under the special liquidity facility provisions in § 201.3(e) is equal to the targeted federal funds rate plus 1.5 percentage points on each day the credit is outstanding.

By order of the Board of Governors of the Federal Reserve System, May 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–13551 Filed 5–26–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 135

Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability for public comment.

SUMMARY: This document announces the availability of and requests comments on a revised proposed Technical Standard Order (TSO) C151, Terrain Awareness and Warning System (TAWS). The proposed TSO prescribes the minimum operational performance standards that TAWS must meet to be identified with the applicable TSO marking.

DATES: Comments submitted must be received on or before July 9, 1999.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Michelle Swearingen, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3817, FAX: 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this document by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments must be marked ''Comments to TSO C151.'' Comments received on the proposed technical standard order may be examined, both before and after the closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA is developing a new technical standard order, TSO–C151, Terrain Awareness and Warning System. This TSO will prescribe the minimum operational performance standards that TAWS equipment must meet to be identified with the TSO–C151 Class A or Class B marking. This is the second opportunity for the public and the industry to review and comment upon the proposed TSO before the FAA publishes it as a final document. The FAA is giving this second opportunity for the following two reasons.

First, the FAA has revised significantly the proposed TSO as a result of public comments. On November 4, 1998, the FAA published in the **Federal Register** (63 FR 59494, November 4, 1998) a notice of availability for public comment that announced the availability of and requested comments on proposed TSO–C151, Terrain Awareness and Warning System. In response to the TSO notice of availability, commenters submitted a large number of suggested changes, approximately 300, to the proposed TSO. In trying to be as flexible and as accommodating as technically feasible, the FAA accepted and included most of the suggested changes. As a result, the current proposed version is significantly different than what was originally proposed with the initial notice of availability.

Second, the FAA has included two classes of TAWS equipment in the current version of the proposed TSO. On August 26, 1998, the FAA published in the **Federal Register** (63 FR 45628, August 26, 1998) a notice of proposed rulemaking (NPRM). That NPRM proposed to amend 14 CFR part 91, General Operating and Flight Rules, by adding new rules that prohibit the operation of certain airplanes unless those airplanes are equipped with a TAWS that meets the requirements of the proposed TSO–C151. In response to the NPRM, the FAA received over 250 comments. Having reviewed the comments, the FAA is making changes to its proposed rule based on those comments. One significant change is to develop two classes of TAWS equipment, known as Class A and Class B. TSO–C151 Class A equipment will be required for all turbine powered airplanes operated under 14 CFR part 121 and for turbine powered airplanes configured for 10 or more passenger seating operating under 14 CFR part 135. TSO–C151 Class B equipment will be the minimum requirement for turbine powered airplanes configured with 6 or more passenger seats operating under 14 CFR part 91 and for turbine powered airplanes configured with 6 to 9 passenger seating operating under 14 CFR part 135. The proposed TSO–C151 has been revised to include the airworthiness requirements for both Class A and Class B equipment. The original proposed TSO associated with the initial notice of availability did not include two classes of TAWS equipment.

Both classes of equipment—Class A and Class B—include the TAWS features of comparing airplane position information to an on board terrain database then providing appropriate caution and warning alerts if necessary. The Class A equipment includes, in addition to the TAWS features, ground proximity warning system (GPWS) functions. There currently are International Civil Aviation Organizations (ICAO) and FAA (14 CFR parts 121 & 135) requirements for all part 121 and certain part 135 airplanes to carry GPWS. Therefore Class A equipment includes both TAWS and GPWS features. The existing 14 CFR parts 121 and 135 rules for GPWS are being revised to make them compatible with the proposed new 14 CFR part 91 TAWS rule. Class B equipment is the basic TAWS equipment and is required as minimum equipment by the new FAR Part 91 TAWS rule. Class A equipment, which includes both TAWS and GPWS, is required by the revised part 121 and part 135 rules for those airplanes that currently must carry GPWS. The FAA is requiring one level of safety for TAWS while still maintaining existing ICAO and FAA GPWS requirements for turbine-powered commercial airplanes. This TSO will be the means to obtain FAA approval of TAWS product(s).

How To Obtain Copies

A copy of the revised proposed TSO–C151 may be obtained via Internet (http://www.faa.gov/avr/air/airhome.htm) or on requests from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The revised proposed TSO references several RTCA, Inc. documents that contain specific requirements related to the TSO. RTCA Document No. DO–161A, ''Minimum Performance Standards—Airborne Ground Proximity Warning Equipment,'' dated May 27, 1976; DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997; DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated December 1, 1992; and DO–200A, ''Preparation, Verification and Distribution of User-Selectable Navigation Data Bases,'' dated November 28, 1998, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 22036. Copies of the RTCA documents may be inspected at the location specified under **ADDRESSES.** However, those documents are copyrighted and may not be copied without the written consent of RTCA, Inc.

Issued in Washington, DC, on May 19, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–13233 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–082–FOR]

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM) Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia regulations concerning definitions of ''area mining operations'' and ''mountaintop mining operations;'' variances from approximate original contour in steep slope areas; and emergency spillway designs. The amendment is intended to improve the operational efficiency of the State program, and to make the regulations consistent with the counterpart Federal regulations.

DATES: Written comments must be received on or before 4:00 p.m. on June 28, 1999. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on June 21, 1999. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on June 11, 1999.

ADDRESSES: Your written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the proposed amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515.

In addition, copies of the proposed amendment are available for inspection during regular business hours at the following locations.

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956.) You can find later actions concerning the West Virginia program and previous amendments codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated May 5, 1999 (Administrative Record Number WV–1127), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to the West Virginia program pursuant to 30 CFR 732.17. The amendment concerns changes to the West Virginia regulations made by the State legislature in House Bill 2533. In addition, the WVDEP requested that OSM reconsider its disapproval of parts of CSR 38–2–3.12 (concerning subsidence control plan) and 38–2–16.2 (concerning subsidence control, surface owner protection) and remove the corresponding required regulatory program amendments specified in the February 9, 1999, Federal Register (64 FR 6201–6218) in light of the April 27, 1999, United States Court of Appeals decision on Case No. 98–5320.

The amendments submitted by the WVDEP are identified below.

1. *CSR 38–2–2.11 Definition of ''Area Mining Operation*.'' In this new definition, ''Area Mining Operation'' is defined to mean a mining operation where all disturbed areas are restored to approximate original contour (AOC) unless the operation is located in steep slope areas and a steep slope AOC variance in accordance with subsection 14.12 of this rule has been approved. An area mining operation may remove all or part of coal seam(s) in the upper fraction of a mountain, ridge, or bill. However, it is not classified as a mountaintop operation for one or more of the following reasons:

2.11.a. The site may be restored to AOC; or

2.11.b. The entire coal seam may not be removed.

2. *CSR 38–2–2.78 Definition of ''Mountaintop Mining Operation*.'' In this new definition, ''Mountaintop Mining Operation'' is defined to mean a mining operation that removes an entire coal seam or seam(s) in an upper fraction of a mountain, ridge, or hill and creating a level plateau or a gently rolling contour with no highwalls. The approved postmining land use must be in accordance with 22–3–13(c)(3).

3. *CSR 38–2–3.12 Subsidence control plan*.'' Subdivision 3.12.a.2. is amended to change the words ''could contaminate, diminish or * * *'' to read ''could be contaminated, diminish or * * *.''

The second paragraph of subdivision 3.12.a.2. is amended by adding the word ''building'' to read as follows: ''A survey of the condition of all non-commercial building or residential * * *.''

Subdivision 3.12.a.2.B. is amended to change the words ''Non-commercial building as used in this section means, other than * * *'' to read ''Non-commercial building as used in this section means any building, other than * * *.''

4. *CSR 38–2–3.32.b. Findings-permit issuance*. In the third paragraph, the name of the database ''Surface Mining Information System'' is deleted and replaced by ''Environmental Resources Information Network.''

5. *CSR 38–2–2.35 Construction tolerance*. This subsection is amended by adding the title ''Construction Tolerance.''

6. *CSR 38–2–14.12.a.1. Variance from approximate original contour requirements*. This provision is amended by adding the following language: ''and the land after reclamation is suitable for industrial, commercial, residential or public use (including recreational facilities).'' As amended the provision reads as follows.

''The permit area is located on steep slopes as defined in subdivision 14.8.a. of this rule and the land after reclamation is suitable for industrial, commercial, residential or public use (including recreational facilities).

7. *CSR 38–2–16.2. Surface owner protection*. Subdivision 38–2–16.2.c. is amended by adding the word ''damage'' after the word ''Material'' at the beginning of the first sentence. In addition, the words ''or facility'' are added after the word ''structure'' and before the word ''from'' near the end of the first sentence.

Subdivision 38–2–16.2.c.3. is amended to delete the word ''occurs'' after the words ''subsidence damage'' and before the words ''to any.''

8. *CSR 38–2–22.4.g. Primary and emergency spillway design*. The Subdivision is amended by changing the probable maximum precipitation event for impoundments meeting the size or other criteria of 30 CFR 77.216(a) from a 24-hour storm event to a ''six (6)'' hour storm event.

III. Public Comment Procedures

We are seeking comments, in accordance with the provisions of 30 CFR 732.17(h), on the proposed amendment submitted by the State of West Virginia by letter dated May 5, 1999. Your comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this notice and include explanations in support of your recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to comment at the public hearing, you should contact the person listed above at **FOR FURTHER INFORMATION CONTACT** by close of business on June 11, 1999. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

If you file a written statement at the same time that you request a hearing, the statement will greatly assist the person who will make a transcript of the hearing.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather then a public hearing, may be held. Persons wishing to meet with us to discuss the proposed amendments, may request a meeting at the Charleston Field Office by contacting the person listed above at **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations

listed above at **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

If you are disabled and have need for a special accommodation to attend a public hearing, please contact the person listed above at **FOR FURTHER INFORMATION CONTACT**.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determinations as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovermnetal relations, Surface mining, Underground mining.

Dated: May 19, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc 99–13335 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 287

Defense Information Systems Agency (DISA) Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides guidance on the implementation of the FOIA program within the Defense Information and the Office of the Manager National Communications System. It was written to comply with the Electronic FOIA Amendments of 1996.

DATES: Comments must be received by July 26, 1999.

ADDRESSES: Forward comments to the Defense Information Systems Agency, Attention: RGC (FOIA Officer), 701 South Courthouse Road, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Ms. Robin M. Berger, 703–607–6515.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 287 is not a significant regulatory action. The rule does not:

(1) Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

This part would provide guidance on the implementation of the Freedom of Information Act Program within the Defense Information Systems Agency and the Office of the Manager, National Communications System (OMNCS). It was written to comply with the Freedom of Information Act, as amended by the Electric Freedom of Information Act amendments of 1996.

Public Law 96–51 1, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 287

Freedom of information.

Accordingly, 32 CFR part 287 is revised to read as follows:

PART 287—DEFENSE INFORMATION SYSTEMS AGENCY (DISA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.
287.1 Purpose.
287.2 Applicability.
287.3 Authority.
287.4 Duties of the FOIA officer.
287.5 Responsibilities.
287.6 Duties of the DITCO and the DTIC FOIA officers.
287.7 Fees.
287.8 Appeal rights.

287.9 Reports.
287.10 Questions.
287.11 ''For Official Use Only'' records.

Authority: 5 U.S.C. 552.

§ 287.1 Purpose.

This part assigns responsibilities for the Freedom of Information Act (FOIA) Program for DISA.

§ 287.2 Applicability.

This part applies to DISA and the Office of the Manager, National Communications System (OMNCS).

§ 287.3 Authority.

This part is published in accordance with the authority contained in 32 CFR part 286. It supplements 32 CFR part 286 to accommodate specific requirements of the DISA FOIA Program. However, 32 CFR part 286 takes precedence and shall be used for all issues not covered by this part.

§ 287.4 Duties of the FOIA officer.

The DISA FOIA Officer, located at DISA Headquarters, 701 S. Courthouse Road, Arlington, Virginia, is vested with the authority, within DISA, to release documentation for all requests of Agency records received by DISA directorates and field activities. The DISA FOIA Officer will:

(a) Make the materials described in paragraph C2.1. of DoD 5400.7–R available for public inspection and reproduction. A current index of this material will be maintained in accordance with paragraph C2.2 of DoD 5400.7–R.

(b) Establish education and training programs for all DISA employees who contribute to the DISA FOIA Program.

(c) Respond to all requests for records from private persons IAW DoD 5400.7–R whether the requests are received directly by DISA Headquarters or by DISA field activities. Coordinate proposed releases with the General Counsel in any case in which the release is, or may be, controversial. Coordinate all proposed denials with the General Counsel.

(d) Be the DISA principal point of contact for coordination with the Directorate for Freedom of Information and Security Review (DFOISR), Washington Headquarters Services reference FOIA issues.

(e) Ensure the cooperation of DISA with DFOISR in fulfilling the responsibilities of monitoring the FOIA Program.

(f) Coordinate cases of significance with DFOISR, after coordination with the General Counsel and with the approval of the Chief of Staff, when the issues raised are unusual, precedent setting, or otherwise require special attention or guidance.

(g) Advise DFOISR prior to the denial of a request or prior to an appeal when two or more DOD components are affected by the request for a particular record or when circumstances suggest a potential public controversy.

(h) Ensure completion of the annual reporting requirement contained in DoD 5400.7–R.

287.5 Responsibilities.

(a) *Deputy Directors, Headquarters DISA; Commanders and Chiefs of DISA Field Activities; and the Deputy Manager, NCS.* These individuals will furnish the FOIA Officer, when requested, with DISA documentary material, which qualifies as a record IAW DoD 5400.7–R, for the purpose of responding to FOIA requests.

(b) *Chief of Staff.* The Chief of Staff will, on behalf of the Director, DISA, respond to the corrective or disciplinary action recommended by the Merit Systems Protection Board for arbitrary or capricious withholding of records requested, pursuant to the Freedom of Information Act, by military members or civilian employees of DISA. (This will be coordinated with the General Counsel.)

(c) *General Counsel.* The General Counsel or, in his or her absence, the Deputy General Counsel, is vested with the authority to deny, in whole or in part, a FOIA request received by DISA. The General Counsel will:

(1) Make the decision to deny a record in whole or in part; to deny a fee category claim; to deny a request for waiver or reduction in fees; to deny a request to review an initial fee estimate; to deny a request for expedited processing; or to confirm that no records were located during the initial search IAW 5 U.S.C. 552, as supplemented by the guidance provided in DoD 5400.7–R.

(2) Inform the person denied the basis for the denial of the request and of his or her right to appeal the decision to the Director, DISA, via written correspondence.

(3) Review any appeal the public may consider adverse in nature and ensure that the basis for the determination by the Director, DISA, be in writing, state the reasons for the denial, and inform the requester of his or her right to a judicial review in the appropriate U.S. District Court.

(4) Arrange for the publication of this part in the **Federal Register**.

(d) Chief, Legal Counsel, Defense Information Technology Contracting Organization (DITCO). The Chief Legal Counsel, DITCO, or, in his or her absence, the Deputy Legal Counsel, DITCO, is vested with same authority and responsibilities, for DITCO, as stated in paragraph (c) of this section.

(e) Administrator, Defense Technical Information Center (DTIC). The Administrator, DTIC, is vested with the same authority and responsibilities, for DTIC, as stated in paragraph (c) of this section.

§ 287.6 Duties of the DITCO and the DTIC FOIA officers.

(a) DITCO FOIA officer. The DITCO FOIA Officer, located at 2300 East Drive, Scott AFB, IL 62225, is vested with the authority, within DITCO, to release documentation for all requests of records received by DITCO and its field activities, as stated in § 287.4(a), (b), and (c) and assist the DISA FOIA officer in carrying out the duties stated in § 287.4 (d) and (h).

(b) DTIC FOIA officer. The DTIC FOIA Officer, located at 8725 John J. Kingman Road, Suite 0944, Ft. Belvoir, VA 22060, is vested with the authority, within DTIC, to release documentation for all requests of records within DTIC, as stated in § 287.4 (a), (b), and (c) and assist the DISA FOIA officer in carrying out the duties stated in § 287.4 (d) and (h).

§ 287.7 Fees.

Fees charged to the requester are contained in DoD 5400.7–R.

§ 287.8 Appeal rights.

All appeals should be addressed to the Director, DISA, and be postmarked no later than 60 days after the date of the initial denial letter.

§ 287.8 Appeal rights.

All appeals should be addressed to the Director, DISA, and be postmarked no later than 60 days after the date of the initial denial letter.

§ 287.9 Reports.

An annual report will be furnished to the FOIA officer by the field activities by 15 October IAW DoD 5400.7–R.

§ 287.10 Questions.

Questions on both the substance and procedures of FOIA and the DISA implementation thereof should be addressed to the FOIA Officer by the most expeditious means possible, including telephone calls, faxes, and electronic mail. FOIA requests should be addressed as follows: Defense Information Systems Agency, 701 S. Courthouse Road, Arlington, VA 22204–2199, Attn: RGC. Calls should be made to (703) 607–6515. Faxed requests should be addressed to the FOIA Officer at (703) 607–4344. Electronic mail

requests should be addressed to bergerr@ncr.disa.mil.

§ 287.11 "For Official Use Only" records.

The designation "For Official Use Only" will be applied to documents and other material only as authorized by DoD 5400.7–R and DoD 5200.1–R, Information Security Program.

Dated: May 21, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–13442 Filed 5–26–99; 8:45 am]

BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–6350–8]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) and Ventura County Air Pollution Control District (Ventura County APCD)are the designated COAs. The intended effect of approving the OCS requirements for the above Districts, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed rule must be received on or before June 28, 1999.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XVII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XVI. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XVII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XVII, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by a local air pollution control agency and receipt of Notices of Intent under § 55.4. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rule submitted by Santa Barbara County APCD against

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revision applicable to OCS sources for which the Santa Barbara County APCD is designated as the COA:

Rule 102 Definitions (Adopted 1/21/99)

B. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the Ventura County APCD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)

2. *The following new rules were submitted:*

Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)[3]
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do 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. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, 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 annual 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

[3] Ventura County APCD Rule 36 is being incorporated into part 55 to the extent that it is rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act.

estimated annual 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 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.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 7, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F) and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b)(6) and (8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*:

Rule 102 Definitions (Adopted 1/21/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NOx) from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*:

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)

Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 4/15/97)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

* * * * *

[FR Doc. 99–13543 Filed 5–26–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

RIN 0917–AA02

Indian Child Protection and Family Violence Prevention Act Minimum Standards of Character

AGENCY: Indian Health Service, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Indian Health Service (IHS) is extending the comment period for the notice of proposed rulemaking implementing section 408 of the Indian Child Protection and Family Violence Prevention Act Minimum Standards of Character (Published March 25, 1999, 64 FR 14560) from May 24, 1999, to July 26, 1999, in response to tribal requests for more time to analyze the proposed rule and to prepare their comments.

DATES: Comments must be received on or before July 26, 1999.

ADDRESSES: Written comments may be sent to Betty J. Penn, Regulations Officer, Indian Health Service, Twinbrook Metro Plaza, Suite 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Comments will be made available for public inspection at

this address from 8:30 a.m. to 5:00 p.m., Monday–Friday.

FOR FURTHER INFORMATION CONTACT: Ramona Williams, Child Protection Coordinator, Office of Mental Health/Social Services, Indian Health Service, 5300 Homestead Road, N.E., Albuquerque, New Mexico 87110, (505) 248–4245. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 25, 1999, the IHS published proposed regulations to implement section 408 of Pub. L. 101–630, the Indian Child Protection and Family Violence Prevention Act. The Act requires that tribes or tribal organizations who receive funds under the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under these regulations. Comments have been received on behalf of a number of tribes requesting an extension of the comment period for the proposed regulation ranging from 30 days to 2 months. For example, some of the tribes are currently engaged in contract/compact negotiations and need additional time to fully study the proposed regulations and consult with their tribal councils before submitting written comments. Some tribes have already adopted their detailed policies on this subject and need time to compare the proposed regulations to their policies. The IHS has considered these requests and determined that an additional 60 days would accommodate the need for additional time and be consistent with its policy of consultation with tribes.

All comments received during the public comment period will be given full consideration in the development of the final regulations.

Dated: May 21, 1999.

Robert G. McSwain,

Acting Director.

[FR Doc. 99–13505 Filed 5–26–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE92

Endangered and Threatened Wildlife and Plants; Proposed Establishment of Nonessential Experimental Population Status for Sixteen Freshwater Mussels (Alabama Lampmussel, Birdwing Pearlymussel, Clubshell, Cracking Pearlymussel, Cumberland Bean Pearlymussel, Cumberlandian Combshell, Cumberland Monkeyface Pearlymussel, Dromedary Pearlymussel, Fine-Rayed Pigtoe, Oyster Mussel, Purple Cat's Paw Pearlymussel, Shiny Pigtoe, Tubercled-blossom Pearlymussel, Turgid-blossom Pearlymussel, Winged Mapleleaf Mussel, and Yellow-blossom Pearlymussel) and One Freshwater Snail (Anthony's Riversnail) in the Free-flowing Reach of the Tennessee River below the Wilson Dam, Colbert and Lauderdale Counties, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service; also, ''we'', ''us'', ''our'') proposes to reintroduce 16 federally listed endangered mussels (Alabama lampmussel (*Lampsilis virescens*), birdwing pearlymussel (*Conradilla caelata*), clubshell (*Pleurobema clava*), cracking pearlymussel (*Hemistena lata*), Cumberland bean pearlymussel (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface pearlymussel (*Quadrula intermedia*), dromedary pearlymussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), oyster mussel (*Epioblasma capsaeformis*), purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), shiny pigtoe (*Fusconaia cor*), tubercled-blossom pearlymussel (*Epioblasma torulosa torulosa*), turgid-blossom pearlymussel (*Epioblasma turgidula*), winged mapleleaf mussel (*Quadrula fragosa*), and yellow-blossom pearlymussel (*Epioblasma florentina florentina*)) and 1 federally listed endangered aquatic snail (Anthony's riversnail (*Athearnia anthonyi*)) into historic habitat in the free-flowing reach of the Tennessee River from about 1.4 river miles (RM) (2.2 kilometers [km]) below Wilson Dam to the backwaters of Pickwick Reservoir (RM 258.0 [412.8 km]) to (RM 246.0 [393.6 km]) in Colbert and Lauderdale counties, Alabama. These reintroduced populations are proposed to be classified as nonessential experimental populations (NEP) under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Based on the evaluation of species experts and the State, none of these species are currently known to exist in this river reach or its tributaries. Ongoing surveys conducted by the Tennessee Valley Authority (TVA) and the State of Alabama over the past 20 years have failed to locate any individuals of the species proposed for NEP status under this rule.

To ensure that any reintroduced species that move upstream to Wilson Dam or into the tributaries are covered by these NEP designations, we propose that the geographic boundaries of the NEPs extend from the base of the Wilson Dam (RM 259.4 [414.0 km]) to the backwaters of the Pickwick Reservoir (RM 246.0 [393.6 km]) and include the lower 5 RM (8 km) of all tributaries that enter the Wilson Dam tailwater. In the future, if any of the aforementioned mollusks are found upstream beyond the lower 5 RM (8 km) of these tributaries, the animals will be presumed to have come from the reintroduced NEP, and the boundaries of the NEP will be enlarged to include the entire range of the expanded population. No designation of critical habitat will be made for any of these NEPs. Additionally, we do not intend to change these NEPs from ''nonessential'' to ''essential'' or to ''threatened'' or ''endangered'' without the full cooperation of the State of Alabama and other affected parties within the NEP areas. These proposed reintroductions are recovery actions and part of a series of reintroductions and other recovery actions the Service, Federal and State agencies, and other partners are considering and conducting throughout the species' historic ranges. The only change to the NEPs we foresee would be elimination of the designations if the species are recovered and removed from the Act's protection. This proposed rule sets forth a plan for establishing the nonessential experimental population and provides for limited allowable legal take of the aforementioned mollusks within the defined NEP areas.

DATES: Comments from all interested parties must be submitted on or before July 26, 1999.

ADDRESSES: Send comments and material concerning this proposal to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and material received will be available for public inspection, by appointment, during

normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins, Fish and Mollusk Recovery Coordinator (see **ADDRESSES** section), telephone 704/258–3939, Ext. 228, or facsimile 704/258–5330.

SUPPLEMENTARY INFORMATION:

Background

Legislative: The Endangered Species Act Amendments of 1982, Pub. L. 97–327, made significant changes to the Act, including the creation of section 10(j), which provides for the designation of specific populations of listed species as ''experimental populations'' (EP). Under previous authorities of the Act, the Service was permitted to reestablish (reintroduce) populations of a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts, stemming from concerns by some about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the effectiveness of reintroduction as a management tool.

Under section 10(j), a population of a listed species reestablished outside its current range but within its probable historic range may be designated as ''experimental,'' at the discretion of the Secretary of the Interior, if reintroduction of the EP furthers the conservation of the listed species. An EP must be separated geographically from nonexperimental populations of the same species. Designation of a population as an EP increases our management flexibility.

Additional management flexibility exists if the Secretary of the Interior finds the EP to be ''nonessential'' to the continued existence of the species. For purposes of section 7 (except section 7(a)(1), which requires Federal agencies to use their authorities to conserve listed species), NEPs located outside National Wildlife Refuge or National Park lands are treated under 50 CFR part 17.83(a) as if they are proposed for listing. This means that Federal agencies are obligated to confer (as if the species were only proposed for listing), as opposed to consult (required for a listed species), on any actions authorized, funded, or carried out by them that are likely to jeopardize the continued existence of the species (see ''Management'' section). NEPs located on National Wildlife Refuge or National Park lands are treated as threatened, and formal consultation may be required. Activities undertaken on private land are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

For the purposes of section 9 of the Act, endangered species designated as EPs or NEPs are treated as threatened species. Therefore, special rules can be written that lessen restrictions regarding take of the covered listed species from the EP or NEP area [see under ''Special rules—invertebrates (3)(i-iii)'' sections below].

Individual animals used in establishing an EP or NEP can be removed from a source population if their removal is not likely to jeopardize the continued existence of the species (see ''Status of Reintroduced Populations'' section of these rules) and a permit has been issued in accordance with 50 CFR part 17.22.

Justification for the proposal, listing history, and the dates of any recovery plans developed for the 16 mussels and 1 snail proposed for these NEPs are presented below in the ''Biological'' section. Recovery plans for these species guide recovery efforts, outline recommended recovery tasks, and set forth a series of recovery criteria (e.g., number of restored historic populations) that must be met before the species can be considered for removal from the Federal List of Endangered and Threatened Wildlife and Plants.

Biological: In a December 9, 1996, letter from the Director of the Alabama Division of Game and Fish (ADGF) to the Regional Director of the Service's Southeast Region, the ADGF Director stated:

> Because of recent improvements in water quality, due primarily to the U.S. Environmental Protection Agency's Clean Water Act of 1971 and the Tennessee Valley Authority's committal to maintenance of good water quality below their dams, mollusk populations below Guntersville, Wheeler, and Wilson Dams are in excellent condition.

The Director of the ADGF further stated:

> Although several species have been extirpated from these areas in the past, both mussels and snails which now occur there are abundant and a healthy range of size classes are present.

Based on the improving status of mollusks in these river reaches and the fact that recent advances in mussel culture techniques will likely lead to the availability of endangered juvenile mussels for release, the ADGF Director requested that we consider designating NEP status for the reintroduction of federally listed mussel and snail species that historically existed in the riverine habitat below these dams.

A Service biologist met with representatives of the ADGF in January 1997 to discuss the possibility of designating NEP status for the reintroduction of federally listed mollusks into the tailwaters of Guntersville, Wheeler, and Wilson Dams. The consensus at that meeting was that: (1) the tailwaters of Wilson Dam (the remains of Muscle Shoals) provided the best opportunity for successfully reestablishing federally listed mollusks; and (2) the tailwaters of Guntersville and Wheeler Dams should be considered for mollusk reintroductions at a later time.

Muscle Shoals (sometimes referred to as Mussel Shoals), a 53-mile (85-km) reach of the Tennessee River in Colbert and Lauderdale Counties, Alabama, once supported the world's greatest assemblage of freshwater mussels (van der Schalie 1939) and was one of the finest mussel habitats ever known (Isom 1969). Ortmann (1924) stated that there was no other place on earth that could compare to this shoal with respect to freshwater mussels. This river reach historically contained nearly 80 percent of all the mussel taxa known from the entire Tennessee River system (ca. 100 taxa) and about 25 percent of the total North American mussel fauna (ca. 300 taxa). Ortmann (1925) listed 69 mussel species and varieties from this shoal complex. Stansbery (1964), using current nomenclatural concepts, excluding subspecies, and adding a species not reported by Ortmann (1925), reported the mussel diversity at 63 species. A biologist with the ADGF (J. Garner, personal communication, 1997) combined historic distribution records (Ortmann 1925, van der Schalie 1939, Scruggs 1960, Stansbery 1964, Gooch *et al.* 1979) with personal observations and the observations of malacologists (scientists who study molluscs) familiar with the area (P. Yokley and T. Richardson, University of North Alabama, and S. Ahlstedt, U.S. Geological Survey, personal communication, 1997) and found that a total of 78 mussel taxa had been reported from Muscle Shoals. Goodrich (1931) reported that Anthony's riversnail also occurred at Muscle Shoals. However, the species is no longer found in the area (Garner, personal communication, 1997).

With the completion of Wilson Dam (completed 1924), Wheeler Dam (completed in 1936), and Pickwick Dam (completed in 1938), about 41 RM (66 km) of shoal habitat were impounded. Although some mussel species survived in the remaining 12 RM (19 km) of shoal habitat between Wilson Dam and the backwaters of Pickwick Reservoir, much of the reach's mussel diversity and abundance began to disappear. Based

largely on a 1931 survey of Muscle Shoals, van der Schalie (1939) reported the resident mussel fauna at 40 species; Stansbery (1964) listed 30 species from a 1963 mussel survey of remaining shoal habitat; and Isom (1969) reported that 31 species existed on the shoal. Garner (personal communication, 1997) reviewed current and recent historic records (last 20 years) and concluded that possibly as many as 44 mussel species, including 6 federally listed mussels; fanshell (*Cyprogenia stegaria*), orange-foot pimple back pearlymussel (*Plethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), and white wartyback pearlymussel (*Plethobasus cicatricosus*); are known or presumed to still exist in the free-flowing riverine habitat below Wilson Dam. (Note: As these six listed mollusks exist or are believed to still exist in this river reach, they cannot be included in the NEP. However, these populations could be augmented with artificially propagated juveniles.) Based on a review of the most recent records, it is presumed that 34 mussel species, including 16 federally listed mussels and the Anthony's riversnail, have been extirpated from the Muscle Shoals complex (Garner, personal communication, 1997).

Although many aquatic mollusks have been lost from Muscle Shoals, habitat quality has been improving in the remaining shoal habitat in recent years. The Tennessee Valley Authority (TVA) (1993), reporting on their Clean Water Initiative, rated macroinvertebrates below Wilson Dam as excellent. They stated: ''The 1993 results indicate continued improvement in the benthos [bottom dwelling organisms].'' The Reservoir Fish Assemblage Index, a measure TVA uses to rate the health of the fish fauna at sites throughout the Tennessee River valley, was rated as good in the Wilson Dam tailwater during 1993, 1994, and 1996; no figure was given for 1995 (E. Scott, TVA, personal communication, 1997). Additionally, the ADGF Director, in his December 9, 1996, letter to the Service, points to the improving water quality and the improved health of mussel and snail populations below Wilson Dam and other TVA dams on the Tennessee River in Alabama.

The Tennessee River from about 1.4 RM (2.2 km) below Wilson Dam to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] now appears suitable for a mollusk reintroduction effort for several reasons, as follows: (1) habitat quality in the Wilson Dam tailwater has improved; (2) existing aquatic mollusk populations have responded positively to the improved habitat quality; (3) Muscle Shoals historically contained a rich mollusk fauna, and some of the shoal habitat that once supported this fauna still remains; and (4) the reestablishment of listed mollusks to historic habitat is identified as a high-priority task in listed aquatic mollusk recovery plans. Based on these factors and discussions with knowledgeable individuals with regard to the endangered mollusks of the Tennessee River, we propose to reintroduce 16 federally endangered mussels (Alabama lampmussel (*Lampsilis virescens*), birdwing pearlymussel (*Conradilla caelata*), clubshell (*Pleurobema clava*), cracking pearlymussel (*Hemistena lata*), Cumberland bean pearlymussel (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface pearlymussel (*Quadrula intermedia*), dromedary pearlymussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), oyster mussel (*Epioblasma capsaeformis*), purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), shiny pigtoe (*Fusconaia cor*), tubercled-blossom pearlymussel (*Epioblasma torulosa torulosa*), turgid-blossom pearlymussel (*Epioblasma turgidula*), winged mapleleaf mussel (*Quadrula fragosa*), and yellow-blossom pearlymussel (*Epioblasma florentina florentina*)) and 1 federally listed endangered aquatic snail (Anthony's riversnail (*Athearnia anthonyi*)) into historic habitat in the free-flowing reach of the Tennessee River from about 1.4 RM (2.2 km) below Wilson Dam to the backwaters of Pickwick Reservoir, Tennessee River, Colbert and Lauderdale counties, Alabama. These reintroduced populations are proposed to be classified as NEPs under section 10(j) of the Act (see the ''Status of Reintroduced Populations'' section for a description of the proposed NEPs).

The Alabama lampmussel (*Lampsilis virescens*) (Lea 1858), a Tennessee River system endemic, was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan for this species was completed in July 1985 (Service 1985a). The Alabama lampmussel was historically known from seven rivers in the Tennessee River system (Ortmann 1918, Bogan and Parmalee 1983, Service 1985a). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species is known to survive only in the upper Paint Rock River system, Jackson County, Alabama (Service 1985a). The delisting objectives in the recovery plan call for: (1) restoring the viability of the population in the Paint Rock River and its tributaries; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The birdwing pearlymussel (*Conradilla caelata*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064), and a recovery plan for the species was finalized in July 1984 (Service 1984a). This species was originally known from 11 rivers in the Tennessee River system, and one record exists from an unknown location in the Cumberland River. The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. It currently survives in the Clinch and Powell Rivers in Tennessee and Virginia, and in the Duck and Elk Rivers, Tennessee (Service 1984a). The delisting objectives presented in the recovery plan call for: (1) restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing or discovering viable populations in three additional rivers (only two rivers if Columbia Dam on the Duck River is not built); (3) ensuring there are no foreseeable threats to the continued existence of any of the populations; and (4) noticeable improvements in coal-related problems and substrate quality in the Powell River and no increase in coal-related sedimentation in the Clinch River. No downlisting criteria are given in the recovery plan.

The clubshell (*Pleurobema clava*) (Lamarck 1819) was listed as an endangered species on January 22, 1993 (58 FR 5642). A recovery plan for the species was finalized in September 1993 (Service 1993a). This widespread species occurred in the Ohio River and Lake Erie basins but now survives in only a few small and isolated populations in both basins (Service 1993a). It was last found at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to no longer survive in this river reach. The downlisting objectives in the recovery plan call for the establishment of ten viable populations and ensuring there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for: (1) the establishment of ten viable populations; (2) populations to be large enough to survive a single adverse ecological event; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations.

The cracking pearlymussel (*Hemistena lata*) (Rafinesque 1820) was listed as an endangered species on September 28, 1989 (54 FR 39853). A recovery plan for the species was finalized in July 1991 (Service 1991). This widespread species historically occurred in the Ohio, Cumberland, and Tennessee River systems (Bogan and Parmalee 1983, Service 1991). It has been extirpated throughout much of its range. It was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to no longer survive in this river reach. It is presently known to survive at only a few shoals in the Clinch and Powell Rivers in Tennessee and Virginia (Bogan and Parmalee 1983, Neves 1991). This species possibly survives in the Green River, Kentucky, and below Pickwick Reservoir in the Tennessee River, Tennessee (Service 1991). The downlisting objectives in the recovery plan call for the establishment of five viable populations and ensuring that there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for the establishment of eight viable populations.

The Cumberland bean pearlymussel (*Villosa trabalis*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved August 22, 1984 (Service 1984b). This species was historically known from ten river systems in the Cumberland and Tennessee river basins (Service 1984b). It was last collected at Muscle Shoals, which may represent its type locality, prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The Cumberland bean currently survives only in the Hiwassee River in Tennessee and in Buck Creek, the Little South Fork of the Cumberland River, and the Rockcastle River system in Kentucky (Service 1984b). The delisting objectives in the recovery plan call for: (1) restoring the viability of its populations in Buck Creek, the Rockcastle River, and the Little South Fork River in Kentucky; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The Cumberland monkeyface pearlymussel (*Quadrula intermedia*) (Conrad 1836) was listed as an endangered species on June 24, 1976 (41 FR 24064). A recovery plan for the species was completed in November 1983 (Service 1983a). This species was historically known from 11 rivers in the Tennessee River system (Service 1983a). It was last collected from Muscle Shoals around 1900 by R.E. Call and A.A. Hinkley (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species survives only at a few shoals in the Powell River, Tennessee and Virginia, and the Elk and Duck Rivers, Tennessee (Service 1983a). The delisting objectives presented in the recovery plan call for: (1) restoring the viability of the populations in the Powell and Elk Rivers; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The Cumberlandian combshell (*Epioblasma brevidens*) (Lea 1831) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although no Cumberlandian combshell recovery plan has been developed, a recovery outline, which briefly enumerates anticipated recovery actions, was developed prior to the final listing decision. The recovery outline identified reintroduction into historic habitat as a method that would likely be needed to recover the species.

The dromedary pearlymussel (*Dromus dromas*) (Lea 1845) was listed as an endangered species on June 24, 1976 (41 FR 24064). A recovery plan for the species was completed in November 1983 (Service 1983b). This species was historically widespread in the Cumberland and Tennessee River systems (Bogan and Parmalee 1983). It was last collected at Muscle Shoals prior to 1931 (van der Schalie 1939) and is presumed to be extirpated from the shoal. The species survives at a few shoals in the Powell and Clinch Rivers, Tennessee and Virginia, and possibly in the Cumberland River, Tennessee (Service 1983b, Neves 1991). The delisting objectives in the recovery plan call for: (1) restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing viable populations in three additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The fine-rayed pigtoe (*Fusconaia cuneolus*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved in September 1984 (Service 1984c). This species was historically known from 15 Tennessee River tributaries and is currently known from seven rivers (Service 1984c). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The recovery objectives call for: (1) restoring the viability of the populations in the Clinch, Powell, and North Fork Holston Rivers and in the Little River and Copper Creek (Clinch River tributaries); (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given.

The oyster mussel (*Epioblasma capsaeformis*) (Lea 1834) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although no oyster mussel recovery plan has been developed, a recovery outline, which briefly enumerates anticipated recovery actions, was developed prior to the final listing decision. The recovery outline identified reintroduction into historic habitat as a method that would likely be needed to recover the species.

The purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*) (Rafinesque 1820) was listed as an endangered species on July 10, 1990 (55 FR 28210). A recovery plan for the species was finalized in March 1992 (Service 1992). This once widespread species historically occurred in the larger rivers of the Ohio River system (Service 1992). The species is currently known from two apparently nonreproducing populations (Green River, Kentucky, and Cumberland River, Tennessee) and one reproducing population in Killbuck Creek, Muskingum River system, Ohio. It was last collected at Muscle Shoals by A. E. Ortmann sometime prior to 1925 (Ortmann 1925) and is presumed to no longer survive in this river reach. The downlisting objectives in the recovery

plan call for: (1) the establishment of four viable populations; (2) two naturally produced year classes to exist in each of the four populations; (3) biological studies on the species to have been completed; and (4) recovery measures to have resulted in an increase in population density and/or length of the river inhabited. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (4) above.

The shiny pigtoe (*Fusconaia cor*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was completed in July 1984 (Service 1984d). This species was historically known from the Tennessee River and ten of its tributaries. It is currently known from five river systems; the Clinch, Powell, North Fork Holston, Elk, and Paint Rock (Service 1984d). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The delisting objectives call for: (1) restoring the viability of the populations in the Clinch, Powell, North Fork Holston, and Paint Rock Rivers; (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The tubercled-blossom pearlymussel (*Epioblasma torulosa torulosa*) (Rafinesque 1820) was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan for the species was completed in January 1985 (Service 1985b). This species was historically known from nine rivers in the Ohio River system (Service 1985b). The species was last collected at Muscle Shoals around 1900 by A. A. Hinkley (Ortmann 1925); it has not been collected anywhere since 1969 (Stansbery 1976, Service 1985b). However, the Service continues its efforts to determine whether any extant populations occur and the species is therefore included in these NEP proposals. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The turgid-blossom pearlymussel (*Epioblasma turgidula*) (Lea 1858) was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan for the species was completed in January 1985 (Service 1985b). This widespread species was historically known from 12 rivers in Arkansas, Missouri, Tennessee, and Alabama (Service 1985b). The species was last collected at Muscle Shoals (its type locality, along with the Cumberland River, Tennessee) prior to 1925 (Ortmann 1925); it has not been collected anywhere since the early 1960s (Stansbery 1971, Service 1985b). However, the Service continues its efforts to determine whether any extant populations occur and the species is therefore included in these NEP proposals. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The winged mapleleaf mussel (*Quadrula fragosa*) (Conrad 1835) was listed as an endangered species on June 20, 1991 (56 FR 28349). The final recovery plan for the species was completed in June 1997 (Service 1997). This species was historically reported from 34 rivers in 12 states in the Mississippi River drainage (Service 1997). It is now believed to be extirpated from all but one remnant population in the St. Croix River between Minnesota and Wisconsin. The species was reported from the Tennessee River below Wilson Dam by Scruggs (1960). However, our 1997 Recovery Plan reports that the record may be the mapleleaf (*Q. quadrula*) instead of the winged mapleleaf. As the winged mapleleaf was historically reported from the Wilson Dam tailwater, it is included in this proposed NEP. However, because of the question regarding the identification of the collection, the winged mapleleaf will not be released into the NEP area until this question is resolved. The downlisting objectives in the recovery plan call for: (1) the existence of three distinct viable populations in at least two tributaries of the Mississippi River basin; and (2) the long-term protection of all three populations. Delisting objectives call for: (1) the existence of five distinct viable populations; and (2) the long-term protection of all five populations.

The yellow-blossom pearlymussel (*Epioblasma florentina florentina*) (Lea 1857) was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan for the species was completed in January 1985 (Service 1985b). This species was historically known from 13 rivers in the Cumberland and Tennessee River systems (Service 1985b). The species was last collected at Muscle Shoals, its type locality, prior to 1925 (Ortmann 1925); it has not been collected anywhere in over 50 years (Stansbery 1971, Service 1985b). However, the Service continues its efforts to determine whether any extant populations occur and the species is therefore included in these NEP proposals. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan; however, it does call for the recovery efforts to be reevaluated if the species is found.

Anthony's riversnail (*Athearnia anthonyi*) was listed as an endangered species on April 15, 1994 (59 FR 17994). The final recovery plan for the species was completed in August 1997 (Service 1997). This snail was historically found in the Tennessee River and the lower reaches of some of its tributaries from Muscle Shoals, Colbert and Lauderdale counties, Alabama, upstream to the Clinch and Nolichucky Rivers, Tennessee (Bogan and Parmalee 1983). Currently, two populations are known to survive; one in Limestone Creek, Limestone County, Alabama, and one in the Tennessee River and the lower portion of the Sequatchie River (a tributary to this reach of the Tennessee River), Marion County, Tennessee, and Jackson County, Alabama (Service 1996). It is apparently extirpated from Muscle Shoals (Garner, personal communication, 1997). The downlisting objectives in the recovery plan call for: (1) the establishment of four viable populations; (2) two naturally produced year classes to exist in each of the four populations; (3) biological studies on the species to have been completed; (4) noticeable improvements in water and substratum quality where habitat is degraded; (5) each of the populations to be protected from present and foreseeable threats; and (6) all four populations to remain stable or increase over a 10-year period. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (5) above and for six populations to remain stable or increase over a 15-year period.

The recovery objectives in the recovery plans and recovery outlines for the aforementioned species generally agree that, to reach recovery: (1) existing populations should be restored to viable

levels; (2) the species should be protected from threats to their continued existence; and (3) viable populations should be reestablished in historic habitat. The number of secure, viable populations (existing and restored) needed to achieve recovery varies from species to species, depending on the extent of the species' former range (i.e., species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historic populations is a critical component to the recovery of all these species.

Preliminary Notification and Comment

On June 18, 1997, we notified (by mail, 54 letters) potentially affected congressional offices, Federal and State agencies, local governments, and interested parties that we were considering proposing NEP status for 17 mollusks. We received six written responses.

TVA suggested that although reintroduced Cumberlandian mussel species might survive below Wilson Dam, they might not be able to reproduce there. Based on the improved reproductive success of the mussel fauna below Wilson Dam, we are optimistic that at least some of the Cumberlandian species will reproduce. However, even if these species are unable to reproduce, the establishment of nonreproducing populations of listed Cumberlandian mussels will assist in the recovery effort. Mussels are long-lived (40 years or more); thus, any surviving mussels could be available to researchers and managers for a number of years after they are reintroduced.

TVA cautioned that current conditions (i.e., variations in hydro power discharges, seasonal low dissolved oxygen levels, urban related impacts) and potential impacts (i.e., invasion of zebra mussels, navigation improvements, and additional municipal developments) are likely to limit the success of mollusk reintroductions below Wilson Dam. We agree that there are many factors that could limit the success of these proposed mollusk reintroductions, but there is always a risk of failure with any EP reintroduction. There are only a few river reaches in the Tennessee River basin that appear to have suitable habitat for reintroductions. Our goal is to recover the region's federally listed mussels; therefore, we will attempt to reestablish populations in as many reaches as possible.

TVA encouraged us to evaluate the reintroduction sites before any mollusks are released. The ADGF, in cooperation with the Service, is evaluating specific reaches of the Wilson Dam tailwaters for reintroductions.

Although TVA expressed some concerns regarding the potential success of reintroducing listed mollusks below Wilson Dam, their response to the notice was generally positive. They agreed that now (because of advances in mussel propagation technology and water quality improvements below many of their reservoirs) ''* * * may be an appropriate time to start reintroducing and augmenting mussel stocks within their historic ranges * * *'' in the Tennessee River system. They further stated that designating NEPs below Wilson Dam would not result ''* * * in any additional regulatory burden for TVA,'' and they offered to assist in reintroducing mollusks below Wilson Dam. We appreciate TVA's comments and their generally positive assessment of the notice, and we especially appreciate their offer to assist in mussel reintroductions below Wilson Dam. Our agencies have had a long and productive relationship with regard to mussel recovery issues, and we look forward to a continued partnership that will work toward recovering the Tennessee River valley's aquatic mollusk resources.

The Director of the ADGF reconfirmed his support for the project and stated: ''This is an opportunity to take a major step towards restoring the native fauna of our rivers to their historic diversity.''

Although the proposed action will not occur within the State of Tennessee, the Executive Director of the Tennessee Wildlife Resources Agency (TWRA) supported the designation of NEPs and mollusk reintroductions below Wilson Dam. He stated:

> We understand that this is part of the ongoing program conducted by state and federal agency partners to improve the status of these mollusks where they no longer need endangered species protection.

A consulting firm (Firm) for the City of Florence, Alabama, (City) provided information on the City's plans to construct a submerged muliport diffuser in the Tennessee River below Wilson Dam as part of a sewer system improvement project. The Firm stated:

> We hope that you will coordinate your department's restocking program with the City's plans to avoid the areas that may be affected by both the relocation program and subsequent diffuser construction.

We are aware of the City's proposed construction project, and we assured the Firm and the City that the reintroduction of endangered mollusks under this proposed NEP designation would not negatively impact the City's proposed sewer system improvement project.

Letters of support were also received from the University of North Alabama and a local chapter of the Sierra Club.

Status of Reintroduced Populations

We propose to reintroduce populations of 16 mussels (Alabama lampmussel, birdwing pearlymussel, clubshell, cracking pearlymussel, Cumberland bean pearlymussel, Cumberlandian combshell, Cumberland monkeyface pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, oyster mussel, purple cat's paw pearlymussel, shiny pigtoe, tubercled-blossom pearlymussel, turgid-blossom pearlymussel, winged mapleleaf mussel, and yellow-blossom pearlymussel))and 1 freshwater snail (Anthony's riversnail) in the free-flowing reach of the Tennessee River from about 1.4 river miles (RM) (2.2 kilometers [km]) below Wilson Dam to the backwaters of Pickwick Reservoir (RM 258.0 [412.8 kilometers [km]) to RM 246.0 [393.6 km])in Colbert and Lauderdale counties, Alabama.

These populations are proposed to be designated NEPs according to the provisions of section 10(j) of the Act. None of these species are known to currently exist in this river reach or in tributaries to this reach nor are they expected to populate the area immediately below Wilson Dam. Thus, to give the regulatory relief provided by a NEP designation for any reintroduced listed mollusk that may move upstream to the base of Wilson Dam or into tributaries of this reach, we propose that the geographic boundaries of the NEP designation extend from the base of the Wilson Dam (RM 259.4 [414.0 km] to the backwaters of the Pickwick Reservoir (RM 246.0 [393.6 km]) and include the lower 5 RM (8 km) of all tributaries that enter the river reach from the tailwaters of Wilson Dam to the backwaters of Pickwick Reservoir. Additionally, if any of the reintroduced endangered mollusks move upstream beyond the lower 5 RM (8 km) of these tributaries, the animals will be presumed to have come from the reintroduced NEP, and the boundaries of the NEP will be enlarged to include the entire range of the expanded population. Thus, the proposed NEP designation includes the following: the free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 RM [19 km]) and 5 RM (8 km) upstream of all tributaries to this reach in Colbert and Lauderdale Counties, Alabama.

We considered designating EP status instead of NEP status for these reintroductions. However, the designation of NEP status, which provides for the maximum degree of management flexibility and regulatory relief was necessary to gain the support of local governments, State agencies, industry, local communities, and landowners. Therefore, we believe it is the appropriate designation for reintroducing these species under section 10(j). We will ensure, through our section 10 permit authority and section 7 consultation process, that the use of animals from any donor population for this proposed reintroduction project is not likely to jeopardize the continued existence of the species or the donor population. Therefore, if any introduced populations become established and are subsequently lost, it would not reduce the likelihood of the species' survival in the wild or jeopardize its continued existence. In fact, the anticipated success of these reintroductions will enhance the species' conservation status by extending their present range into currently unoccupied historic habitat.

Location of Reintroduced Population

The sites for the proposed reintroductions (free-flowing reach of the Tennessee River between Wilson Dam and the backwaters of Pickwick Reservoir, Colbert and Lauderdale Counties, Alabama) are within the proposed NEP areas; these NEP areas are totally isolated from existing populations of these species by large reservoirs; and none of these mollusks are known to occur in reservoir habitat. These reservoirs will, therefore, act as barriers to the expansion of these species upstream or downstream in the main stem of the Tennessee River and ensure that these proposed NEPs remain geographically isolated and easily identifiable as distinct populations.

Management

The proposed dates for these reintroductions, the specific sites (between about 1.4 river miles RM [2.2 km] below Wilson Dam to the backwaters of Pickwick Reservoir RM 258.0 (412.8 km) to RM 246.0 (393.6 km) in Colbert and Lauderdale counties, Alabama) where the mussel and snail species will be released, and the actual number of individuals to be released cannot be determined at this time. Individual endangered mussels to be used in the proposed NEP reintroductions will be, primarily, artificially propagated juveniles. However, it is possible that wild adult stock of some mussels could be released into the area (see below). Mussel propagation and juvenile rearing technology are currently being developed using nonendangered surrogate species, and it is expected that juvenile endangered mussels of some species will be available for the reintroduction effort within 2 to 3 years. The parent stock for juveniles to be used for the NEPs will come from existing wild populations, and in most cases they will be returned live to that wild population. Under some circumstances, adult endangered mussels could be permanently relocated to propagation facilities or be moved directly into the NEP areas. Anthony's riversnails will be collected from a large naturally reproducing population located in the Tennessee River, Jackson County, Alabama, and Marion County, Tennessee, and relocated directly into the NEP area.

The permanent removal of adults from the wild for their use in reintroduction efforts could occur when one or more of the following conditions exists: (1) sufficient adult endangered mussels and Anthony's riversnails are available within a donor population to withstand the loss without jeopardizing their continued existence; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present; or (3) when the donor population is not reproducing. To ensure that the nonlethal use of a parent stock or the permanent removal of adults is not likely to jeopardize the continued existence of the donor population of the species, a section 10 (a)(1)(A) permit will be issued before any take occurs. We will coordinate these actions with the appropriate lead Regions and State natural resources agencies.

We do not believe these proposed reintroductions would conflict with existing or proposed human activities or hinder public utilization of the proposed NEP areas. If this proposed rule is finalized, the NEPs would be treated as threatened species under all provisions of the Act, except section 7 (see ''Legislative'' section of these rules). The NEPs are treated under section 7(a)(4) of the Act as species proposed to be listed under the Act. For proposed species, section 7(a)(4) requires that Federal agencies confer with the Service on actions that the Federal agency itself finds are likely to jeopardize a species' continued existence. We then produce a conference report outlining measures that could be taken to avoid jeopardy. However, the measures we recommend are only advisory. The Federal agency is not required to implement any of the recommended measures, and the Act does not prohibit the Federal agency from implementing the Federal action as was originally planned. Therefore, these proposed reintroductions are not expected to conflict with existing or proposed Federal activities in the NEP areas.

The Act, under section 10(j), allows special rules (protective regulations), which contain all prohibitions and exceptions regarding the taking of individual animals, to be written for experimental populations. Thus, section 17.85 (a)(3) of the proposed special rule defines the circumstances under which it will be a violation of the Act to take animals from these introduced populations. We do not expect these proposed reintroductions to conflict with existing or proposed Federal activities or to hinder the public's utilization of the NEP areas. We will work cooperatively with private landowners and will not impose any land-use restrictions on private lands for the recovery of these species without prior concurrence from the landowners.

Public Comments Solicited

We intend for any rule that is finally adopted to be as effective as possible. Therefore, we invite the public, concerned government agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule (see ''Addresses'' section).

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated?, (2) Does the rule contain technical language or jargon that interferes with its clarity?, (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?, (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 17.11 Endangered and threatened wildlife), (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-

mail the comments to this address: Exsec@ios.doi.gov

However, as noted earlier, all comments related to the proposed reintroduction to establish the nonessential experimental populations should be directed to the Service's Asheville, North Carolina Field Office (see **ADDRESS** section). Comments must be received within 60 days of publication of this proposed rule in the **Federal Register**.

Any final decision on this proposed rule will take into consideration the comments and any additional information received. These may lead to a final rule that differs from this proposal.

National Environmental Policy Act

We have determined that the issuance of a proposed rule for these NEPs is categorically excluded under our National Environmental Policy Act procedures (516 DM 6, Appendix 1.4 B (6)), which states:

* * * The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historical or established range, where no or negligible environmental disturbances are anticipated * * *.

Paperwork Reduction Act

This proposed rule contains no collections of information requiring approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Required Determinations

This proposed rule to designate NEP status for 16 mussels and 1 freshwater snail in the free-flowing reach of the Tennessee River below Wilson Dam in Colbert and Lauderdale Counties, Alabama, will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Shellfish harvesting in the United States is dominated by small firms. Of the 441 firms included in Standard Industrial Code 0913 for ''establishments primarily engaged in the catching or taking of shellfish,'' 421 have fewer than 20 employees, 353 have fewer than five employees. These figures include saltwater shellfishing (lobsters, crabs, clams, etc.) so freshwater mussel harvesting is only a fraction of this small industry (Office of Advocacy, U.S. Small Business Administration based on data provided by the Department of Commerce, Bureau of the Census).

The rule is not expected to have any impact on the use of the river. Mussels are harvested from the relevant reach primarily by diving from one or two person boats. Harvesters are seeking larger mussels of a dozen specific permitted species to be used as seed in the Japanese cultured pearl industry. Two endangered species are already present in the area and divers are careful to identify species in situ to avoid carrying extra weight to the surface. The added species are not expected to complicate this task. Other river activities will not be affected.

The final rule will not significantly change costs to industry or government. Furthermore, this rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is not a significant regulatory action and was not subject to review by the Office of Management and Budget under Executive Order 12866. It is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis not required. The area affected by this rule consists of a very limited and discrete geographic segment (only 12 river miles) of the Tennessee River in northern Alabama. Therefore no significant impacts on existing economic activities associated with this stream reach as a result of this rule are anticipated.

This rule will not create inconsistencies with other agencies' actions. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species within the NEP. Because of the substantial regulatory relief provided by NEP designations, the Service does not believe the reintroduction of these mollusks would conflict with existing or proposed human activities or hinder public utilization of the Tennessee River system.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of the Tennessee River as a result of this rule, no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur.

This rule will not raise novel legal or policy issues. The Service has previously promulgated more than a dozen section 10 (j) rules for experimental populations of other listed threatened and endangered species in various localities since 1984. The rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

We have determined and certified, pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. Further, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The ADGF, which manages the aquatic mollusks in the Tennessee River below Wilson Dam, requested the Service consider this reintroduction under a NEP designation. However, they will not be required by the Act to specifically manage for any reintroduced species.

This proposed rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Departmental Guidelines, and the Attorney General Supplemental Guidelines to determine the taking implications of this proposed rule if it were promulgated as currently drafted. The implementation of this proposed rule will not result in any ''taking'' under the 5th Amendment. In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines that its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, even if an agency action would totally eliminate a reintroduced species from a NEP and jeopardize the species continued existence, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, regulatory relief can be provided here regarding take of reintroduced species within NEP areas, and the special rule has been proposed stipulating that there would be no violation of the Act for unavoidable and unintentional take (including killing or injuring) of these reintroduced mollusks, when such take

is non-negligent and incidental to a legal activity (e.g., boating, commercial navigation, commercial musseling, fishing) and the activity is in accordance with State laws or regulations. Because of the substantial regulatory relief provided by NEP designations, the Service does not believe the reintroduction of these mollusks would conflict with existing or proposed human activities or hinder public utilization of the Tennessee River system.

This proposed rule has been reviewed under Executive Order 12612 to determine Federalism considerations in policy formulation and implementation. This proposed rule does not require a Federalism assessment under Executive Order 12612 since it will not have any significant Federalism effects as described in the order. Nevertheless, we have endeavored to cooperate with the Alabama Division of Game and Fish in the preparation of this proposed rule.

The Department of the Interior has determined that this proposed regulation meets the applicable standards provided in sections (3)(a) and (3)(b)(2) of Executive Order 12988.

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Author

The principal author of this proposed rule is Richard G. Biggins (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h). revise the entries in the table under CLAMS for ''Clubshell'': ''Combshell, Cumberlandian''; ''Lampmussel, Alabama''; ''Mussel, Oyster''; ''Mussel, winged mapleleaf''; ''Pearlymussel, birdwing''; ''Pearlymussel, cracking''; ''Pearlymussel, Cumberland bean''; ''Pearlymussel, Cumberland monkeyface''; ''Pearlymussel, dromedary''; ''Pearlymussel, purple cat's paw''; ''Pearlymussel, tubercled-blossom''; ''Pearlymussel, turgid-blossom''; and ''Pearlymussel, yellow-blossom''; ''Pigtoe, fine-rayed''; ''Pigtoe, shiny''; and the table entry under SNAILS for ''Riversnail, Anthony's'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CLAMS							

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Clubshell	*Pleurobema clava*	U.S.A. (AL, IL, IN, KY, MI, OH, PA, TN, WV).	NA	E	488	NA	NA
Do	do	do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and 5 RM [8 km] upstream of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN	488, ____	NA	17.85(a)
*	*	*	*	*	*		*
Combshell, Cumberlandian.	*Epioblasma brevidens*.	U.S.A. (AL, KY, TN, VA).	NA	E	602	NA	NA
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	602, ____	NA	17.85(a)
*	*	*	*	*	*		*
Lampmussel, Alabama.	*Lampsilis virescens*	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, ____	NA	17.85(a)
*	*	*	*	*	*		*
Mussel, oyster	*Epioblasma capsaeformis*.	U.S.A. (AL, KY, TN, VA).	NA	E	602	NA	NA
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	602, ____	NA	17.85(a)
*	*	*	*	*	*		*
Mussel, winged mapleleaf.	*Quadrula fragosa*	U.S.A. (AL, IA, IL, IN, KY, MN, MO, NE, OH, OK, TN, WV).	NA	E	426	NA	NA
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	426, ____	NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, birdwing.	*Conradilla caelata*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, [illegible]____	NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, cracking.	*Hemistena* (= *Lastena*) *lata*.	U.S.A. (AL, IL, IN, KY, OH, TN, VA).	NA	E	366	NA	NA
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	366, [illegible]____	NA	17.85(a)

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Pearlymussel, Cumberland bean.	*Villosa* (= *Micromya*) *trabalis*.	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a))..	XN	15, $\frac{a}{16}$____	NA	17.85(a)
Pearlymussel, Cumberland monkeyface.	*Quadrula intermedia*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, $\frac{a}{16}$____	NA	17.85(a)
*	*	*	*	*	*	*	*
Pearlymussel, dromedary.	*Dromus Dromas*	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN 1	5, ____	NA	17.85(a)
*	*	*	*	*	*	*	*
Pearlymussel, purple cat's paw.	*Epioblasma obliquata obliquata*.	U.S.A. (AL, IL, IN, KY, OH, TN).	NA	E	394	NA	NA
Do	.....do	.....do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	394, ____	NA	17.85(a)
*	*	*	*	*	*	*	*
Pearlymussel, tubercled-blossom.	*Epioblasma* (=Dysnomia) *torulosa torulosa*.	U.S.A. (AL, IL, IN, KY, TN, WV).	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, ____	NA	17.85(a)
Pearlymussel, turgid-blossom.	*Epioblasma* (=*Dysnomia) turgidula*.	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, ____	NA	17.85(a)
*	*	*	*	*	*	*	*
Pearlymussel, yellow-blossom.	*Epioblasma florentina florentina*.	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, ____	NA	17.85(a)
*	*	*	*	*	*	*	*
Pigtoe, fine-rayed	*Fusconaia cuneolus*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	.....do	.....Do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, ____	NA	17.85(a)
*	*	*	*	*	*	*	*
Pigtoe, shiny	*Fusconaia cor (= edgariana)*.	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, ____	NA	17.85(a)
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (AL, GA, TN)	NA	E	538	NA	NA
Do	do	do	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	538, ____	NA	17.85(a)
*	*	*	*	*	*		*

3. Section 17.85 is amended by adding text to read as follows:

§ 17.85 Special rules—invertebrates.

(a)(1) What species are covered by this special rule?

(i)

Common name	Scientific name
Alabama lampmussel	*Lampsilis virescens.*
Anthony's riversnail	*Athearnia anthonyi.*
birdwing pearlymussel	*Conradilla caelata.*
clubshell	*Pleurobema clava.*
cracking pearlymussel	*Hemistena lata.*
Cumberland bean pearlymussel	*Villosa trabalis.*
Cumberlandian combshell	*Epioblasma brevidens.*
Cumberland monkeyface pearlymussel	*Quadrula intermedia.*
dromedary pearlymussel	*Dromus dromas.*
fine-rayed pigtoe	*Fusconaia cuneolus.*
oyster mussel	*Epioblasma capsaeformis.*
purple cat's paw pearlymussel	*Epioblasma o. obliquata.*
shiny pigtoe	*Fusconaia cor.*
tubercled-blossom pearlymussel	*Epioblasma torulosa torulosa.*
turgid-blossom pearlymussel	*Epioblasma turgidula.*
winged mapleleaf mussel	*Quadrula fragosa.*
yellow-blossom pearlymussel	Epioblasma f. florentina.

(ii) [Reserved]

(2) Where does this special rule apply?

(i) The designated recovery areas classified as NEPs for the aforementioned 17 mollusks in paragraph (a)(1)(i) of this section are within the species' historic ranges and are defined as follows:

The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (RM 258.0 [412.8 km] to RM 246.0 [393.6 km]about 12 RM [19 km]) and 5 RM (8 km) upstream of all tributaries to this reach in Colbert and Lauderdale Counties, Alabama.

(ii) None of the aforementioned species is known from any of the tributaries to the free-flowing reach of the Tennessee River below Wilson Dam, Colbert and Lauderdale Counties, Alabama. In the future, if any of the aforementioned 17 mollusks are found upstream beyond the lower 5 RM (8 km) of these tributaries, we will presume the animals to have come from the reintroduced NEP, and the boundaries of the NEP will be enlarged to include the entire range of the expanded population.

(3) What is the legal status of the species described in the rule?

(i) The species identified for reintroduction in paragraph (a)(1) of this section are listed as ''endangered'' and protected under 50 CFR 17.11 (h). The Alabama lampmussel, birdwing pearlymussel, clubshell, cracking pearlymussel, Cumberland bean pearlymussel, Cumberlandian combshell, Cumberland monkeyface pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, oyster mussel, purple cat's paw pearlymussel, shiny pigtoe, tubercled-blossom pearlymussel, turgid-blossom pearlymussel, winged mapleleaf mussel, yellow-blossom pearlymussel, and Anthony's riversnail, identified in paragraph (a)(2) of this section, are nonessential experimental populations. These NEPs will be managed in accordance with these provisions.

(ii) We find, under 50 CFR 17.81 (b), that the reintroduction of an experimental population of the aforementioned 17 mollusks into their historic range will further their conservation. We also find, under 50 CFR 17.81(c)(2) that the experimental population is not essential to the continued existence of the species in the wild.

(4) What activities are prohibited?

(i) You may not take any of the aforementioned 17 mollusks in the wild within these species' NEP areas except in accordance with the applicable laws or regulations of the State of Alabama and as provided by these rules. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(ii) This provision does not exempt Federal agencies from complying with section 7(a)(4) of the Act, which requires them to confer with the Service if they propose an action that is likely to jeopardize the continued existence of one or more of these species.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the aforementioned 17 mollusks, or parts thereof, from these NEPs that are taken or possessed in violation of these regulations or in violation of the applicable laws or regulations of the State of Alabama.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (a).

(5) What activities are allowed?

(i) Throughout the entire NEP areas for the aforementioned 17 mollusks, you will not be in violation of the Act for unavoidable and unintentional take (including killing or injuring) of these species when such take is incidental to a legal activity, such as fishing, boating, commercial navigation, trapping, wading, mussel harvesting, or other activities, and the activity is in accordance with the laws or regulations of the State of Alabama.

(ii) Throughout the entire NEP areas for the aforementioned 17 mollusks, no Federal agency or its contractors will be in violation of the Act for take of these species resulting from any authorized agency action.

(6) What are we doing for these species?

(i) We will continuously evaluate the progress of the aforementioned 17 mollusk reintroductions. We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(ii) We will work cooperatively with private landowners and will not impose any land-use restrictions on private lands for the recovery of these species without prior concurrence from the landowners.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' without the full cooperation of the State of Alabama and the affected parties within the NEP areas. Additionally, we will not designate critical habitat for these NEPs. We cannot designate critical habitat under the NEP classification, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(b) [Reserved]

Dated: April 30, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–13490 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 102
Thursday, May 27, 1999

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, D.C., 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0017.

Form No.: AID 1440–3.

Title: Contractor's Certificate and Agreement with the U.S. Agency for International Development/Contractor's Invoice and Contract Abstract.

Type of Review: Renewal of Information Collection.

Purpose: USAID finances host country contracts, for technical and professional services and for the construction of physical facilities, between the contractors for such services and entities in the country receiving assistance under loan or grant agreements with the recipient country. USAID is not a party to these contracts, and the contracts are not subject to the FAR. In its role as the financing agency, USAID needs some means of collecting information directly from the contractors supplying such services so that it may take appropriate action in the event that the contractor does not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

Annual Reporting Burden:

Respondents: 30.

Total annual responses: 360.

Total annual hours requested: 210 hours.

Dated: May 18, 1999.

Willette L. Smith,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 99–13523 Filed 5–26–99; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, D.C., 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0035.

Form No.: AID 1550–2.

Title: Computation of Percentage of Private Funding for PVO's International Activities.

Type of Review: Renewal of Information Collection.

Purpose: USAID is required to collect information regarding the financial support of private and voluntary organizations registered with the Agency. The information is used to determine the eligibility of PVOs to receive USAID funding.

Annual Reporting Burden:

Respondents: 240.

Total annual responses: 245.

Total annual hours requested: 368 hours.

Dated: May 18, 1999.

Willette L. Smith,

Chief, Information and Records Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 99–13524 Filed 5–26–99; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by

the paperwork, Reduction Act for 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, D.C., 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0020.

Form No.: AID 1450–4.

Title: Supplier's Certificate and Agreement with the U.S. Agency for International Development for Project Commodities/Invoice and Contract Abstract.

Type of Review: Renewal of Information Collection.

Purpose: When USAID is not a party to a contract which it finances, it needs some means of collecting information directly from the suppliers of such commodities and related services to enable it to take appropriate action in the event that they do not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies. It also allows for positive identification of transactions where overcharges occur.

Annual Reporting Burden:

Respondents: 33.

Total annual responses: 99.

Total annual hours requested: 65 hours.

Dated: May 18, 1999.

Willette L. Smith,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 99–13525 Filed 5–26–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 20, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Field Crops Objective Yield.

OMB Control Number: 0535–0088.

Summary of Collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue current official State and national estimates of crop and livestock production. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that the Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists. Data collected in this information collection sets yield estimates for wheat, corn, cotton, soybeans, and potatoes. The Objective Yield Survey provides an unbiased input by utilizing plant counts and other measurements during the growing season. This information is one of the information sources used in making agricultural policy decisions. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information on sample fields of wheat, corn, cotton, soybean, potatoes, and durum wheat. The information will be used to anticipate loan receipts and pricing of loan stocks for grains.

Description of Respondents: Farms.

Number of Respondents: 8,100.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,013.

National Agricultural Statistics Service

Title: Egg, Chicken, and Turkey Surveys.

OMB Control Number: 0535–0004.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Thousands of farmers, ranchers, agribusinesses and others voluntarily respond to nationwide surveys about crops, livestock, prices, and other agricultural activities. Estimates of egg, chicken, and turkey production are an integral part of this program. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that the Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by the collection of statistics and shall distribute them among agriculturists. Information published from the surveys in this docket are needed by USDA economists and government policy makers to ensure the orderly marketing of broilers, turkeys and eggs.

Need and Use of the Information: Statistics on these poultry products contribute to a comprehensive program of keeping the government and poultry industry abreast of anticipated changes. All of the poultry reports are used by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for their production and marketing decisions.

Description of Respondents: Farms.

Number of Respondents: 6,883.

Frequency of Responses: Reporting: Weekly, Monthly, Annually.

Total Burden Hours: 5,421.

Food and Nutrition Service

Title: FSP-State Agency Options.

OMB Control Number: 0584-New.

Summary of Collection: The Food Stamp Act of 1977, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) establishes a program whereby needy households apply for and receive food stamp benefits. It specifies national eligibility standards but allows State agencies certain options in administering the program. These options relate to establishing a homeless shelter deduction; establishing, periodically reviewing, and updating standard utility allowances to be used in excess shelter cost computation; and establishing a methodology for offsetting costs of producing self-employment income. The Food and Nutrition Service (FNS) will collect information from State agencies on the methods used to calculate these deductions and allowances.

Need and Use of the Information: FNS will collect information from State agencies on how the various Food Stamp Program implementation options will be determined. The information collected will be used by FNS to establish quality control reviews, standards, and self-employment costs.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 49.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 296.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–13473 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of Small and Disadvantaged Business Utilization

Federal Subcontracting Forum, Workshop and Opportunities Fair

AGENCY: U.S. Department of Agriculture (USDA), Office of Small and Disadvantaged Business Utilization.

ACTION: Notice of meeting.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU) at the U.S. Department of Agriculture (USDA) will hold a Federal Subcontracting Forum, Workshop and Opportunities Fair on Wednesday, June 23, 1999, from 9:00 AM to 4:00 PM in the Jamie L. Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250–9501. The morning session, which will consist of presentation topics from featured guest speakers and the conduct of the workshop, will be held in Room 107–A from 9 AM to 12 Noon. The subcontracting opportunities fair will take place in the afternoon in the Patio of the building from 1:30 to 4:00 PM. Attendance at the morning session is open to large business concerns and non-profit organizations. Small business concerns are invited to participate in the afternoon session. Presentation topics include the Office of Federal Procurement Policy's (OFPP) Initiatives Relating to the Small Business Program including the new OFPP Policy Letters on Goaling and Subcontracting; the Small Business Administration's (SBA) Role in 2 Subcontracting and the Future of Subcontracting; the Small Disadvantaged Business (SDB) Reform—Interim Rules Published by the Federal Acquisition Regulation Council; the SDB Procurement Mechanisms including the Subcontracting Evaluation Factor for SDB Participation & Monetary Subcontracting Incentives; Reporting Requirements—including the new (supplemental) SDB Reports; the new Historically Underutilized Business Zone (HUBZone) Subcontracting Goal; the Role of the Commercial Market Representative; An Update on SBA's Procurement Marketing and Access Network (PRO-Net) System; and An Update on the USDA Subcontracting Program. Among the guest speakers will be Linda Williams, Associate Deputy Administrator for the OFPP, and Robert C. Taylor, Manager of the Federal Subcontracting Program at the SBA. Confidential and proprietary information will not be discussed. A number of large business concerns and non-profit organizations will be represented at the opportunities fair to discuss upcoming subcontracting opportunities. Seating at the forum/workshop is limited, and reservations are required. Reservations will be taken on a first-come, first-served basis.

DATES: Reservations must be made by June 15, 1999 (fax or e-mail only).

ADDRESSES: Confirm by facsimile at (202) 720–3001. Confirm by e-mail at janet.baylor@usda.gov.

FOR FURTHER INFORMATION CONTACT: Loretta D'Amico, USDA/OSDBU, 1400 Independence Avenue, SW, AG STOP 9501, Washington, DC 20250–9501, telephone: (202) 720–7117, or visit the OSDBU Home Page on the Internet at www.usda. gov/da/smallbus.html under the What's New Section. If you need special accommodations to participate in the event, please notify Loretta D'Amico by June 15 at (202) 720–7117 (v) or through the Federal Information Relay Service at 1–800–877–8339 (voice/tdd).

Sharron L. Harris,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 99–13441 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–002–2]

University of Saskatchewan; Availability of Determination of Nonregulated Status for Flax Genetically Engineered for Tolerance to Soil Residues of Sulfonylurea Herbicides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the University of Saskatchewan's flax line designated as CDC Triffid, which has been genetically engineered for tolerance to soil residues of sulfonylurea herbicides, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the University of Saskatchewan in its petition for a determination of nonregulated status and our analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: May 19, 1999.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact and the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 147, Suite 5B05, Riverdale, MD 20737–1236; (301) 734–

5940. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: kay.peterson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1998, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 98–335–01p) from the Crop Development Centre (CDC) of the University of Saskatchewan (CDC/Saskatchewan) of Saskatchewan, Saskatoon, Canada, seeking a determination that a flax (*Linum usitatissimum* L.) line designated as CDC Triffid, which has been genetically engineered for tolerance to residues of sulfonylurea herbicides in soil, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On March 4, 1999, APHIS published a notice in the **Federal Register** (64 FR 10442-10443, Docket No. 99–002–1) announcing that the CDC/Saskatchewan petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject flax line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether the CDC Triffid flax line posed a plant pest risk. The comments were to have been received by APHIS on or before May 3, 1999. APHIS received no comments on the subject petition during the designated 60-day comment period.

Analysis

The CDC Triffid flax line has been genetically engineered to contain a modified acetolactate synthase (*als*) gene derived from *Arabidopsis thaliana*. The *als* gene encodes a modified acetolactate snythase enzyme that extends to root tissues the reported natural ability of flax to withstand sulfonylurea herbicides. The subject flax line also contains and expresses the nopaline synthase (*nos*) gene derived from *Agrobacterium tumefaciens* and the neomycin phosphotransferase-II (*nptII*) gene derived from *Escherichia coli*. The *nos* and *nptII* genes were used as selectable markers during the plant transformation process. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *A. tumefaciens*, and the *A. tumefaciens* method was used to transfer the added genes into the parental Norlin commercial flax variety.

The CDC Triffid flax line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from a plant pathogen. However, evaluation of data from field tests and site monitoring conducted in Canada indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of the CDC Triffid flax line.

Determination

Based on its analysis of the data submitted by CDC/Saskatchewan and a review of other scientific data and field tests of the subject flax line, APHIS has determined that the CDC Triffid flax line: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than flax varieties developed by traditional plant breeding; (3) is unlikely to increase the weediness potential for any sexually compatible cultivated or wild species; (4) will not harm nontarget organisms, including threatened or endangered species or organisms that are recognized as beneficial to the agricultural ecosystem; and (5) will not cause damage to raw or processed agricultural commodities. Therefore, APHIS has concluded that the subject flax line and any progeny derived from hybrid crosses with other flax varieties will be as safe to grow as flax in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that CDC/Saskatchewan's CDC Triffid flax line is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject flax line or its progeny. However, importation of the CDC Triffid flax line or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that CDC/Saskatchewan's CDC Triffid flax line and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 21st day of May 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13515 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Frank Church-River of No Return, Wilderness, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental draft environmental impact statement (SEIS).

SUMMARY: The Forest Service is in the process of developing a plan for future management of the Frank Church-River of No Return Wilderness (FC–RONRW). Review of the comments received on the Frank Church-River of No Return Draft Environmental Impact Statement has led the Forest Service to revise management direction, which will be accomplished by issuing two additional NEPA documents to the public. The Forest Service will prepare a site specific analysis for noxious weed control through a separate finalized EIS. A supplemental draft EIS will be prepared analyzing six new alternatives along with new information. The final EIS will be responsive to comments received on both the draft and supplemental draft EIS.

DATES: The supplemental draft EIS is expected to be available for public review and comment in mid Summer, 1999. Once the Supplemental draft is released, public comment will be accepted through December 1, 1999. The Forest Service Interdisciplinary Team will analyze the comments on the supplemental draft EIS and prepare a final EIS. The final EIS is expected to be available in the Fall of 2000 and a record of decision (ROD) will be signed shortly thereafter. The final EIS for site specific Noxious Weed Control and ROD will be released in mid Summer 1999.

FOR FURTHER INFORMATION CONTACT: Ken Wotring, Coordinator, FC–RONRW, RR2 Box 600, Hwy 93 S, Salmon, ID 83467, telephone 208–756–5131.

SUPPLEMENTARY INFORMATION: On December 7, 1994, the Forest Service published in the **Federal Register**, a Notice of Intent to prepare an EIS to develop a management plan for the FC–RONRW. On January 23, 1998, the Environmental Protection Agency published a notice of availability of the draft EIS and informed the public of a 90-day review period. The review period was later extended to February 1, 1999. During the public review, 1643 comments were received on the draft.

Review of the comments received has led the Forest Service to supplement the range of alternatives, add new information and revise the management direction described in the draft EIS. The Forest Service has decided to respond to noxious weed concerns by moving forward with a separate final analysis for site specific noxious weed control. The supplemental draft EIS will analyze six new alternatives along with new information identified from public comments. The supplemental analysis will continue to be responsive to the issues identified in the draft EIS including: the acceptable level of commercial aircraft use and degree of maintenance on specific landing strips; Recreation Opportunity Spectrum (ROS) settings; determining acceptable campsite locations and conditions; and determining capacities for both river and land recreation.

The supplemental draft EIS will describe and analyze six new alternatives: two alternatives emphasize current level of use; two alternatives emphasize opportunities for noncommercial float boat use; one alternative emphasizes wilderness preservation and one alternative emphasizes private jet boat use.

The selected alternatives will result in amendments of the land use plans for the administrative units in the Forest Service within the FC–RONR Wilderness.

George Matejko,

Lead Forest Supervisor FC–RONRW, Salmon-Challis National Forest.

[FR Doc. 99–13491 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Committee of Scientists is scheduled for June 12, 1999, in Denver, Colorado. The purpose of the meeting is for the Department and the Forest Service to brief the committee on aspects of draft planning regulations and for the committee to compare the general themes and approaches in the draft regulations with the themes and approaches set out in the committee's March 15, 1999, report. The meeting is open to the public.

DATES: A meeting is scheduled for June 12, 1999, in Denver, Colorado.

ADDRESSES: The meeting will be held at the Holiday Inn at the Denver International Airport, 15500 East 40th Avenue, Denver, Colorado. The meeting will begin at 10 a.m. and end at 4 p.m.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Designated Federal Official to the Committee of Scientists, telephone: 202–205–1523.

SUPPLEMENTARY INFORMATION: The Committee of Scientists was chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997).

Dated: May 24, 1999.

Gloria Manning,

Acting Deputy Chief, NFS.

[FR Doc. 99–13545 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Lincoln-Pipestone Rural Water; Existing System North/Lyon County Phase and Northeast Phase Expansion Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing a Final Environmental Impact Statement (EIS) for the Lincoln-Pipestone Rural Water Existing System North/Lyon County Phase and Northeast Phase Expansion Project. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality's (CEQ), Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500—1508) and RUS's Environmental Policies and Procedures (7 CFR 1794). RUS invites comments on the FEIS.

DATES: Written comments on the FEIS will be accepted on or before June 28, 1999.

ADDRESSES FOR FURTHER INFORMATION: To send comments or for more information, contact: Mark S. Plank, USDA, Rural Utilities Service, Engineering and Environmental Staff, 1400 Independence Avenue, Stop 1571, Washington, DC 20250, telephone (202) 720–1649, fax (202) 720–0820, or e-mail: mplank@rus.usda.gov.

A copy of the FEIS or an Executive Summary can be obtained over the Internet at http://www.usda.gov/rus/water/ees/environ.htm. The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from http://www.adobe.com/prodindex/acrobat/readstep.html.

Copies of the FEIS will be available for public review during normal business hours at the following locations:

USDA Service Center, Rural Development, 1424 E. College Drive, Suite 500, Marshall, MN 56258, (507) 532–3234, Ext. 203. Limited copies of the Draft EIS will be available for distribution at this address.

USDA Rural Development State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (612) 602–7800. Limited copies will be available for distribution at this address.

USDA, Rural Development, 810 10th Ave. SE, Suite 2, Watertown, SD 57201–5256, (605) 886–8202. Limited copies will be available for distribution at this address.

Lincoln-Pipestone Rural Water, East Highway 14, P.O. Box 188, Lake Benton, MN 56149, (507) 368–4248. Limited copies will be available for distribution at this address.

Marshall Public Library, 301 W. Lyon, Marshall, MN 56258, (507) 537–7003

Ivanhoe Public Library, P.O. Box 54, Ivanhoe, MN 56142, (507) 694–1555

Canby Public Library, 110 Oscar Ave., N, Canby, MN 56220, (507) 223–5738

Deuel County Extension Service, 419 3rd Ave. S, P.O. Box 350, Clear Lake, SD 57226, (605) 874–2681

Lincoln County Extension Service, 402 N. Harold, Ivanhoe, MN 56142, (507) 694–1470

Lyon County Extension Service, 1400 E. Lyon St., Marshall, MN 56258, (507) 537–6702

Yellow Medicine County Extension Service, 1000 10th Ave, Clarkfield, MN 56223

SUPPLEMENTARY INFORMATION: The purpose of the EIS is to evaluate the

potential environmental effects of a project proposal located in southwestern Minnesota. The proposal to which RUS is responding involves providing financial assistance for the development and expansion of a public rural water system. The applicant for this proposal is a public body named Lincoln-Pipestone Rural Water (LPRW). LPRW's main office is located in Lake Benton, Minnesota. Specific project activities are and have included the development of groundwater sources and production well fields and the construction of water treatment facilities and water distribution networks. The counties in Minnesota affected by this proposal include Yellow Medicine, Lincoln, and Lyon Counties and Deuel County in South Dakota

This document is a final EIS (FEIS) prepared subsequent to the preparation of a draft EIS (DEIS). On February 23, 1998, the RUS announced the availability of the DEIS in the **Federal Register** (63 FR 8901) for the previously constructed LPRW, Existing System North/Lyon County Phase project and the Northeast Expansion Phase project proposal. In addition to the **Federal Register**, public notices were published in the following newspapers: *Ivanhoe Times, Marshall Independent, Canby News,* and the *Lincoln County Valley Journal* in Minnesota; and the *Gary International, Clear Lake Courier,* and *Brookings Register* in South Dakota. The DEIS was also made available for public review at a number of locations throughout the area in both Minnesota and South Dakota and was available over the Internet at RUS's website (http://www.usda.gov/rus/water/ees/eis.htm). Subsequent to a 60-day public review period, RUS sponsored a public meeting to solicit additional comments from the public. The meeting was held on July 30, 1998, in Canby, Minnesota. The public meeting was announced in the **Federal Register** (63 FR 3461) on June 24, 1998, and in the above newspapers.

In total RUS received comments from 26 Federal and State agencies, Congressional representatives, public bodies, individuals, and environmental interest and industry groups. The number of comments totaled 79 pages. The following table outlines the commenters, commenter affiliation, and the number of pages of comments received:

SUMMARY OF PUBLIC COMMENTS

Commenter	Affiliation	Number of pages
Minnesota Department of Natural Resources	State Environmental Regulatory Agency	17
South Dakota Department of Environment and Natural Resources	State Environmental Regulatory Agency	4
Minnesota Historical Society	State Agency	1
Subtotal State Agencies	3	22
U.S. Environmental Protection Agency, Region 8	Federal Environmental Regulatory Agency	3
U.S. Department of the Interior	Federal Natural Resource Mgmt. Agency	7
U.S. Army Corps of Engineers, Omaha District	U.S. Army	2
U.S. Army Corps of Engineers, St. Paul District	U.S. Army	1
Subtotal Federal Agencies	4	13
East Dakota Water Development District (2 letters)	Public Body	9
Lincoln-Pipestone Rural Water	Public Body	7
City of Minneota, Minnesota	Public Body	1
City of Hazel Run, Minnesota	Public Body	2
Marshall Municipal Utilities (2 letters)	Public Body	3
Minnesota Southwest Regional Development Commission	Public Body	3
Subtotal Public Bodies	6	25
U.S. Senator Paul Wellstone, D–MN	U.S. Congress	1
U.S. Congressman David Minge, D–MN	U.S. Congress	1
State Senator Bernie Hunhoff	South Dakota State Legislature	1
Subtotal Congressional	2	2
Natural Audubon Society	Environmental Interest Group	2
Marshall Industries	Industry Interest Group	1
Subtotal Environmental and Industry Interest Groups	2	3
Minnesota Corn Processor	Industry	1
Industry	1	1
Private Citizens	8	13

RUS has determined that the comments, while extensive on a few issues, do not warrant a revision to the DEIS. In accordance with CEQ's procedures, 40 CFR § 1503.4, *Response to Comments,* where substantive comments were determined to merit individual responses, RUS responded directly to the commenter. All other comments were considered as appropriate in the preparation of the FEIS. Copies of all comments received as part of the DEIS's public comment period and submitted at the July 30, 1998 public meeting are included in Appendix A of the FEIS.

In general, the substantive comments received on the DEIS fell into six general areas. The six areas include the following:

1. Projected Water Needs.
2. LPRW Relationship with and Eligibility of the City of Marshall, Marshall Municipal Utilities (MMU) and Minnesota Corn Processor (MCP) for RUS Programs.
3. Contingency Plan.
4. Water Budget for Lake Cochrane.
5. Supplemental Well Field and Exploration Efforts.
6. Speculative Nature of Conclusions.

Preferred Alternative and Conclusions

After carefully considering all of the comments received from the public and Federal and State environmental

regulatory agencies, RUS continues to support the preferred alternative as outlined in the DEIS with slight modifications. The preferred alternative is as follows:

1. Finance the Northeast Phase Expansion.

2. Continue to maintain the Burr Well Field as a primary water source. To minimize reductions in the potentiometric surface, RUS supports limiting pumping rates from wells developed in the Burr Unit of the Prairie Coteau aquifer to 400–525 gpm with a corresponding annual appropriation rate.

3. At some future date, supplement existing wells at the Burr Well Field with a new well field in an area south-southeast or north-northeast of the current Burr Well Field or where sufficient aquifer materials can be found. This new well field could utilize both the Burr Unit and Altamont aquifers in a configuration similar to that at the Burr Well Field or any other configuration determined by the Minnesota Department of Natural Resources (MDNR) as appropriate. Raw water from this well field could be transported to the Burr Water Treatment Plant for treatment and distribution to LPRW customers.

4. RUS recommends that the MDNR consider integrating the proposed Water Resource Management Plan into the Burr Well Field's Water Appropriation Permit.

Mitigation Measures

In order to avoid or minimize any significant adverse environmental impacts to the surface water resources that are hydraulically connected to the Burr Unit, RUS believes that it is necessary to formalize and establish a comprehensive methodology to monitor on-going groundwater appropriations and effects to surface water resources. In addition, it would be appropriate to enable all concerned parties to provide input into evaluating these activities. Therefore, to accomplish these goals RUS will establish as a mitigation measure and as a condition of financing the Northeast Phase Expansion a requirement that LPRW prepare a Water Resource Management Plan (WRMP).

The WRMP should formalize all procedures, protocols, and methodologies to monitor in a comprehensive fashion groundwater appropriations at the Burr Well Field and effects to the surface water resources hydraulically connected to the Burr Unit. The following components should be included in the WRMP:

1. Contingency Plan—the plan should document impact thresholds established by MDNR and outline what procedures LPRW will take in the event water appropriations from the Burr Unit are restricted.

2. Well Field Operation and Management Plan—this plan should be designed to minimize reductions in the potentiometric surface in the Burr Unit.

3. Supplemental Well Field Exploration Plan.

4. Monitoring Plan—formalize monitoring well locations; establish standard methodologies or procedures for data collection, documentation, and information sharing.

While RUS recommends that the MDNR consider integrating the WRMP into the Burr Well Field's Water Appropriation Permit, it cannot require that it do so. RUS will evaluate the technical sufficiency of the WRMP through consultations with hydrogeologists at the U.S. Environmental Protection Agency (USEPA), Region 8. The mechanism for this consultation will be provided for through RUS' cooperating agency agreement with USEPA, Region 8. RUS will condition its concurrence with the WRMP and the release of funds for the Northeast Phase Expansion area subject to consultations with the MDNR and the USEPA and LPRW being able to obtain the appropriate Water Appropriation Permit(s) from the MDNR.

In the DEIS, RUS proposed that LPRW formalize an agreement with South Dakota to establish monitoring procedures and protocols to evaluate the effects of groundwater appropriations from the Burr Unit on surface water resources in South Dakota. The purpose of this agreement was to formalize monitoring input to the WRMP from South Dakota officials. RUS has decided to remove this requirement for the following reasons:

1. Governors from both South Dakota and Minnesota have already formally pledged in writing to cooperate on evaluating the effects of groundwater appropriations to the surface water resources hydraulically connected to the Burr Unit.

2. RUS believes that the MDNR has the appropriate statutory and regulatory procedures in place to allow for South Dakota's input into their Water Appropriation Permitting process.

3. All regulatory issues, concerns, or conditions related to MDNR's Water Appropriation Permit at the Burr Well Field from South Dakota should be directed at MDNR not LPRW.

Provided all of the above conditions are met, RUS is prepared to approve LPRW's application for the Northeast Phase Expansion proposal. In addition, RUS is willing to consider in accordance with RUS regulations and subject to the availability of funding development costs for a supplemental well field.

While RUS supports the development of a supplemental well field, based on monitoring compiled to date it does not appear that surface water resources around the Burr Well Field are being significantly impacted at this time. However, until more definitive conclusions can be drawn from longer term monitoring data, exploration and possible development of the supplemental well field should continue. It does not appear however, that an immediate sense of urgency is justified, rather supplemental well field development should be a long-term goal with exploration being the short-term goal.

Dated: May 20, 1999.

John P. Romano,

Deputy Administrator, Water and Environmental Program.

[FR Doc. 99–13354 Filed 5–26–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 7, 1999, Greening Donald Co. Ltd. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty investigation made by the International Trade Administration, in the antidumping investigation respecting Stainless Steel Round Wire from Canada. This determination was published in the **Federal Register**, 64 FR 17324 on April 9, 1999. The NAFTA Secretariat has assigned Case Number USA–CDA–99–1904–04 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, Acting United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade

Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 7, 1999, requesting panel review of the final antidumping duty investigation described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 7, 1999);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 21, 1999); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 11, 1999.

Caratina L. Alston,

Acting United States Secretary, NAFTA Secretariat.

[FR Doc. 99–13444 Filed 5–26–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052099C]

Designation of Fishery Management Council Members and Application for Reinstatement of State Authority

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

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 26, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard Surdi, 1315 East West Highway, Room 13142, Silver Spring, Maryland 20910, 301–713–2337.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (the Act), as amended in 1996, provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principal state fishery official for the purposes of the Act, and for a request by a state for reinstatement of state authority over a managed fishery. The information submitted with these actions will be used to ensure that the requirements of The Act are being met.

II. Method of Collection

State governors and Indian treaty tribes submit written nominations to the Secretary of Commerce, together with recommendations and statements of candidate qualifications. Designations of state officials and requests for reinstatement of state authority are also made in writing in response to regulations. No forms are used.

III. Data

OMB Number: 0648–0314
Form Number: None
Type of Review: Regular submission
Affected public: State, Local, or Tribal government
Estimated Number of Respondents: 54
Estimated Time Per Response: 1 hour to designate a principal state fishery officials, 120 hours for a nomination for a Council appointment, and 2 hours for a request to reinstate state authority.
Estimated Total Annual Burden Hours: 4,695
Estimated Total Annual Cost to Public: $200

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 19, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99–13431 Filed 5–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC) Meeting

ACTION: Notice of public meeting.

TIME AND DATE: June 15, 1999, beginning at 2:30 p.m. and June 16, 1999, beginning at 8 a.m.

PLACE: Evansville Airport Marriott, 7101 U.S. Highway 41 North, Evansville, IN 47711.

STATUS: The meeting will be open to the public. On June 15, the time between 6 p.m. and 8 p.m. will be set aside for public comments regarding the proposed certifications of the Evansville office. On June 16, the time between 10:30 a.m. and 11:30 a.m. will be set aside for public comments. Approximately 200 seats will be available to the public on a first-come, first-served basis.

MATTERS TO BE CONSIDERED: On June 15, consultation on the proposed closure of the Evansville weather office. On June 16, the meeting will include status updates on the Huntsville, AL, proposed certifications and consultation on the proposed closure of weather offices at Beckley, WV; Boston, MA; Concord, NH; Fort Smith, AR; Hartford, CT; Kahului, HI; Olympia, WA (Fire Weather); Portland, ME; Providence, RI; Salem, OR (Fire Weather); Wenatchee, WA (Fire Weather); and Worcester, MA.

FOR FURTHER INFORMATION CONTACT: Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, Silver Spring, MD 20910–3283. Telephone: (301) 713–0454.

Dated: May 18, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–13500 Filed 5–26–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050399C]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Addition to public meeting agenda.

SUMMARY: In the **Federal Register** notice dated May 10, 1999, an additional subject has been added to the agenda for the meeting of the North Pacific Fishery Management Council.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1999, in FR Doc. 99–1697, on page 25026, in the third column, the following item has been added under groundfish subjects:

The Council will receive a NOAA General Counsel opinion with regard to an amendment requiring retention of demersal shelf rockfish. The Council may reconsider previous action taken on this amendment.

Dated: May 20, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–13432 Filed 5–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042199C]

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Permits

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

ACTION: Notice of proposal for issuance of permits; request for comments.

SUMMARY: NMFS proposes to issue permits for those fisheries that have negligible impacts on marine mammal stocks listed as threatened or endangered under the Endangered Species Act (ESA) for a period of 3 years. This action would allow the incidental, but not intentional, taking of marine mammals in commercial fishing operations.

DATES: Comments on the proposed permits will be accepted through July 12, 1999.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–2337.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) requires the authorization of the incidental taking of individuals from marine mammal stocks listed as threatened or endangered under the ESA in the course of commercial fishing operations if it is determined that (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

''Negligible impact'' as defined in 50 CFR 216.103 and as applied here is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 118 of the MMPA requires the registration of vessels in fisheries listed as either Category I or Category II on the annual list of commercial fisheries. A Category I fishery is a fishery with ''frequent incidental mortality and serious injury of marine mammals.'' A Category II fishery is a fishery with ''occasional incidental mortality and serious injury of marine mammals.'' Registration is not required for Category III fisheries which have ''a remote likelihood of or no known incidental mortality or serious injury of marine mammals.'' The list of fisheries for 1999 was published on February 24, 1999 (64 FR 9067).

On August 31, 1995 (60 FR 45399), NMFS issued interim final permits for those fisheries meeting the conditions under section 101(a)(5)(E) of the MMPA. As a starting point for making determinations, NMFS announced it would consider a total annual serious injury and mortality of not more than 10 percent of a threatened or endangered marine mammal stock's potential biological removal (PBR) level to be negligible. PBR is defined in the MMPA as ''the maximum number of animals, not including natural mortalities, that may be removed from a stock while allowing that stock to reach or maintain its optimum sustainable population.'' NMFS also announced that such a criterion would not be the only factor in evaluating whether a particular level of take would be considered negligible. Because population abundance and fishery-related mortality information used in calculation of PBR have varying degrees of uncertainty, NMFS determined that such factors as population trend and reliability of abundance and mortality estimates also should be considered.

Based on requirements of section 101(a)(5)(E) of the MMPA and these criteria, NMFS issued interim final permits to allow the incidental, but not intentional, taking of three stocks of endangered or threatened marine mammals: (1) Humpback whale, central north Pacific stock; (2) Steller sea lion, eastern stock; and (3) Steller sea lion, western stock. Permits were issued for Category I and Category II fisheries

taking animals from these stocks. Consistent with the provisions of section 101(a)(5)(E)(ii) of the MMPA, NMFS determined that permits were not required for Category III fisheries, which are not required to register under section 118 of the MMPA. The only requirement for Category III fisheries is that any serious injury or mortality be reported.

On December 30, 1998 (63 FR 71894), NMFS extended the permits until June 30, 1999. At that time, NMFS announced that it was reviewing the criteria for issuance of permits and requested public comment on whether the criteria were adequate or whether changes should be made. No comments were received.

Process for Determining Negligible Impact

Based on internal review, NMFS has adopted the following criteria for making the negligible impact determination under section 101(a)(5)(E) of the MMPA:

1. The threshold for initial determination will remain at 0.1 PBR. If total human-related serious injuries and mortalities are less than 0.1 PBR, all fisheries may be permitted.

2. If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 0.1 PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality is less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total.

3. If total fisheries-related serious injuries and mortalities are greater than 0.1 PBR and less than PBR and the population is stable or increasing, fisheries may be permitted subject to individual review and certainty of data. Although the PBR level has been set up as a conservative standard that will allow recovery of a stock, there are reasons for individually reviewing fisheries if serious injuries and mortalities are above the threshold level. First, increases in permitted serious injuries and mortalities should be carefully considered. Second, as serious injuries and mortalities approach the PBR level, uncertainties in elements such as populations size, reproductive rates, and fisheries-related mortalities become more important.

4. If the population abundance of a stock is declining, the threshold level of 0.1 PBR will continue to be used. If a population is declining despite limitations on human-related serious injuries and mortalities below the PBR level, a more conservative criterion is warranted.

5. If total fisheries related serious injuries and mortalities are greater than PBR, permits may not be issued.

Summary of Findings

Using these criteria, the impact of commercial fisheries on specific stocks of endangered and threatened marine mammals can be divided into three groups: (1) Stocks with no fisheries-related mortalities for which permits are not necessary; (2) stocks ineligible for permits under criteria 4 and 5; and (3) stocks for which commercial fisheries are eligible for permits provided other provisions of section 101(a)(5)(E) of the MMPA are met and for which NMFS proposes issuance of permits in this document.

There are no documented fisheries-related serious injuries or mortalities for the following marine mammal stocks which are listed as endangered or threatened under the ESA:

Blue whale, California/Mexico stock
Blue whale, Hawaiian stock
Blue whale, western north Atlantic stock
Bowhead whale, western Arctic stock
Fin whale, California/Oregon/Washington stock
Fin whale, Hawaiian stock
Fin whale, northeast Pacific stock
Humpback whale, western north Pacific stock
Northern right whale, north Pacific stock
Sei whale, eastern north Pacific stock
Sei whale, western north Atlantic stock
Sperm whale, Hawaiian stock
Sperm whale, western north Atlantic stock
Guadalupe fur seal

For the following stocks, NMFS is unable to determine that serious injuries and mortalities incidental to commercial fishing operations will have a negligible impact. No takes of these threatened or endangered marine mammal stocks incidental to commercial fishing operations are allowed.

Humpback whale, California/Oregon/Washington-Mexico stock
Northern right whale, western north Atlantic stock
Sperm whale, California/Oregon/Washington stock
Sperm whale, north Pacific stock
Hawaiian monk seal

Based on the criteria listed above and the 1998 Marine Mammal Stock Assessment Reports, NMFS has determined that the serious injuries and mortalities incidental to commercial fishing operations will have a negligible impact. The Marine Mammal Stock Assessment Reports are available on the NMFS web site at (http://www.nmfs.gov/prot_res/mammals/sa_rep/sar.html). Hard copies are available from Chief, Marine Mammal Division (see **ADDRESSES**). NMFS proposes to issue permits for incidental takes from these stocks for the Category I and II fisheries listed in Table 1 and requests comments. Vessels participating in Category III fisheries included in this list shall not be subject to penalties for the incidental taking of marine mammals listed under the ESA, provided that such takes are reported in accordance with section 118 of the MMPA. The stocks for which permits are proposed are:

Fin whale, western north Atlantic stock
Humpback whale, central north Pacific stock
Humpback whale, north Atlantic stock
Steller sea lion, eastern U.S. stock
Steller sea lion, western U.S. stock

Dated: May 19, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

TABLE 1.—LIST OF FISHERIES AND STOCKS FOR WHICH CRITERIA UNDER SECTION 101(A)(5)(E) HAVE BEEN MET

[Issuance of permits is proposed for incidental takes from these stocks for the Category I and II fisheries indicated. Category III fisheries included in this list would not be subject to penalties for the incidental taking of marine mammals listed under the ESA, provided that such takes are reported in accordance with section 118 of the MMPA]

Fishery	Stocks for which takes are allowed
Category I Fisheries:	
CA/OR thresher shark/swordfish drift gillnet	Steller sea lion, Eastern U.S. stock.
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet.	Humpback whale, Western North Atlantic stock.

TABLE 1.—LIST OF FISHERIES AND STOCKS FOR WHICH CRITERIA UNDER SECTION 101(A)(5)(E) HAVE BEEN MET—Continued

[Issuance of permits is proposed for incidental takes from these stocks for the Category I and II fisheries indicated. Category III fisheries included in this list would not be subject to penalties for the incidental taking of marine mammals listed under the ESA, provided that such takes are reported in accordance with section 118 of the MMPA]

Fishery	Stocks for which takes are allowed
Northeast sink gillnet	Humpback whale, Western North Atlantic stock. Fin whale, Western North Atlantic stock.
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	Humpback whale, Western North Atlantic stock.
Gulf of Maine, U.S. Mid-Atlantic lobster trap/pot	Humpback whale, Western North Atlantic stock. Fin whale, Western North Atlantic stock.
Category II Fisheries:	
Prince William Sound salmon drift gillnet	Steller sea lion, Western U.S. stock.
Alaska Peninsula/Aleutian Islands salmon set gillnet	Steller sea lion, Western U.S. stock.
Southeast Alaska salmon drift gillnet	Steller sea lion, Eastern U.S. stock. Humpback whale, Central North Pacific stock.
Cook Inlet salmon drift gillnet	Steller sea lion, Western U.S. stock.
Cook Inlet salmon set gillnet	Steller sea lion, Western U.S. stock.
Bristol Bay salmon drift gillnet	Steller sea lion, Western U.S. stock.
Southeast Alaska salmon purse seine	Humpback whale, Central North Pacific stock.
U.S. Mid-Atlantic coastal gillnet	Humpback whale, Western North Atlantic stock.
Gulf of Maine small pelagics surface gillnet	Humpback whale, Western North Atlantic stock.
Category III Fisheries:	
Prince William Sound salmon set gillnet	Steller sea lion, Western U.S. stock.
Alaska miscellaneous finfish set gillnet	Steller sea lion, Western U.S. stock.
Alaska salmon troll	Steller sea lion, Eastern U.S. stock.
Alaska miscellaneous finfish/groundfish longline/set line	Steller sea lion, Western U.S. stock.
Hawaii swordfish, tuna, billfish, mahi mahi, oceanic sharks longline/set line.	Humpback whale, Central North Pacific stock.
Southern Bering Sea, Aleutian Islands, and western Gulf of Alaska sablefish longline/set line (federally regulated waters).	Steller sea lion, Western U.S. stock.
Alaska halibut longline/set line	Steller sea lion, Western U.S. stock.
Gulf of Alaska groundfish trawl	Steller sea lion, Western U.S. stock.
Bering Sea and Aleutian Islands groundfish trawl	Steller sea lion, Western U.S. stock.
WA/OR/CA groundfish trawl	Steller sea lion, Eastern U.S. stock
RI, southern MA, and New York Bight inshore gillnet	Humpback whale, Western North Atlantic stock.
Long Island Sound inshore gillnet	Humpback whale, Western North Atlantic stock.
Delaware Bay inshore gillnet	Humpback whale, Western North Atlantic stock.
Gulf of Maine, U.S. Mid-Atlantic mixed species trap/pot	Humpback whale, Western North Atlantic stock.
Gulf of Maine herring and Atlantic mackerel/stop seine/weir	Humpback whale, Western North Atlantic stock.

[FR Doc. 99–13499 Filed 5–26–99; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

LIBRARY OF CONGRESS

Copy Right Office

[Docket No. 990428110–9110–01]

RIN 0660–ZA09

Request for Comments on Section 1201(g) of the Digital Millennium Copyright Act

AGENCIES: The National Telecommunications and Information Administration, United States Department of Commerce; and the United States Copyright Office, Library of Congress.

ACTION: Request for public comment.

SUMMARY: The National Telecommunications and Information Administration of the United States Department of Commerce and the United States Copyright Office invite interested parties to submit comments on the effects of Section 1201(g) of Title 17, United States Code, as adopted in the Digital Millennium Copyright Act, Pub. L. No. 105–304, 112 Stat. 2860 (Oct. 28, 1998) (''DMCA'') on encryption research and the development of encryption technology; the adequacy and effectiveness of technological measures designed to protect copyrighted works; and the protection of copyright owners against unauthorized access to their encrypted copyrighted works.

The DMCA, enacted on October 28, 1998, directs the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to prepare a report for the Congress examining the impact of Section 1201(g) on encryption research and including legislative recommendations—if any—no later than one year after enactment of the DMCA. This **Federal Register** Notice is intended to solicit comments from interested parties on the effects of section 1201(g) of the DMCA. More specifically, how will the provisions of section 1201(g) of the DMCA affect encryption research?

The DMCA defines ''encryption research'' as identification and analysis of flaws and vulnerabilities of encryption technologies applied to copyrighted works. This activity must promote understanding of encryption technology or advance the development of encryption products.

DATES: Comments must be received by July 26, 1999.

ADDRESSES: The Department of Commerce and the Copyright Office invite the public to submit written comments in paper or electronic form. Comments may be mailed to Paula J. Bruening, Office of Chief Counsel, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of

Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; and Jesse M. Feder, Office of Policy and International Affairs, U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Paper submissions should include a version on diskette in PDF, ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format. Comments should be sent to both the Department of Commerce and Copyright Office addresses.

Comments submitted in electronic form should be sent to dmca@ntia.doc.gov and crypto@loc.gov. Electronic comments should be submitted in the formats specified above and should be sent to both the Department of Congress and Copyright Office addresses.

FOR FURTHER INFORMATION CONTACT: Paula J. Bruening, National Telecommunications and Information Administration (202) 482–1816; and Jesse M. Feder, Office of Policy and International Affairs, US Copyright Office, Library of Congress (202) 707–8350.

SUPPLEMENTARY INFORMATION: The National Telecommunications and Information Administration, United States Department of Commerce and the United States Copyright Office, Library of Congress invite interested parties to submit comments on the effects of the Digital Millennium Copyright Act (DMCA) on encryption research and development of encryption technology; the adequacy and effectiveness of technological measures designed to protect copyrighted works; and, protection of copyright owners against unauthorized access to their encrypted copyrighted works.

The objective of Title I of the Digital Millennium Copyright Act was to revise U.S. copyright law to comply with two recent World Intellectual Property Organization (WIPO) Treaties and to strengthen copyright protection for motion pictures, sound recordings, computer software and other copyrighted works in electronic formats. The DMCA establishes a prohibition on the act of circumventing technological measures that effectively control access to a copyrighted work protected under the U.S. Copyright Act. The prohibition, found in Section 1201 of Title 17, U.S. Code, takes effect October 28, 2000, two years from the date of enactment of the DMCA.

The DMCA also makes it illegal for a person to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively controls access to or unauthorized copying of a work protected by copyright, has only a limited commercially significant purpose or use other than circumvention of such measures, or marketed for use in circumventing such measures.

Despite the general prohibitions of Section 1201, the DMCA permits certain specified activities that include the circumvention of access control technologies in limited circumstances. One such specified activity is good faith encryption research. The DMCA defines ''encryption research'' as identification and analysis of flaws and vulnerabilities of encryption technologies applied to copyrighted works. This activity must promote understanding of encryption technology or advance the development of encryption products.

The DMCA exempts from the general prohibition certain good faith activities of circumvention when: (a) The person circumventing the protection system lawfully obtained the encrypted copy of the work; (b) circumvention is necessary to conduct the encryption research; (c) the person circumventing the protection system made a good faith effort to obtain authorization prior to the circumvention; and, (d) such circumvention does not constitute copyright infringement or a violation of any otherwise applicable law. The DMCA also lists additional factors to be considered when determining whether a person qualifies for the exemption.

The DMCA also includes several additional exemptions from the general prohibition or circumvention. One such exemption is for security testing. Section 1201(j) of Title 17, U.S. Code permits circumvention of access control technologies in order to test the effectiveness of a security measure. Comments on Subsection 1201(j), the exemption for ''security testing,'' and comments on exemptions other than the exemption for encryption research, are not being solicited by this Notice and will not be considered.

Information collected from responses to this **Federal Register** Notice will be considered when preparing the required report for Congress.

Kathy D. Smith,

Acting Chief Counsel, National Telecommunications and Information Administration.

Marybeth Peters,

Register of Copyrights, United States Copyright Office.

[FR Doc. 99–13439 Filed 5–26–99; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

RIN 0651–ZA02

[Docket No. 99–0512128–9128–01]

Notice of Public Hearing and Request for Comments on Issues Related to the Identification of Prior Art During the Examination of a Patent Application

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Hearing and Request for Public Comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is seeking comments to obtain views of the public on issues associated with the identification of prior art during the examination of a patent application. Interested members of the public are invited to testify at the hearing and to present written comments on any of the topics outlined in the supplementary information section of this notice.

DATES: Public hearings will be held on Monday, June 28, 1999, and Wednesday, July 14, 1999, starting each day at 9:00 a.m. and ending no later than 5:00 p.m. Those wishing to present oral testimony at any of the hearings must request an opportunity to do so no later than June 21, 1999 for the June 28, 1999 hearing, or July 7, 1999 for the July 14, 1999 hearing. Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings no later than August 2, 1999.

To ensure consideration, written comments must be received at the USPTO no later than August 2, 1999. Written comments and transcripts of the hearing will be available for public inspection on or about August 9, 1999.

ADDRESSES: The June 28, 1999 hearing will be held in the Nob Hill Room of the San Francisco Marriott Hotel located at 55 Fourth Street, San Francisco, California. The July 14, 1999 hearing will be held in the Patent Theater located on the Second Floor of Crystal Park 2, 2121 Crystal Drive, Arlington,

Virginia. Those interested in testifying or in submitting written comments on the topics presented in the supplementary information, or any other related topics, should send their request or written comments to the attention of Elizabeth Shaw, addressed to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Written comments may be submitted by facsimile transmission to Elizabeth Shaw at (703) 305-8885. Comments may also be submitted by electronic mail through the Internet to elizabeth.shaw2@uspto.gov.

Written comments will be maintained for public inspection in Crystal Park Two, Room 902, 2121 Crystal Drive, Arlington, Virginia. Written comments in electronic form may be made available via the PTO's World Wide Web site at http://www.uspto.gov. No requests for presenting oral testimony will be accepted through electronic mail.

FOR FURTHER INFORMATION CONTACT: Lois Boland by telephone at (703) 305–9300, by facsimile at (703) 305–8885, by electronic mail at lois.boland@uspto.gov, or by mail addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231; or Robert J. Spar by telephone at (703) 305–9285, by facsimile at (703) 308–6919, by electronic mail at bob.spar@uspto.gov, or by mail addressed to Commissioner of Patents and Trademarks, Box Comments-Patents, Assistant Commissioner for Patents, Washington, DC 20231. Inquiries regarding the San Francisco Marriott Hotel should be made to the hotel directly at (415) 896–1600.

SUPPLEMENTARY INFORMATION:

I. Background

One of the key functions of the United States patent examination system is to determine whether a claimed invention is novel and nonobvious. According to United States patent law, a claimed invention is not patentable if prior art teaches or renders obvious the invention. See 35 U.S.C. 102 & 103 (1996). Although the term ''prior art'' generally describes all information that can be used to show that an invention is not patentable, Section 102 of title 35 of the United States Code provides a full legal definition of what information qualifies as prior art. 35 U.S.C. 102 (a)–(g).

Locating relevant prior art is one of the most important aspects of the patent examining process. During the prosecution of a patent application, such prior art will be evaluated by the examiner to determine patentability. Moreover, once the patent is issued, the prior art of record will be closely scrutinized by competitors and potential licensees to determine the validity and scope of the patent. In the event of litigation, these prior art documents will be considered by the courts for determinations of the validity and scope of issued patents.

Patent examiners and applicants share the responsibility of ensuring that pertinent prior art is being considered during the examination of a patent application. To this end, the USPTO imposes an obligation on patent examiners to conduct a thorough search of the prior art and on applicants to submit information known to them to be material to patentability. To assist patent examiners in discharging their duty to conduct a thorough search of the prior art, the USPTO provides patent examiners with access to a vast collection of patent documents and nonpatent literature. However, searching prior art in emerging technologies presents challenges. First, the terminology in such fields may not be standardized, which makes it difficult to conduct automated searches based on key terms. Second, prior art information in new technologies is frequently not categorized or indexed in a fashion that facilitates searching and accessibility. Lastly, prior art in certain areas, such as software-related inventions, may not be available through customary or predictable means.

Recently, USPTO has been criticized for not considering the most pertinent prior art during the examination of patent applications. In particular, software-related patents have been criticized for containing too few references to nonpatent literature related to these inventions. While many applicants submit a large number of prior art documents in connection with a filed patent application, the USPTO may not be receiving the kind of valuable nonpatent literature necessary to optimize the quality of patent examination. As the agency charged with issuing valid patents, the USPTO recognizes the importance of obtaining and analyzing the closest prior art to the proper prosecution of a patent application and the validity of an issued patent. For this reason, the USPTO is interested in obtaining public opinion as to whether patent examiners are identifying and applying the most pertinent prior art during the examination of a patent application, and if not, how the USPTO may be equipped to do so.

II. Issues for Public Comment

Interested members of the public are invited to testify and present written comments on issues they believe to be relevant to the discussion below. Questions following the discussion are included to identify specific issues upon which the USPTO is interested in obtaining public opinion.

A. Current Procedures for Obtaining Prior Art

Recognizing the importance of issuing patents that are properly searched and examined, USPTO rules and procedures impose specific requirements on both examiners and applicants for identifying material prior art. These obligations are designed to furnish patent examiners with sufficient information to make appropriate novelty and nonobviousness determinations.

Patent examiners are obligated to conduct ''a thorough investigation of the available prior art relating to the subject matter of the claimed invention.'' 37 CFR 1.104(a) (1998). More specifically, the Manual of Patent Examining Procedure (MPEP) instructs patent examiners that prior art searches include not only the field in which the invention is classified, but also analogous arts. *See* MPEP § 904.01(c) (July 1998). Moreover, patent examiners are instructed to develop a search strategy that includes United States patents and ''other organized systems of literature,'' and to implement the search strategy manually and by machine. MPEP § 904.01(d).

To assist examiners in obtaining prior art, the USPTO has invested a substantial amount of financial resources to the search and retrieval of a wide variety of prior art documents. Patent examiners can readily search classified paper files, microfilm, and CD–ROMs, comprising United States patents, foreign patent documents, Patent Cooperation Treaty (PCT) publications, as well as a large selection of nonpatent literature, including technical journals, books, magazines, encyclopedias, product catalogues, and industry newsletters. In addition, patent examiners have access to hundreds of in-house and commercial online databases providing convenient access, from their desktop, to millions of United States and foreign patent and nonpatent literature documents.

Emerging technologies, such as telecommunications and the computer-related arts, present challenges in searching and identifying the most relevant prior art. This is often because the best prior art with respect to these new technologies is available as

nonpatent literature months to years before it is available in the form of United States or foreign patents. Accordingly, searching the nonpatent literature in blossoming technologies is vital to patentability determinations. To ensure complete coverage, the USPTO is assembling a larger, more complete nonpatent literature prior art collection in emerging technologies and is working on providing patent examiners with better access to nonpatent literature in new areas of technology.

Concurrent with the examiner's duty to conduct a thorough and complete search of the prior art, applicants have a duty to submit all information known to them to be material to patentability. Specifically, 37 CFR 1.56 provides that information is material to patentability when (1) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or (2) it refutes, or is inconsistent with, a position the applicant takes in (i) opposing an argument of unpatentability relied on by the USPTO, or (ii) asserting an argument of patentability. 37 CFR § 1.56 (1998). In addition, this Rule encourages applicants to examine certain types of information, *e.g.,* prior art cited in search reports of a foreign patent office in a counterpart application, to ensure that material information is disclosed to the USPTO. 37 CFR 1.56 (a)(1) & (2).

Applicant's duty to submit material information is important to high quality patent examination because inventors are generally in the best position to be aware of the state of the art and are in possession of, or have access to, the most pertinent prior art. For this reason, the quality of patent examination benefits when applicants assist the examiners in identifying information, particularly nonpatent literature, material to patentability.

B. Questions

The USPTO is interested in ensuring that patent examiners consider the most pertinent prior art during the examination of patent applications. Public comments, including responses to the following questions, are invited to assist the USPTO in identifying any improvements that can be made to ensure that patent examiners are searching and have access to the most relevant prior art in the course of examination of a patent application. The tenor of the following questions should not be taken as an indication that the USPTO has taken a position on or is predisposed to any particular approach to concerns regarding examiner access to pertinent prior art. Your thoughts on the following topics would be appreciated.

1. Is the most pertinent prior art being considered by patent examiners during examination of patent applications? If not, please include the following in your response:

(a) Provide support for your conclusions and identify the following:

(i) The area(s) of technology most affected; and

(ii) The type(s) of prior art most overlooked by the USPTO, including but not limited to United States patents, foreign patent documents, and nonpatent literature.

(b) Identify why you perceive that patent examiners are not considering the most pertinent prior art.

2. Do applicants submit the most pertinent prior art that they are aware of in connection with a filed patent application? If not, please include the following in your response:

(a) Provide support for your conclusions and identify the following:

(i) The area(s) of technology most affected; and

(ii) the type(s) of prior art that is not being submitted by applicants, including but not limited to United States patents, foreign patents, and nonpatent literature.

(b) Identify why you perceive that applicants are not submitting the most pertinent prior art.

3. Are the current rules and procedures for obtaining prior art during the examination of a patent application adequate and effective? If not, please include the following in your response:

(a) Identify aspects of the rules and procedures that do not facilitate the identification of pertinent prior art;

(b) Discuss any proposed changes to the rules or procedures to improve the identification of pertinent prior art; and

(c) Discuss potential advantages and hardships that patent applicants and examiners would face if particular changes were adopted.

4. Are prior art searches typically conducted before filing a patent application with the USPTO? If not, please explain. If so, please include the following in your response:

(a) An identification of the area(s) of technology where it is most likely that a prior art search would be conducted;

(b) The scope of a proper prior art search (*i.e.*, United States Patents, foreign patents, journal articles, corporate bulletins, as well as other types of nonpatent literature); and

(c) An identification of databases and Internet resources generally searched or available to applicants and/or the USPTO.

5. Please indicate whether Information Disclosure Statements are frequently submitted and, if so, which of the following types of prior art documents are included:

(a) United States patents;

(b) Foreign patent documents and Patent Cooperation Treaty (PCT) publications; and

(c) Nonpatent literature, including but not limited to journal articles, conference papers, corporate bulletins, and Internet publications.

If applicable, please explain why any of the aforementioned type(s) of prior art documents are not normally submitted to the USPTO.

6. Should applicants be required to conduct a prior art search and submit corresponding search results, including where they searched, to the USPTO when filing a patent application? If not, should applicants be required to disclose whether or not a search was conducted? Please explain your rationale and discuss any potential advantages and drawbacks.

7. Should applicants be required to submit all prior art relied upon during the drafting of the claims of a patent application? Please explain your rationale and discuss any potential advantages and drawbacks.

8. Should applicants be required to submit all nonpatent literature directed to the same field of invention attributable to, authored by, or co-authored by the applicant? Please explain your rationale and discuss any potential advantages and drawbacks.

9. Please identify any type(s) of nonpatent literature documents applicants should be required to submit to the USPTO in connection with any given patent application (*e.g.*, conference reports, corporate collections, documents relied on in drafting an application, etc.). Please explain your rationale and discuss any potential advantages and drawbacks.

10. If you believe that the most relevant prior art is not being identified during patent examination, please identify any suggestions to obviate this problem. In your response, please:

(a) Discuss in detail any idea for addressing this problem effectively;

(b) Explain how the proposal(s) should be implemented;

(c) Identify who should bear the cost; and

(d) Indicate any potential advantages and drawbacks for each suggestion.

11. Please discuss any related matters not specifically identified in the above questions. If this is done, parties are requested to:

(a) Label that portion of the response as ''Other Issues'';

(b) Clearly identify the matter being addressed;

(c) Provide examples, where appropriate, that illustrate the matter addressed;

(d) Identify any relevant legal authorities applicable to the matter being addressed; and

(e) Provide suggestions regarding how the matter should be addressed by the USPTO.

III. Guidelines for Oral Testimony

Individuals wishing to testify must adhere to the following guidelines:

1. Anyone wishing to testify at the hearing(s) must request an opportunity to do so no later than June 21, 1999 for the June 28, 1999 hearing, or July 7, 1999 for the July 14, 1999 hearing. Requests to testify may be accepted on the date of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

2. Requests to testify must include the speaker's name, affiliation and title, mailing address, telephone number, and hearing date desired. Facsimile number and Internet mail address, if available, should also be provided. Parties may include in their request an indication as to whether they wish to testify during the morning or afternoon session of the hearing.

3. Speakers will be given between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. All efforts will be made to accommodate requests for additional time for testimony presented before the day of the hearing.

4. Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings. These remarks should be provided no later than August 2, 1999.

5. A schedule providing the approximate starting time for each speaker will be distributed the morning of the day of the hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

IV. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of the individual responding; and

2. If applicable, indications of whether comments offered represent views of the respondent's organization or are the respondent's personal views.

If possible, parties offering testimony or written comments should provide their comments in machine-readable format. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5'' floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text), or as formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS, or Windows versions); or WordPerfect (Macintosh, DOS, or Windows versions).

Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise submit the information in a way that will permit its public disclosure.

Dated: May 21, 1999.

Robert M. Anderson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–13440 Filed 5–26–99; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, William Ward, (202) 606–5000, extension 375. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Project Description Form.

OMB Number: None.

Agency Number: None.

Affected Public: Educators and other institutional personnel whose organzations receive grant funds from Learn and Serve America.

Total Respondents: 2,100.

Frequency: Annually.

Estimated Time per Respondent: 1 hour.

Estimated Annual Reporting or Disclosure Burden: 2,100 hours.

Total Annualized Capital/startup costs: None.

Total Annualized Burden Costs: None.

Description: The Corporation seeks approval of the Learn and Serve America Project Description Form. The form will ask Learn and Serve America grantees and their sub-grantees to: (1) Identify the frequency and types of student participants in service-learning programs; (2) identify the frequency and types of institutions and organizations sponsoring and collaborating with service-learning programs; (3) specify the types of services being provided to communities by students in service-learning; and (4) describe the local program operations and achievements. The information will be used to: (1) Measure performance in terms set forth in the annual performance plan; (2) prepare descriptions of program activities and achievements with support from Learn and Serve America; (3) inform the Corporation, grantees, educational institutions, and the public

concerning the nature, extent, and best practices in service-learning programs across the nation.

Dated: May 21, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–13518 Filed 5–26–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of The Army

Army Science Board Notice of Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 9 & 10 June 1999.

Time of Meeting: 0800–1700 (both days).

Place: Arlington, VA.

Agenda: The Army Science Board's (ASB) Summer Study panel on ''Full Spectrum Protection for 2025–Era Ground Platforms'' will meet for briefings and discussions. These meetings will be partially open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and manner permitted by the committee. The classified portions of these meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). For further information, please contact the Army Science Board at (703) 604–7479.

Wayne Joyner,

Program Support Manager, Army Science Board.

[FR Doc. 99–13521 Filed 5–26–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Increased Flight and Related Operations in the Patuxent River Complex, Patuxent River, MD

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy, after carefully considering the operational and environmental consequences, announces its decision to increase flight and related operations in test areas comprising the Patuxent River Complex, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Elleen Kane, NAS Patuxent River Public Affairs, 2268 Cedar Point Road, Bldg 409, Patuxent River, MD 20670, telephone 301–342–7710.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

The Department of the Navy (DON), pursuant to Section 102(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Section 4331 et seq.) and regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures (40 CFR Parts 1500–1508), hereby announces its decision to increase flight and related operations in test areas comprising the Patuxent River Complex, MD as set forth in Operational Workload III, which is identified as Preferred Alternative in the Final Environmental Impact Statement (FEIS).

Operational Workload Alternative III provides for up to 24,400 flight hours per year, including up to 21,100 annual flight hours for research, development, test, and evaluation (RDT&E) activities and related support, and up to 3,300 annual flight hours of military training support. Non-flight and laboratory test activities will operate at levels proportional to the increase in flight operations. This level of future operations is based on foreseeable mission requirements and the complex's unique airfield, facility, and range capabilities. As a result, the complex will have the flexibility to accept new and variable workloads, thereby increasing efficiencies and lowering costs to users.

The test areas involved are under the exclusive control and scheduling authority of the Naval Air Warfare Center, Aircraft Division (NAWCAD). They include Naval Air Station (NAS) Patuxent River (with all its flight and ground test facilities, runways, and associated airspace); Outlying Field (OLF) Webster Field (with its flight test facilities, runways, and associated airspace); and the Chesapeake Test Range (CTR) (including its restricted airspace, aerial and surface firing range, and Hooper, Hannibal, and Tangier Island targets). Combined, these test areas are identified as the Patuxent River Complex.

Implementation of the action will be phased in as needed to support additional workloads beginning in mid-1999.

Process

A Notice of Intent (NOI) to prepare an EIS for increased flight and related operations in the Patuxent River Complex was published in the **Federal Register** on April 1, 1997, and in local and regional newspapers twice, one and three weeks prior to the scoping meetings. Five public scoping meetings were held between May 6 and May 15, of 1997 in Prince Frederick, MD; Leonardtown, MD; Burgess, VA; Crisfield, MD; and Cambridge, MD. Comments received during the public scoping meetings were considered in the preparation of the Draft EIS (DEIS).

A Notice of Availability (NOA) for the DEIS was published in the **Federal Register** on May 15, 1998 and in local and regional newspapers twice, one and three weeks prior to the scheduled hearing dates. Public hearings were held June 10 through June 22 of 1998, in Lusby, MD; Cambridge, MD; Heathsville, VA; and Great Mills, MD. The DON received 330 comments on the DEIS from 2 Congressmen, 4 federal agencies, 17 state agencies, 2 regional agencies, 6 local governments, 11 non-governmental organizations, and 93 private citizens. All verbal and written comments are addressed in Chapter 10 of the FEIS.

The NOA for the FEIS was published in the **Federal Register** on December 18, 1998. Public notices and news releases noting the availability of the FEIS were published in local and regional newspapers the following week. Copies of the FEIS and DEIS are available for public review in 18 repositories around Chesapeake Bay and will continue to be available for 60 days following the signing of this Record of Decision. The DON received 29 public comments on the FEIS during the 30-day public comment period.

Alternatives Considered

The three alternatives considered in this FEIS focus on the efficient use of existing facilities and personnel in the Patuxent River Complex and provide for the continuation of and increase in RDT&E flight operations and non-flight laboratory activities, and additional support for military training activities. The preferred alternative (Operational Workload Alternative III) could accommodate up to 24,400 flight hours per year. Operational Workload Alternatives I and II could accommodate up to 20,700 and 22,600 flight hours per year, respectively. Implementation of any alternative will: (1) Maintain existing boundaries of the special use airspace and restricted surface areas in the CTR; (2) continue airfield daily operating hours at current, or slightly modified operating hours; (3) require no additional permanent and transient employees at NAS Patuxent River and OLF Webster Field or construction of major new facilities beyond those constructed as a result of previous Base

Realignment and Consolidation decisions.

The Navy also evaluated a No Action Alternative that maintained flight and related operations at current levels of intensity (18,200 annual flight hours). The No Action Alternative anticipated changes in the future mix of aircraft (i.e., both the addition of new aircraft/aircraft systems that may be tested for Navy acquisition and the retirement and/or replacement of aging aircraft/aircraft systems).

Environmental Impacts

The Department of the Navy analyzed the impacts of the alternative proposals, considering the following factors: land use and coastal zone management; socioeconomics; community facilities and services; transportation; infrastructure; air quality; noise; ordnance, hazardous materials management, and radio frequency sources; topography, geology, and soils; vegetation and wetlands; terrestrial and aquatic wildlife; water and sediment quality; and aircraft operations and safety. Potential cumulative impacts of the proposed action and consistency of the proposed action with federal policies addressing environmental justice and environmental health risks to children were also considered. Based upon these analyses the Department of the Navy finds that no significant impacts will result from implementation of the preferred alternative (Operational Workload Alternative III).

Mitigation

Even though no significant impacts would result from implementation of the preferred alternative, public comments outlined concerns with several operational issues. As a result, the Navy is implementing a series of measures in response to public complaints about aircraft noise disturbances, supersonic events, sufficiency of pilot awareness briefs, Unmanned Aerial Vehicle (UAV) operations in the CTR, and the operation of an open-air aircraft engine test cell at NAS Patuxent River.

Aircraft Noise Disturbances

NAS Patuxent River will establish formal procedures to ensure proper handling of and response to noise/aircraft disturbance reports. The procedures will include the compilation of a centralized database of noise disturbance reports, and a monthly review of these reports by the NAS Patuxent River Air Installation Compatible Use Zone (AICUZ) officer. When appropriate, corrective action to minimize future noise disturbances will be taken.

Supersonic Events

The Navy will undertake two measures with respect to supersonic flight testing. First, supersonic flights below 30,000 ft in the CTR will be restricted to supersonic test flights for weapons separation. Supersonic flights above 30,000 ft will be in response to mission-critical needs only. Second, a sonic boom monitoring system will be installed in the CTR. Data records from the monitoring system, when used in combination with noise/aircraft disturbance reports, will identify the need for corrective action to be taken, or to suggest operational or procedural modifications that will minimize sonic boom impacts.

Pilot Awareness Briefs

The Navy will expand existing briefings on aircraft operations procedures to all users of the CTR to ensure an understanding of proper procedures and mitigation measures adapted as a result of this study.

UAV Operations in the CTR

The operation of UAVs in a constricted area of the CTR over the Northern Neck of Virginia has resulted in overflights of the same location numerous times during each mission. These overflights subject residents of the Northern Neck to a low level of noise during daylight hours of the work week. To mitigate this situation, the Navy will increase the flight area within the CTR that UAVs use for routine training purposes. These alternative UAV operating areas are being identified by the Navy using detailed demographic and land use data to avoid overflights of densely populated areas. This expansion of prescribed airspace will greatly reduce UAV presence and noise at any one location.

Operations at the Open-Air Aircraft Engine Test Cell

At various times during the first and second quarters of 1998, the enclosed engine maintenance test cell was temporarily unavailable. This situation caused the tempo and type of operations at the open-air aircraft engine test facility at NAS Patuxent River to increase. A continuing need exists to conduct critical engine tests at this facility. However, the Navy will minimize use of the open-air aircraft engine test facility by eliminating aircraft turbofan and turbojet engine maintenance runs, except for mission-critical situations where the enclosed engine maintenance test cell is unavailable for an extended period of time and approval of the Commanding Officer of NAS Patuxent River has been obtained. In addition, the Navy will investigate: (1) Feasible technical solutions to reduce the noise associated with operations at the open-air aircraft engine test facility and (2) the technical feasibility of developing an alternative back-up site for the enclosed engine maintenance test cell to further reduce the likelihood that the open-air aircraft engine test facility will be required for aircraft jet engine maintenance runs.

EIS Implementation Plan

The Navy has prepared an EIS Implementation Plan that has been approved by NAS Patuxent River and the NAWCAD Atlantic Ranges and Facilities Department. This plan provides policy and direction that will ensure that the operational mitigation and monitoring specified in this Record of Decision will be executed. The NAS Operational Environmental Planning (OEP) Office is responsible for data administration. The NAS Public Affairs Office (PAO) will provide public interface support.

Response to Comments Received Regarding the Final Environmental Impact Statement

The DON received 29 comments on the FEIS from 1 federal agency, 4 state agencies, 3 local governments, and 2 private citizens. Some comments received were editorial in nature, had been addressed in the FEIS and thereby required no further discussion, or, simply disagreed with conclusions of the FEIS but did not present new or additional information that substantially affected the FEIS analysis. Substantive comments organized by subject matter are addressed below.

Aircraft Noise

The Calvert County Board of Commissioners questioned the population data used in the computer noise models and the conclusions reached from the modeling results. The noise modeling analyses are based on standard procedures widely used for commercial and military airfields. These procedures have been validated and are sufficient to predict the resultant noise levels in the CTR from the additional aircraft operations. To maintain consistency in the noise analysis conducted for the CTR, US Census 1990 data were used to characterize the existing and future population. These are the only data that provide population statistics on a census tract basis. Only a very small portion of the population of southern Calvert County

(i.e., the southernmost tip of Drum Point) would be impacted by airfield-related noise levels of 65 to 70 dB DNL. In addition, in response to comments on the DEIS, text was added to FEIS Subchapter 4.1 (page 4.1–2) to acknowledge the significant current and future growth in the Solomons area that is changing in character from a rural residential area to a more densely-populated suburban community.

Water and Sediment Quality

The Virginia Department of Environmental Quality (VDEQ) Tidewater Regional Office requested clarification on the amount of lead that would be released into the Chesapeake Bay in the form of lead bullets. The FEIS states on page 4.13–5 that an estimated 1.0 cu ft of lead (about 0.5 cu ft of lead more than identified under the No Action Alternative) could be released annually into the Bay under the preferred alternative (Operational Workload Alternative III).

The VDEQ Tidewater Regional Office also requested additional analysis on the potential water quality impacts of continued use of target areas in Chesapeake Bay. The existing Environmental Monitoring and Assessment Program (EMAP) sampling data for Chesapeake Bay were performed by the Environmental Protection Agency. However, the DON did undertake sediment and water sampling (Sirrine study) in 1991 at several water range and target locations in North Carolina that have been impacted by about 40 years of military bombing activities. The results of the Sirrine study showed no significant differences in water and sediment quality between the range areas and non-range areas and support the conclusion of the FEIS that the surface water impacts of either the No Action Alternative or the preferred alternative will not adversely affect water or sediment quality in the Bay. The Department of Navy has decided, therefore, that narrowly focused sampling in the vicinity of the targets would only be required as a result of changes in ordnance volume or type or some indication of significant water or sediment quality degradation.

Furthermore, the Environmental Protection Agency's EMAP metals data for Station VA 91–303 (FEIS page 4.13–3) are for sediment samples. These data are not directly comparable to Maryland State Water Quality Standards because those standards are not applicable to measuring solid phase contaminants. Instead, these data were more appropriately compared to the Effects Range Median (ER–M) criterion, which is the concentration of a contaminant that will result in ecological effects approximately 50 percent of the time based on scientific literature studies. The data for EMAP Station VA 91–303 do not exceed the ER–M threshold for any metal. When EMAP data are examined for other stations in proximity to the target areas, particularly Hannibal target where most lead bullets are likely to be found, no pattern of elevated metals can be discerned. Therefore, the DON reaffirms the conclusion stated in the FEIS that the presence of elevated metals at EMAP Station VA 91–303 is not related to Navy use of the target areas.

Air Quality

The VDEQ Office of Air Data Analysis recommended that the Final Environmental Impact Statement (FEIS) address air pollutant dispersion (short-term effects) in the CTR area, especially under flight paths as a result of public complaints about ''low-flying aircraft and dwellings laden with aircraft exhaust/fuel.'' The emissions analysis contained in the FEIS was conducted pursuant to the Clean Air Act General Conformity Rule (40 CFR 51 and 93). The results of this analysis show that air emissions resulting from implementation of the preferred alternative would be well within the budgeted limits of Delaware, Maryland, and Virginia and not significant. Also, as noted on FEIS page 4.9–3, emergency fuel dumping is extremely rare in the CTR. DON policy prohibits fuel dumping below 6,000 feet above ground level unless necessary to save the pilot and/or the aircraft. Above 6,000 feet, the fuel has sufficient time to completely vaporize and dissipate before reaching the ground. Thus, any fuel dumping that occurs has less than significant impacts at ground level.

Coastal Zone Management

Worcester County, MD commented that implementation of the preferred alternative would be consistent with their plans, programs, and objectives provided increases in flight and related operations would not have a negative impact on the use and enjoyment of the county's ocean beaches and coastal bays. As the CTR does not include any portion of Worcester County, implementation of the preferred alternative would be consistent with the county's plans, programs, and objectives.

Aircraft Operations and Safety

One commentor expressed concern that the FEIS did not provide a ''probabilistic risk analysis'' of an aircraft crashing into the Calvert Cliffs Nuclear Power Station. First, it should be noted that the Calvert Cliffs Nuclear Power Station is located outside of the boundaries of the CTR. Second, the critical structures at the power station (i.e., nuclear systems containment buildings) have been designed and constructed to withstand earthquakes, hurricanes, tornadoes, and the impact of a fully laden, fully fueled Boeing 707 without damage to the systems inside. Additionally, Baltimore Gas & Electric (BG&E), owner of the power station, concluded in its August 1997 Individual Plant Examination of External Events (a study required by the Nuclear Regulatory Commission [NRC]) that the probability of an aircraft crashing into the power station, including aircraft from NAS Patuxent River is very low (a probability of about 1.1×10^{-6} crashes per year). Only about 25 percent of this risk is assignable to aircraft from NAS Patuxent River. In another report to the NRC (Region 1 Inspection Report Nos. 50–317/97–06), BG&E concluded that there was no significant safety hazard represented by NAS Patuxent River aircraft. Lastly, BG&E is consulting with the NAS Patuxent River as it currently prepares its EIS to support an application to the NRC for re-licensing of the power plant. The risk of an aircraft operating in the CTR crashing into the Calvert Cliffs Nuclear Power Station is not significant and the DON has determined that a probabilistic risk analysis is not required.

Impacts to Calvert Cliffs State Park

The Calvert County Board of Commissioners expressed concern that increased flight and related operations in the Patuxent River Complex would impact the designation of Calvert Cliffs State Park as a ''State Wildlands.'' This designation provides protection and benefits to the park's water quality, wilderness research, and preservation of unique ecological communities and primitive recreation.

The park is located on the northern boundary of the CTR. Aircraft flight tracks for approaches and departures to NAS Patuxent River overfly the Drum Point peninsula to the south of the park and the results of the noise analysis show noise levels at the park to be less than 45 dB DNL, which is consistent with existing noise levels at the park. Consequently, implementation of the preferred alternative would not impact water quality, wilderness research, or the preservation of unique ecological communities and primitive recreation that may be conducted at Calvert Cliffs State Park.

Conclusions

Based on the analysis contained in the EIS, the administrative record, and the factors discussed above, I identify Operational Workload Alternative III (Preferred Alternative) as the course of action the Navy will implement at the Patuxent River Complex. Operational Workload Alternative III will best allow the Navy to meet current and future global defense challenges posed by a post-Cold War environment. It provides the Navy with the necessary flexibility to efficiently enhance use of Patuxent River Complex facilities and reduce costs to users. Use of the CTR and related laboratories and test support facilities for both manned and unmanned flight testing can be optimized without increasing construction or the number of personnel needed to complete the mission. Navy operational air assets will be able to conduct effective training and pilot evaluation exercises using the technological, visual, and measurement assets that are integral to the instrumented airspace of the CTR. The flexibility in asset management and asset use that is achievable under Operational Workload Alternative III will create no significant impacts to the surrounding environment. The Navy will respond to public concerns involving aircraft and engine testing noise, supersonic events, and UAV operations through the mitigation measures described above.

Dated: May 17, 1999.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

[FR Doc. 99–13519 Filed 5–26–99; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to list the members of the National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee) and to give the public the opportunity to nominate candidates for the positions to be vacated by those members whose terms will expire on September 30, 1999. This notice is required under Section 114(c) of the Higher Education Act (HEA), as amended by Pub. L. 105–244.

What Is the Role of the National Advisory Committee?

The National Advisory Committee is established under Section 114 of the HEA, as amended, and is composed of 15 members appointed by the Secretary of Education from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, including representatives of all sectors and type of institutions of higher education.

The National Advisory Committee meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

As the Committee deems necessary or on request, the Committee also advises the Secretary about:

- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Are the Terms of Office for Committee Members?

The term of office of each member is 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term. A member may be appointed, at the Secretary's discretion, to serve more than one term.

Who Are the Current Members of the Committee?

The current members of the National Advisory Committee are:

Members With Terms Expiring 9/30/99

- Mr. Gordon M. Ambach (Committee Vice Chairperson), Executive Director, Council of Chief State School Officers, Washington, DC.
- Dr. Norman Francis, President, Xavier University of Louisiana.
- Dr. George A. Pruitt, President, Thomas A. Edison State College, New Jersey.
- Dr. Norma S. Rees, President, California State University, Hayward.
- Honorable Thomas P. Salmon, Chair of the Board, Green Mountain Power Corporation, Vermont.

Members With Terms Expiring 9.30.00

- Dr. David W. Adamany, President Emeritus and Distinguished Professor of Law and Political Science, Wayne State University, Michigan.
- Mr. Robert L. Hawkins, Superintendent, Colorado Mental Health Institute.
- Ms. Tanya L. Pollard, Student, Yale University, Connecticut.
- Dr. Eleanor P. Vreeland, Chairman, Barland, Inc., New York.
- Dr. John A. Yena, President, Johnson & Wakes University, Rhode Island.

Members With Terms Expiring 09/30.01

- Mrs. Wilhelmina R. Delco (Committee Chairperson), Retired Member of Texas House of Representatives.
- Dr. Alfredo G. de los Santos, Jr., Vice Chancellor for Educational Development, Maricopa Community Colleges, Arizona.
- Dr. Kenneth B. Orr, President Emeritus, Presbyterian College, South Carolina.
- Dr. Robert L. Potts, President, University of North Alabama.
- Dr. Richard F. Rosser, President of the President's Group, Wisconsin.

How Do I Nominate an Individual for Appointment as a Committee Member?

If you would like to nominate an individual for appointment to the Committee, send the following information to the Committee's Executive Director:

- A cover letter that provides your reason(s) for nominating the individual; and
- Contact information for the nominee (name, title, business address, and business phone and fax numbers) and a copy of the nominee's resume.

The information must be sent by [insert 45 days from date of publication]

to the following address: Bonnie LeBold, Executive Director, National Advisory Committee, U.S. Department of Education, ROB–3, Rm. 3082, 400 Maryland Avenue, SW, Washington, DC 20202–7592.

How Can I Get Additional Information?

If you have any specific questions about the nomination process or general questions about the National Advisory Committee, please contact Ms. Bonnie LeBold, the Committee's Executive Director, at (202) 260–3636 [phone] or (202) 260–5049 [fax] between 9:00 a.m. and 5:00 p.m., Monday through Friday.

Authority: 20 U.S.C. 1011.

Dated: May 21, 1999.

Greg Woods,

Chief Operating Officer, The Office of Student Financial Assistance.

[FR Doc. 99–13553 Filed 5–26–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–42–014]

ANR Pipeline Company; Notice of Refund Report

May 21, 1999.

Take notice that on May 18, 1999, ANR Pipeline Company (ANR), tendered for filing a report of refunds related to the above captioned docket. This filing was made pursuant to a September 10, 1997, order of the Federal Energy Regulatory Commission issued at Docket No. RP97–369–000, *et al.*

ANR's report of refunds summarizes the status of refunds owed to ANR for Kansas ad valorem tax overpayments. The report also provides the current or last known mailing address of each first seller that has not paid its refund in full.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13453 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–54–026]

Colorado Interstate Gas Company; Notice of Refund Report

May 21, 1999.

Take notice that on May 18, 1999, Colorado Interstate Gas Company (CIG), tendered for filing its second annual refund report in Docket No. RP98–43. This filing and refunds were made to comply with the Federal Energy Regulatory Commission's (Commission) Order of September 10, 1997. Refunds have been paid by CIG on May 1 and June 10, 1998.

The May 18, 1999 refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments pursuant to the Commission's September 10, 1997 Order. Lump-sum cash refunds were made by CIG to its former jurisdictional sales customers. In instances where payment has not been made within 30 days of receipt from the producers, appropriate interest had been computed as provided for in the Order.

Copies of CIG's filing have been served on CIG's former jurisdictional sales customers, interested states' commissions, and all parties to the proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13452 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–256–002]

Columbia Gulf Transmission Company; Notice of Extension of Time and Waiver Request

May 21, 1999.

Take notice that on April 1, 1999, Columbia Gulf Transmission Company (Columbia Gulf), in compliance with the Commission's order issued December 17, 1998,[1] in Docket No. RM96–1–012, tendered for filing a report detailing its level of compliance with Section 284.10(c)(2)(i) of the Commission's Regulations.[2] This section, adopted by the Commission in Order No. 587–G, requires each interstate pipeline to enter into operational balancing agreements (OBAs) at all points of interconnection between its system and the system of another interstate or intrastate pipeline by April 1, 1999.[3]

Extension of Time

Columbia Gulf requests an extension of time, until July 1, 1999, to conclude OBA negotiations with three interconnecting systems. In addition, Columbia Gulf seeks either an extension of time to comply with, or a waiver of the requirements of Section 284.10(c)(2)(i) with respect to Columbia Gulf's ownership interest in the Central Texas Loop facility.

Upon consideration, notice is hereby given that Columbia Gulf is granted a further extension of time to comply with section 284.10(c)(2)(i) of the Commission's regulations until no later than June 30, 1999. On or before June 30, 1999, Columbia Gulf must file a statement indicating whether it is in compliance with section 284.10(c)(2)(i) of the Commission's Regulations.

Waiver Request

Columbia Gulf also seeks a waiver of the requirements of Section 284.10(c)(2)(i) for the following types of

[1] Standards For Business Practices of Interstate Natural Gas Pipelines, 85 FERC ¶ 61,371 (1998).

[2] 18 CFR 284.10(c)(2)(i).

[3] Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

interconnects: (a) Columbia Gulf's offshore sub-sea interconnections [small offshore lines that run from an offshore natural gas production platform to a sub-sea interconnection with another pipeline]; and (b) Columbia Gulf's small offsystem-onshore pipelines [small lines that run from an onshore natural gas production well to an interconnection with another pipeline downstream of the meter].

Any person desiring to be heard or to protest Columbia Gulf's request for waiver should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of Columbia Gulf's report are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc/fed/us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13460 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockert No. ER99–2901–000]

Commonwealth Edison Company; Notice of Filing

May 20, 1999.

Take notice that on May 11, 1999, Commonwealth Edison Company (ComEd) tendered for filing an executed Service Agreements for Network Integration Transmission Service (Service Agreement) and an unexecuted Network Operating Agreement (Operating Agreement) with Commonwealth Edison Company, in its wholesale merchant function, (WMD), under the terms of ComEd's Open Access Transmission Tariff OATT). ComEd requests that the Commission substitute the Service Agreement and the Operating Agreement for the unexecuted agreements with WMD previously filed under the OATT in Docket No. ER99–2321–000 on March 30, 1999.

Copies of this filing were served on WMD.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 28, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13459 Filed 4–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–266–001]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

May 21, 1999.

Take notice that on May 14, 1999, Destin Pipeline Company, L.L.C. (Destin), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 (Tariff), the following Tariff sheets to become effective May 1, 1999:

Substitute First Revised Sheet No. 6
Substitute First Revised Sheet No. 21
Substitute First Revised Sheet No. 26a
Substitute First Revised Sheet No. 194a

Destin states that the purpose of this filing is to implement certain modifications to its tariff sheets in compliance with the Commission's Order issued on April 29, 1999, in the captioned proceeding. In accordance with the April 29, 1999 Order, Destin has requested that these sheets be made effective as of May 1, 1999. Destin states that copies of the filing will be served upon its shippers and interested state commissions, and upon each party designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13456 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–024]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1999.

Take notice that on May 12, 1999, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective May 1, 1999:

Fourth Revised Sheet No. 213

Equitrans states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Letter Order issued on May 10, 1999, the Commission found that the filing contained a duplicate numbered tariff sheet Third Revised Sheet No. 213 which should have been paginated Fourth Revised Sheet No. 213.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13449 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–022]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1999.

Take notice that on May 14, 1999, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff:

Effective: August 1, 1997

2nd Substitute 3rd Substitute Ninth Revised Sheet No. 6

Effective: October 1, 1997

3rd Substitute Tenth Revised Sheet No. 6

Equitrans states that the purpose of this filing is to correct its interruptible and firm gathering rates on Sheet No. 6 which was filed on May 5, 1999 in compliance with the Commission's April 29, 1999, Letter Order approving the uncontested January 22, 1999, Stipulation and Agreement as amended on March 31, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13463 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–023]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1999.

Take notice that on May 14, 1999, Equitrans, L.P. (Equitrans), tendered for filing the revised tariff sheets shown on the Appendix of the filing, for incorporation in its Equitrans, L.P. FERC Gas Tariff, Original Volume No. 1 (L.P. Tariff) in lieu of certain tariff sheets that were filed in May 5, 1999 (May 5, Compliance Filing), for incorporation in its Equitrans, Inc., FERC Gas Tariff, First Revised Volume No. 1 (Inc., Tariff).

Equitrans made the May 5, Compliance Filing in order to implement rate changes required by the Commission's April 29, 1999, Letter Order approving the uncontested January 22, 1999, Stipulation and Agreement as amended on March 31, 1999 in the above-referenced proceedings. However, on May 5, 1999, the Commission, by Order issued in Docket No. CP96–532–001, approved Equitrans' L.P. Tariff with an effective date of November 19, 1998. Since some of the time periods involved in the May 5, Compliance filing fall within the effective period of the L.P. Tariff, Equitrans is submitting revised tariff sheets for incorporation in the L.P. Tariff instead of those tariff sheets designated for incorporation in the Inc., Tariff contained in the May 5, Compliance Filing. Equitrans states that, other than the redesignation of the tariff sheets for incorporation in the L.P. Tariff, the tendered tariff sheets are the same in all respects as the corresponding tariff sheets submitted in the May 5, Compliance Filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13464 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–280–002]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1999.

Take notice that on May 18, 1999, Mid Louisiana Gas Company (Mid Louisiana), tendered for filing the following tariff sheets to be included in its FERC Gas Tariff, Third Revised Volume No. 1:

Fifth Revised Sheet No. 78
Sixth Revised Sheet No. 155
Third Revised Sheet No. 142
Second Revised Sheet No. 155A
Fourth Revised Sheet No. 143
Original Sheet No. 155B
Third Revised Sheet No. 144
Original Sheet No. 155C
Fourth Revised Sheet No. 145
Fifth Revised Sheet No. 157
Fourth Revised Sheet No. 146
Second Revised Sheet No. 158

The purpose of this filing is to comply with the Letter Order issued by the Office of Pipeline Regulation (''OPR'') in Docket No. RP99–280–001 on May 3, 1999, wherein Mid Louisiana was instructed to revise its tariff to include the GISB Standard 1.3.2 verbatim and not by reference. Additionally, Mid Louisiana has revised Paragraph 15.3(e) of its General Terms and Conditions to indicate the priority of firm intra-day service over scheduled and flowing interruptible service and cross-referenced this paragraph with paragraph 5.6(b) of its General Terms and Conditions to indicate the applicability of penalties for bumped interruptible shippers. The Letter Order also directed Mid Louisiana to refile Sheet No. 78 to indicate proper pagination.

Mid Louisiana requests that the Commission grant a waiver of Section 154.207 of the Commission's Regulations thereby allowing the indicated tariff sheets to be accepted to be effective May 10, 1999.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any additional requirement of the Regulations in order to permit the

tendered tariff sheets to become effective May 10, 1999 as submitted.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13455 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–524–000]

Natural Gas Pipeline Company of America; Notice of Application

May 21, 1999.

Take notice that on May 18, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148 filed an application with the Commission in Docket No. CP99–524–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to MidCon Texas Pipeline Operator, Inc. (MidCon Texas), an affiliated intrastate pipeline, various contiguous facilities located in Arkansas and Refugio Counties, Texas, and authorized in Docket Nos. G–19086, as amended in Docket No. CP61–111, CP66–96, CP76–493, CP80–86, CP82–402–000, and CP85–519–000, all as more fully set forth in the application which is open to the public for inspection. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Natural proposes to abandon its contiguous St. Charles, Zoller, Fulton Beach, and Nine Mile Point laterals and related meter, tap, and appurtenant facilities located in Arkansas and Refugio Counties. Natural states that these facilities were originally constructed as a means of receiving gas purchased from various producers for Natural's system supply to support Natural's merchant function. Natural's merchant function terminated effective December 1, 1993. Consequently, Natural states that it no longer needs the said facilities to receive its own gas supply and no longer has any gas purchase obligations regarding these facilities. Moreover, Natural states that the transportation value to Natural of the above facilities has been greatly reduced.

Natural proposes to abandon a total of approximately 52 miles of pipeline laterals and related meter, tap, and appurtenant facilities. Natural states that it proposes to transfer these facilities to MidCon Texas for their cumulative net book value as of the closing date specified in its assets sale agreement with MidCon Texas.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 11, 1999, file with the Federal Energy Regulatory commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–13461 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–39–020]

Northern Natural Gas Company; Notice of Distribution of Refunds Paid

May 21, 1999.

Take notice that on May 18, 1999, Northern Natural Gas Company (Northern), tendered for filing worksheets reflecting the distribution of refunds paid to jurisdictional sales customers on August 14, 1998 and April 15, 1999. Northern states that these refunds are being made pursuant to the Commission's Order in Public Service Company of Colorado, *et al.*, Docket No. RP97–369–000, *et al.*

The Commission ordered that ''any first seller that collected revenues in excess of the applicable maximum lawful price established by the NGPA as a result of the reimbursement of the Kansas ad valorem taxes for sales based upon a tax bill rendered on or after October 3, 1983, shall refund any such excess revenues to the purchaser.'' The interstate pipelines were then required to make lump-sum cash payments of the Kansas ad valorem tax refunds to the customers who were overcharged. Included with Northern's payments is interest on any amounts received from producers held longer than 30 days by Northern, covering the period from the date Northern received the refund from the producers until the date that refunds were paid out to its customers.

Northern states that a copy of this report is being mailed to each of Northern's affected jurisdictional sales customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference

Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13450 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–308–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1999.

Take notice that on May 17, 1999, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing Forty-Sixth Revised Sheet No. 5, to its FERC Gas Tariff, Original Volume No. 2, proposed to be effective July 1, 1999.

The instant filing is submitted pursuant to Section 4, of the Natural Gas Act, Section 9 of the Alaskan Natural Gas Transportation Act of 1976 and Part 154 of the Federal Energy Regulatory Commission's Regulations. Northwest Alaskan is submitting this filing pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Pan-Alberta Gas (U.S.), Inc. (PAG–US), and pursuant to Rate Schedules X–1, X–2 and X–3, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1999 through December 31, 1999) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Included in Appendix B attached to the filing are the workpapers supporting the derivation of the revised demand charge and demand charge adjustment reflected on the tariff sheet included therein.

Northwest Alaskan states that it is serving copies of the instant filing to its affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13457 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–309–000]

Overthrust Pipeline Company; Notice of Tariff Filing

May 21, 1999.

Take notice that on May 18, 1999, Overthrust Pipeline Company pursuant to 18 CFR 154.7, tendered for filing and acceptance, to be effective June 17, 1999, the tariff sheets to First Revised Volume No. 1–A, of its FERC Gas Tariff as listed on Appendix A.

Overthrust's Electronic Bulletin Board (EBB) has been phased out to be replaced by an interactive web site containing the informational postings and interactive systems for contracting/capacity release and nominations/confirmations, collectively referred to as Questline. This filing proposes to revise Overthrust's tariff sheets to reflect the replacement of EBB language with Questline-related language.

Also included in this filing are miscellaneous minor clean-up revisions correcting typographical errors as well as inadvertent omissions, duplication and incorrect references to corresponding sections.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13458 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–022]

Panhandle Eastern Pipe Line Company; Notice of Annual Report

May 21, 1999.

Take notice that on May 18, 1999, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing its Annual Report pursuant to the Commission's Order Denying Petitions For Adjustment and Establishing Procedures For the Payment of Refunds for Kansas Ad Valorem Taxes dated September 10, 1997 (September 10, 1997 Order).

Panhandle states that on April 8, 1998, it refunded to its jurisdictional customers their allocated share of the Kansas Ad Valorem taxes received from producer suppliers through March 31, 1998. During the succeeding thirteen month period April 1998 through April 1999 Panhandle has received only a small additional amount of Kansas Ad Valorem Tax refunds from its producer suppliers. Pursuant to Appendix E of the Commission's September 10, 1997 Order, interest will accrue on refunds received from producer suppliers and held longer than thirty days. Accordingly, Panhandle will continue to accrue interest in accordance with the Commission's September 10, 1997 Order on the Kansas Ad Valorem Tax refunds received from producer suppliers until these amounts are distributed to its jurisdictional customers.

Panhandle further states that a Pursuant to Ordering Paragraph (E) of the September 10, 1997 order Panhandle is submitting the following information:

(1) *Appendix A*—Summary of the Kansas Ad Valorem tax refund amounts due from the producer suppliers, amounts received and amounts which remain unpaid by producer suppliers as of April 30, 1999.

(2) *Appendix B*—A schedule reflecting the date that the refunds of Kansas Ad Valorem Taxes were received from each producer supplier.

Panhandle states that the producer supplier refund amounts, as shown in column (4) of Appendix A, have not been adjusted for additional interest that has accumulated subsequent to its initial refund report. This additional interest will be due and payable with each producer suppliers' actual refund payments.

Panhandle states that a copy of this information is being sent to each of Panhandle's affected customers and respective State Regulatory Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13451 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–33–000]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1999.

Take notice that on May 18, 1999, Sabine Pipe Line Company (Sabine), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Revised Sheet No. 00, to become effective July 1, 1999.

Sabine states that the purpose of this filing is to reflect a change in the contact person responsible for the maintenance of its FERC Gas Tariff.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties. In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Sabine's offices at 1111 Bagby Street in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13462 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

TransColorado Gas Transmission Company; Notice of Informal Settlement Conference

May 21, 1999.

Take notice that an informal settlement conference will be convened in these proceedings on June 3, 1999 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or John P. Roddy (202) 208–0053.

David P. Boergers,

Secretary.

[FR Doc 99–13508 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–272–001]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

May 21, 1999.

Take notice that on May 14, 1999, Transcontinental Gas Pipe Line Corporation tendered for filing Substitute Second Revised Sheet No. 374F.01 as part of its FERC Gas Tariff, Third Revised Volume No. 1, to become effective May 1, 1999.

On March 31, 1999, Transco filed in the captioned docket to revise Section 42.10(a) of the General Terms and Conditions of Transco's tariff to permit a Replacement Shipper that desires to re-release capacity to specify Recall Rights for that re-released capacity even through Recall Rights were specified by a prior Releasing Shipper. Transco's proposal was intended to provide a Replacement Shipper with increased flexibility in structuring a re-release of capacity, including specifying Recall Rights for that re-released capacity. On April 29, 1999, the Commission issued an ''Order Accepting Tariff Sheet Subject to Conditions'' (April 29, Order), which requires that Transco file within fifteen days of the date of the order a revised tariff sheet to address customer concerns that subsequent re-releasing shippers of capacity not adversely affect the prior releasing shipper's recall rights.

In compliance with the April 29 Order, Transco has revised Section 42.10(a), and submits that the revision is consistent with Transco's intent in proposing the modification to Section 41.10(a) in this proceeding, and with the Commission's policy as stated in the April 29, Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13454 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL99–2–000]

Anticipated Demand for Natural Gas in the Northeastern United States; Schedule and Information Regarding Public Conference

May 21, 1999.

The public conference previously noticed in the above-captioned proceeding will be held in the Commission meeting room, 888 First Street, N.E., Washington, D.C., on June 7, 1999, beginning promptly at 10:00 a.m. All interested persons are invited to attend.

Because the Commission has received numerous requests to make oral presentations at the conference, the Commission has established six panels. In order to accommodate all of the requests to speak, it will be necessary for the Commission to limit the individual presentations to five (5) minutes. Parties may address any of the issues within the scope of the conference and, if necessary, file with the Secretary additional written comments to highlight other areas of interest. There will be a question and answer period following the presentations of each panel. Parties making oral presentations that have not already identified their speakers are asked to contact Joel Arneson at (202) 208–2169 by May 28, 1999, with the name of their speaker.

The public conference will follow, approximately, the schedule set forth below.

Opening Remarks

10:00–10:15

Commissioners

Panel No. 1

10:15–10:45

Energy Information Administration [1]

Panel No. 2

10:45–11:45

Edison Electric Institute
Electric Power Supply Association
Independent Petroleum Association of America
Natural Gas Supply Association
Process Gas Consumers Group

Panel No. 3

11:45–1:00

CNG Transmission Corporation
Colubmia Gas Transmission Corporation
El Paso Energy Corporation
Interstate Natural Gas Association of America
Iroquois Gas Transmission System, L.P.
Millennium Pipeline Company, L.P.

Lunch Break

1:00–2:00

Panel No. 4

1:00–2:00

Consolidated Edison Company of New York, Inc.
KeySpan Energy Corporation
New England Gas Distributors
New York Public Service Commission
Northeast States for Coordinated Air Use Management
Public Service Electric & Gas Company

Panel No. 5

3:15–4:30

Donaldson, Lufkin, & Jenrette
eCorp, L.L.C.
Environment Northeast
Independent Power Producers of New York
Supply Planning Associates, Inc.
Texaco Natural Gas—North America
U.S. Generating Company and PG&E Energy Trading—Gas Corporation

Panel No. 6

4:30–5:15

Independence Pipeline Company
Portland Natural Gas Transmission System
Texas Eastern Transmission Corporation
Williams Companies

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13509 Filed 5–26–99; 8:45 am]

BILLING CODE 6717–01–M

[1] The Energy Information Administration will have a total of 20 minutes for its presentation.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6351–3]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection as described below.

DATES: Comments must be submitted on or before July 26, 1999.

ADDRESSES: U.S. EPA, Office of Compliance, 401 M Street SW, Washington, DC 20460, Mail code 2223A. Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OP at (202) 260–2740.

FOR FURTHER INFORMATION CONTACT: Anthony Raia at (202) 564–6045, Facsimile Number (202) 564–0050, or raia.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Affected entities: Entities potentially affected by this action are those which are subject to The National Emission Standard for Hazardous Air Pollutants (NESHAP) for Shipbuilding and Ship Repair (Surface Coating) (40 CFR part 63, subpart II).

Title: NESHAP subpart II: Shipbuilding and Ship Repair (Surface Coating), OMB Control #2060–0330 and EPA ICR number 1712.02, expiration date May 31, 1999.

Abstract: The respondents are owners or operators of Shipbuilding and Ship Repair Facilities. Operations covered include: primer and top coat application in manufacturing processes and in ship repair processes. The NESHAP regulation 40 CFR part 63, subpart II, was promulgated on December 15, 1995. The Administrator has determined that Hazardous Air Pollutant (HAP) and Volatile Organic Compound (VOC) emissions from Shipbuilding and Ship Repair Facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In order to ensure compliance with the standards promulgated to protect public health, adequate record keeping and reporting is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Record keeping and reporting are mandatory under this regulation. Records must be maintained for 5 years.

Burden Statement: 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.

Affected facilities must comply with the part 63 General Provisions recordkeeping and reporting requirements including: initial notifications; performance tests; and start-up, shut-down, malfunction reports. In addition there are record keeping and reporting requirements specific to the shipbuilding and repair NESHAP. Owners or operators of shipbuilding and ship repair facilities to which this regulation is applicable must choose one of the four compliance options described in the final rule or install and monitor a specific control system to control coating emissions and reduce HAP emissions to the compliance level. The rule requires an initial one-time notification from each respondent and subsequent notification every 6 months to indicate their compliance status. At the time of the initial notification each respondent is also required to submit an implementation plan that describes compliance procedures. A respondent is also required to keep necessary records of data to determine compliance with the standards in the regulation. The data must be recorded monthly. A report must be submitted semi-annually by each respondent. There will be an estimated 100 respondents to the information collection requirements.

The total annual reporting and recordkeeping burden for this collection averaged over the next 3 years is estimated to be $26,218 per year. The average burden, per respondent, is 772 hours per year.

Dated: May 14, 1999.

David N. Lyons,

Acting Director, Manufacturing, Energy and Transportation Division.

[FR Doc. 99–13541 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6351–2]

Notice of Fourth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meeting.

SUMMARY: This document reschedules the Fourth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Task Force) which was postponed from February as published in the **Federal Register** on February 10, 1999 (64 FR 6652) . The purpose of this Task Force, consisting of Federal, State, and Tribal members, is to understand and address nutrient management and hypoxia related issues in the Mississippi River and Gulf of Mexico watersheds. The matters to be discussed at the meeting include six topical scientific reports on an assessment of the causes and consequences of hypoxia in the Gulf of Mexico, and the work schedule for completion of an Action Plan for addressing hypoxia in the Gulf of Mexico. The science assessment and the Action Plan were requested by the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) as required by section 604(a) and 604(b) of Public Law 105–383 Coast Guard Authorization Act of 1998. The meeting of the Task Force will be open to the public, and the public will be afforded an opportunity to provide input during open discussion periods.

DATES: 12:00 p.m.–5:00 p.m., and optional 6:00 p.m.–10:00 p.m. session on June 30, 1999; and 8:30 a.m.–12:30 p.m. on July 1, 1999.

ADDRESSES: Memphis Cook Convention Center, 255 N. Main Street, Memphis, TN; (901) 527–7300. The meeting is open to the public and is limited only by the space available. The meeting room accommodates approximately 125 people. The optional session on June 30 will be at Mud Island River Park, 125 North Front Street, Memphis, TN 38103.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone (202) 260–7061; Internet: *belefski.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: The cost for dinner at the optional session on June 30 is $15.00 and is limited to the first 75 people who make reservations by June 18, 1999. To make reservations for the optional Mud Island Session, contact Marquietta Davis, Tetra Tech, Inc., 10306 Eaton Place, Fairfax, VA 22030, telephone (703) 385–6000.

Dated: May 19, 1999.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 99–13542 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6350–7]

Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—Chemical Handling Corporation Site, Jefferson County, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given of a proposed settlement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) concerning the Chemical Handling Corporation Site, Jefferson County, Colorado (the ''Site''). Under the Agreement and Covenant Not to Sue (Agreement), Broomfield Investment Group, LLC and 1031–B Land Corporation will pay $5,000 to the United States and perform various improvements to the property at the Site.

DATES: Comments will be received until June 28, 1999.

ADDRESSES: The Agreement is available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Carol Pokorny, Technical Enforcement Program, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, (80202–2466, and should reference the Chemical Handling Corporation Site Agreement and Covenant Not to Sue, EPA Docket No. CERCLA–VIII–99–10. Copies of the agreement may be obtained from the Superfund Records Center at the address above.

FOR FURTHER INFORMATION CONTACT: Sheldon Muller, Legal Enforcement Program, at 303/312–6916.

Dated May 17, 1999.

Michael T. Risner,

Acting Assistant Regional Adminstrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 99–13538 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6350–6]

Proposed CERCLA Administrative Cost Recovery Settlement; Michigan Avenue Dump Site

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 Michigan Avenue Dump Site in Canton, Michigan with the following settling parties: General Motors Corporation, Chrysler Corporation, Dow Chemical Company, and Ford Motor Company. The settlement requires the settling parties to pay $23,676.35 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). The Attorney General of the United States approved this settlement on April 21, 1999. For thirty (30) days following the date of publication of this document, 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 at U.S. EPA, Region 5, Records Center, 7th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before June 28, 1999.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, Records Center, 7th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Cynthia Kawakami, Associate Regional Counsel, U.S. EPA, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, (312) 886–0564. Comments should reference the Michigan Avenue Dump Site and EPA Docket No. V–W–99–C–538 and should be addressed to Cynthia Kawakami, Associate Regional Counsel, U.S. EPA, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Cynthia Kawakami, Associate Regional Counsel, U.S. EPA, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604, (312) 886–0564.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–13544 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6349–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and opportunity to Comment Regarding Alliance Water Resources, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Alliance Water Resources, Inc.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment of an administrative penalty against Alliance Water Resources, Inc. Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing administrative penalties for violations of the Act. EPA may issue such orders after filing a Complaint commencing, a Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order in thirty (30) days after issuance of public notice.

On May 11, 1999, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint: In the Matter of the Alliance Water Resources, Inc.; EPA Docket No, CWA–7–99—0011.

The Complaint proposes a penalty of Fifty-Six Thousand Seven Hundred Dollars ($56,700) for the discharge of sludge and other solids to waters of the U.S. in violation of Sections 301(a) and 402 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or

otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Alliance Water Resources, Inc. is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (3) days from the date of this document.

Dated: May 15, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–13198 Filed 5–26–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 14, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Monroe Partners, Ltd., Stuart, Florida; to acquire additional voting shares of Seacoast Banking Corporation of Florida, Stuart, Florida, and thereby indirectly acquire First National Bank & Trust Company of the Treasure Coast, Stuart, Florida.

2. Sherwood Partners, Ltd., Stuart, Florida; to acquire additional voting shares of Seacoast Banking Corporation of Florida, Stuart, Florida, and thereby indirectly acquire First National Bank & Trust Company of the Treasure Coast, Stuart, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. E. Linus and Gale Carroll, Columbia, Louisiana; to acquire additional voting shares of Caldwell Holding Company, Columbia, Louisiana, and thereby indirectly acquire additional voting shares of Caldwell Bank & Trust Company, Columbia, Louisiana.

Board of Governors of the Federal Reserve System, May 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13549 Filed 5–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First National Corporation, Orangeburg, South Carolina; to merge with First Bancorporation, Inc., Beaufort, South Carolina, and thereby indirectly acquire FirstBank, N.A., Beaufort, South Carolina.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Coconut Grove Bankshares, Inc., Coconut Grove (Miami), Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Coconut Grove Bank, Coconut Grove (Miami), Florida.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Eggemeyer Advisory Corp., WJR Corp., Castle Creek Capital, LLC, all of Rancho Santa Fe, California; to acquire up to 45 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire State National Bank of West Texas, Lubbock, Texas; United Bank & Trust, Abilene, Texas; Montwood National Bank, El Paso, Texas; Continental National Bank, El Paso, Texas; and Sierra Bank, Las Cruces, New Mexico.

2. Castle Creek Capital Partners Fund IIa, LP; Castle Creek Capital Partners Fund IIb, LP, all of Rancho Santa Fe, California; to acquire up to 34.2 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire State National Bank of West Texas, Lubbock, Texas; United Bank & Trust, Abilene, Texas; Montwood National Bank, El Paso, Texas; Continental National Bank, El Paso, Texas, and Sierra Bank, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, May 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13548 Filed 5–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or

assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Bay View Capital Corporation, San Mateo, California; to acquire Franchise Mortgage Acceptance Company, Los Angeles, California, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y; and leasing personal or real property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, May 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13547 Filed 5–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 24, 1999. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E of the Martin Building (Terrace level). The meeting will begin at 8:45 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Electronic Delivery of Disclosures. The Depository and Delivery Systems and the Consumer Credit Committees will lead a discussion about the electronic delivery of disclosures required under certain consumer financial services and fair lending laws such as the Truth in Lending and Equal Credit Opportunity Acts.

Consumer Financial Privacy. The Depository and Delivery Systems Committee will lead a discussion of current issues on consumer financial privacy matters.

Community Reinvestment Act. The Bank Regulations Committee will lead a discussion on the revised CRA Questions and Answers.

Members Forum. Individual Council members will present views on economic conditions present within their industries or local economies.

Committee Reports. Council committees will report on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, 202-452-3544.

Board of Governors of the Federal Reserve System, May 24, 1999.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 99–13550 Filed 5–26–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–147]

Availability of Final Toxicological Profile for Mercury

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final updated toxicological profile for mercury completing the eleventh set prepared by ATSDR. The announcement of nine toxicological profiles for the eleventh set was published in the **Federal Register** on March 1, 1999 (64 FR 9999).

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 most hazardous substances was announced in the **Federal Register** on November 17, 1997 (62 FR 61332). For prior versions of the list of substances see **Federal Register** notices dated April 29, 1996 (61 FR 18744); April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486).

Notices (62 FR 55816) and (62 FR 55818) announcing the availability of draft toxicological profiles for public review and comment were published in the **Federal Register** on October 28, 1997 (62 FR 55816) with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control numbers ATSDR–127 or ATSDR–128. This material is available for public inspection at the Division of

Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of the final updated toxicological profile for mercury completing the eleventh set prepared by ATSDR. The following toxicological profile is now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS order No.	CAS No.
MERCURY	PB99–142416	007439–97–6
MERCURIC (II) ACETATE		001600–27–7
MERCURIC (II) SULFIDE		001134–48–5
MERCURIC (I) CHLORIDE		010112–91–1
METHYLMERCURIC CHLORIDE		000115–09–3

Dated: May 20, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–13434 Filed 5–26–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99105]

Research Studies to Characterize the Clinical Relevance of HIV Superinfection Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for epidemiologic and laboratory research studies to characterize reinfection with Human Immunodeficiency Virus Type 1 (HIV–1.) This program addresses the ''Healthy People 2000'' priority area of HIV Infection.

The purpose of this program is to characterize the occurrence of reinfection with a second strain of HIV and determine whether reinfection has clinical relevance for the pathogenesis of HIV disease. Specific questions must at least include:

1. Can naturally-occurring reinfection with a second, genotypically distinct strain of HIV–1 be documented after initial infection has been established?
2. (How often?) Does reinfection result in the emergence of a new predominant strain of HIV–1?
3. Is reinfection with a second strain of HIV–1 associated with clinical disease progression, emergence of resistance to antiviral drugs, or other adverse consequences?

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Because studies to date suggest that reinfection with a second HIV–1 strain may be rare or difficult to detect, a case-control study design may be most likely to yield expeditious answers to study questions. Funds under this announcement may not be used to establish a prospective cohort. Therefore, successful applicants must demonstrate access to an existing cohort for recruitment of appropriate study subjects for whom stored specimens are available to conduct the necessary retrospective analysis.

C. Availability of Funds

Approximately $500,000 will be available in FY 1999 to fund approximately 2 awards. It is expected that the average new award will be approximately $250,000. It is expected that awards will begin on or about September 30, 1999. Awards will be funded for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary. Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under Recipient Activities, and CDC will be responsible for conducting activities listed under CDC Activities.

1. Recipient Activities

a. Develop Study Protocol: Design an appropriate study to answer the specific research questions related to HIV–1 reinfection.

b. Identify Study Cohort: Identify a cohort of HIV-infected persons from which eligible study subjects can be recruited, for whom (1) sufficient information is available to document a known or likely re-exposure to a second strain of HIV–1; (2) a clinically significant event such as disease progression or emergence of antiviral drug resistance has been recognized; and (3) suitable stored specimens are available for genotypic analysis of viral strains of HIV–1 before and after occurrence of the clinical event.

c. Conduct Productive and Scientifically Sound Studies: Identify, recruit, obtain informed consent, and enroll study participants as determined by the study protocol and the program requirements. Perform the laboratory tests necessary to characterize viral strains as determined by the study protocol. Ideally, recipients would be able to characterize the HIV–1 strain in the source partner epidemiologically associated with reinfection.

d. Publish the Results of the Study: Upon completion, publish the results of the study. At the completion of the funding period, recipients should optimally prepare at least one manuscript based on the funded research for a peer-reviewed journal. All recipients will provide copies of relevant publications and other significant documents to CDC project co-investigators, and any other local agencies or individuals with a special interest in the research project.

e. Share Data and Specimens: Share data and specimens (when appropriate) with other collaborators to answer the project's specific research questions.

2. CDC Activities

a. Assist in Protocol Development: CDC staff will assist in the development

of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

b. Provide Technical Assistance: CDC staff will assist in the design of the research and quality assurance of laboratory methods.

c. Provide Scientific Expertise: CDC staff will provide current scientific and programmatic information relevant to the studies, and will provide technical advice throughout the study, including study design, data analysis and publication.

d. Share Data and Specimens: CDC staff will assist in the dissemination of study results and distribution of specimens.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applications must not be more than 25 double-spaced pages, printed on one side, with one inch margins and 12 point font (exclusive of official PHS application pages and relevant attachments.) Applications will not be reviewed if the narrative is more than 25 pages, not counting PHS forms and appendices. In the narrative, address the following:

1. Background: Briefly describe your research questions.

2. Study design: Describe: (a) the proposed study design and (b) how this study design will address the specific research questions.

3. Study cohort: Describe: (a) the study cohort from which eligible study subjects will be recruited; (b) how this study cohort was selected; (c) specific clinical and epidemiologic information available for potential study subjects related to the study objectives; and (d) the availability, quality, and condition of stored specimens necessary for the laboratory analysis as determined by the study design. Also provide evidence that the necessary information and specimens from this cohort will be accessible for the purposes of this study.

4. Laboratory methods: Describe the laboratory methods that will be used to characterize the viral strains, and provide evidence that these are adequate to distinguish between different strains of HIV–1 with the same envelope subtype.

5. Organization: Describe: (a) the existing relationship between the proposed study staff, managers of the proposed study cohort, and the laboratory which will perform the study analyses; (b) the proposed organization structure, with lines of authority, for implementing the proposed study; (c) the current working relationship with any research, academic, scientific groups, community-based organizations or other affiliated organizations; and (d) strategy for identification and recruitment of study participants.

6. Capacities: Describe your capacity and experience in: (a) performing previous clinical or laboratory research involving the recruitment of HIV-positive persons and collection of clinical or epidemiologic data; (b) performing genotypic analysis of viral strains of HIV–1; (c) ensuring the hiring of staff for implementing the study in a timely manner; and (d) participating in collaborative research with other research organizations.

7. Personnel: Describe (a) personnel proposed for implementing the research study; (b) roles and responsibilities for each proposed staff; and (c) evidence of qualifications for the responsibilities proposed.

8. Budget and Line-Item Justification: Provide an annualized budget that anticipates the organizational and operational needs to carry out the proposed study.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 1, 1999 submit the application to: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mail Stop E–15, Atlanta, GA 30341, Email KGM1@cdc.gov.

Deadline: Applications shall be considered as meeting the deadline if they are either received on or before the stated deadline date or sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable proof of timely mailing. Applications that do not meet these criteria are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually based on the evidence submitted against the following criteria by an independent review group appointed by CDC (Note: total possible point value is 110):

1. Demonstration of the applicant's understanding of the research objectives and the ability, willingness, and need to collaborate in the study design and analysis, and (when appropriate) sharing of data and specimens. Evidence should include a brief review of previous studies related to HIV–1 infection, and laboratory methods for characterizing viral strains of HIV–1. (15 points)

2. Quality of an explicit research plan adequate to address the study questions. The research plan should include a specific study design (e.g., case series, case-control analysis) and describe how HIV-infected study subjects will be identified and how their re-exposure to infection with another strain of HIV–1 will be documented. The research plan should specify the anticipated number of subjects, and demonstrate how this study design and subject selection will resolve the study questions. Preference will be given to applicants who propose to evaluate reinfection in persons whose initial infection and possible reinfection are both due to group M, subtype B strains of HIV–1. (25 points)

3.a. Capacity to access a cohort of HIV-infected persons with sufficient epidemiologic information to document re-exposure to HIV–1, adequate descriptive clinical information to identify significant clinical events such as disease progression or emergence of antiviral drug resistance, and the availability of adequate stored specimens to implement the study. (15 points)

b. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. (5 points)

4. Capability to employ laboratory methods sufficient to differentiate

among viral strains of HIV–1 with the same envelope subtype. Evidence should include a justification for the laboratory techniques selected, documentation of either proficiency with these methods or specific plans and commitments to access services from a laboratory which has demonstrated this proficiency, and assurance that capacity is adequate to accomplish the analyses necessary for the proposed research. Letters of support from collaborating institutions or organizations should be included. (15 points)

5. Demonstration of a history of conducting comparable research studies. Research studies related to the molecular biology, genetic diversity, or genetic evolution of HIV–1 are of greatest interest. (10 points)

6. The capacity to effectively manage the study as evidenced by the proposed organizational structure, the quality and experience of proposed personnel with realistic and sufficient percentage-time commitments; clarity of the described duties and responsibilities of project personnel; adequacy of the facilities; and plans for administration of the project including project oversight and data management. Evidence should document qualifications of a prospective PI and other key personnel, and, if indicated, support arrangements with a university, community-based or other affiliated organization, etc. (15 points)

7. A comprehensive schedule, including a time line, for accomplishing the activities of the research and an evaluation plan that identifies methods and instruments for evaluating progress in designing and implementing the research objectives. (10 points)

8. Other (Not Scored).

a. Budget: The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: Whether or not exempt from the Department of Health and Human Services (DHHS) regulations, are procedures adequate for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Annual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the paragraph Where to Obtain Additional Information.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 311 of the Public Health Service Act, [42 U.S.C. 241 and 243], as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and to identify the Announcement number, 99105. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mail Stop E–15, Atlanta, GA 30341, Telephone (770) 488–2737, E-mail address KGM1@cdc.gov.

For a detailed description of the additional requirements in Attachment 1, to download forms required by this announcement, and to review other CDC program announcements, see the CDC home page on the Internet: www.cdc.gov.

For program technical assistance, contact Kay Lawton, Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mail Stop E–46, Atlanta, Georgia 30333, telephone (404) 639–6131, E-mail address KEL1@cdc.gov.

Dated: May 21, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13493 Filed 5–26–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section l0(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 8:30 a.m.–5 p.m., June 24, 1999; 8:30 a.m.–3 p.m., June 25, 1999.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items include issues pertaining to (1) syphilis elimination (2) HIV Prevention Community Planning and (3) encouraging early diagnosis of HIV infection. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008, fax 404/639–8600, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 21, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13492 Filed 5–26–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1457]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,5-dichloro-2-((4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)benzenesulfonic acid, calcium salt (1:1), (C.I. Pigment Yellow 183) as a colorant in high density polyethylene and polypropylene resins intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4664) has been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposes to amend the food additive regulations to provide for the safe use of 4,5-dichloro-2-((4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1H-pyrazol-4-yl)azo)bezenesulfonic acid, calcium salt (1:1), (C.I. Pigment Yellow 183) as a colorant in high density polyethylene and polypropylene resins intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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.

Dated: May 7, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13471 Filed 5–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1456]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,6-hexanediamine,*N*,*N*′-bis(2,2,6,6,-tetramethyl-4-piperidinyl)-,polymer with 2,4,6-tricholoro-1,3,5-triazine,reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine as a stabilizer in olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4656) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591-9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 1,6-hexanediamine,*N*,*N*′-bis(2,2,6,6,-tetramethyl-4-piperidinyl)-,polymer with 2,4,6-tricholoro-1,3,5-triazine, reaction products with *N*-butyl-1-butanamine and *N*-butyl-2,2,6,6-tetramethyl-4-piperidinamine as a stabilizer in olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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.

Dated: May 12, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13472 Filed 5–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1423]

Yoshitomi Fine Chemicals, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Yoshitomi Fine Chemicals, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of food-contact paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4654) has been filed by Yoshitomi Fine Chemicals, Ltd., c/o SRS International Corp., suite 1000, 1625 K St. NW., Washington, DC 20006–1604. The petition proposes to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of food-contact paper and paperboard.

The agency has determined under 21 CFR 25.32(q) 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.

Dated: May 5, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13506 Filed 5–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–269]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Evaluation of Competitive Bidding Demonstration for Durable Medical Equipment (DME) and Prosthetics, Orthotics, and Supplies (POS)—Data Collection Plan for Baseline Beneficiary Surveys, Oxygen Consumer Survey, Medical Equipment and Supplies Consumer Survey and Supporting Statute Section 4319 of the Balanced Budget Act of 1997;

Form No.: HCFA–R–0269;

Use: Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of certain categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six month period between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. HCFA intends to operate the demonstration in two rounds, the first of two years, and the second of one year. HCFA has announced that it intends to operate its first demonstration in Polk County, Florida, which is the Lakeland-Winter Haven Metropolitan Area.

This evaluation is necessary to determine whether access to care, quality of care, and diversity of product selection are affected by the competitive bidding demonstration. Although secondary data will be used wherever possible in the evaluation, primary data from beneficiaries themselves is required in order to gain an understanding of changes in their level of satisfaction and in the quality and selection of the medical equipment.

The purpose of the data collection plan is to describe the baseline data collection procedures and the plan for analyzing the data to be collected.

The baseline beneficiary surveys will take place March 1999 to May 1999, prior to the competitive bidding demonstration. We will sample beneficiaries from claims summaries provided by the durable medical equipment regional carrier (DMERC). The sample will be stratified into two groups: beneficiaries who use oxygen and beneficiaries who are non-oxygen users, i.e., users of the other four product categories covered by the demonstration (hospital beds, enteral nutrition, urological supplies, and surgical dressings) but not oxygen. To draw a comparison, we will sample in both the demonstration site (Polk County, Florida) and a comparison site (Brevard County, Florida) that matches Polk County on characteristics such as number of Medicare beneficiaries and DME/POS utilization.

The research questions to be addressed by the surveys focus on access, quality, product selection, and satisfaction with products and services. Our collection process will include fielding the survey for oxygen users and the survey for non-oxygen users before the demonstration begins and again after the new demonstration prices have been put into effect. The same data collection process will be followed in the comparison site (Brevard County). In the analysis of the data, we will also control for socioeconomic factors. This will allow us to separate the effects of the demonstration from beneficiary-or site-specific effects.

Information collected in the beneficiary survey will be used by the University of Wisconsin-Madison (UW-M), Research Triangle Institute (RTI), and Northwestern University (NU) to evaluate the Competitive Bidding Demonstration for DME and POS. Results of the evaluation will be presented to HCFA and to Congress, who will use the results to determine whether the demonstration should be extended to other sites. The information that these surveys will provide about access, quality, and product selection will be very important to the future of competitive bidding within the Medicare program. This is the first Medicare demonstration that allows competitive bidding for services and equipment provided to beneficiaries. A negative impact on access, quality, or product selection would have significant implications for the future of competitive bidding within the Medicare program.

Frequency: Annually;

Affected Public: Individuals or Households;

Number of Respondents: 2,560;

Total Annual Responses: 2,560;

Total Annual Hours: 724.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–13522 Filed 5–26–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Proposed Collection; Comment Request; Partner and Customer Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Center for Scientific Review (CSR), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Partner and Customer Satisfaction Surveys. Type of Information Collection Request: New request. Need and Use of Information Collection: The information collected in these surveys will be used by the Center for Scientific Review personnel: (1) to assess the quality of operations and processes used by CSR to review grant applications; (2) to assess the quality of service provided to our partners and customers; (3) to assist with the design of modifications of these operations, processes, and services, based on partner and customer input; (4) to develop new modes of operation based on partner and customer need; and (5) to obtain partner and customer feedback about the efficacy of implemented modifications. These surveys will almost certainly lead to quality improvement activities and will enhance and/or streamline CSR's operations. The major mechanism by which CSR will request input is through surveys. The surveys for partners is generic and tailored for Scientific Review Group (SGR) past and present members and chairs. The survey for customers, i.e., grant applicants, will have slight variations determined by which category of scientific review group the researcher/investigator's grant application is reviewed. Surveys will be collected as written documents or via Internet. Information gathered from these surveys will be presented to, and used directly by, CSR management to enhance the operations, processes, and services of our organization. Frequency of Response: The participants will respond yearly.

Affected public: Universities, not-for-profit institutions, business or other for-profit, small business and organizations and individuals. Type of Respondents: Adult scientific professionals. The annual reporting burden is as follows: It is estimated that the survey form will take 20 minutes to complete. The annual hour burden is, therefore, estimated to be 1,932 hour for 5,855 respondents in FY 2001, 1,932 hours for 5,855 respondents in FY 2002, 1,932 hours for 5,855 respondents in FY 2003. Estimated costs to the respondents consists entirely of their time. Costs for time estimated using a rate of $38.00 per hour for SGR members, SGR chairs, and principal investigators/grant applicants. The estimated annual cost for each year for which the generic clearance is requested is $73,421 for FY 2001, $73,421 for FY 2002, $73,421 for FY 2003. No additional costs should be incurred by respondents or recordkeepers.

Requests for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the CSR, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond while maintaining their anonymity, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans, contact: Elliot Postow, Ph.D., Director, Division of Molecular and Cellular Mechanisms, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4160 MSC 7806, Bethesda, MD 20892–7806, or call non-toll-free: 301–435–0911, or e-mail your request or comments, including your address to postowe@drg.nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by July 26, 1999.

Dated: May 19, 1999.

Chris Wisdom,

Eexcutive Officer, CSR.

[FR Doc. 99–13474 Filed 5–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselor, National Eye Institute.

Date: June 21–22, 1999.

Open: June 21, 1999, 9:00 a.m. to 10:00 a.m.

Agenda: Opening remarks by the Director, Intramural Research Program, on matters concerning the intramural program of the NEI.

Place: Building 10, Room 10B16, Bethesda, MD 20892.

Closed: June 21, 1999, 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 10, Room 10B16, Bethesda, MD 20892.

Closed: June 22, 1999, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 10, Room 10B16, Bethesda, MD 20892.

Contact Person: Robert B. Nussenblatt, MD, Director, Intramural Research Program, National Eye Institute, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–496–2123.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13477 Filed 5–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group Ethical, Legal, Social Implications Review Committee.

Date: June 7, 1999.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13479 Filed 5–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: June 4, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rudy O. Pozzatti, Phd., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 20, 1999.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 99–13480 Filed 5–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Stem Cell Transplantation for the Treatment of Autoimmune Diseases.

Date: June 18–19, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Boston Airport, 225 McClellan Highway, Boston, MA 02128.

Contact Person: Stanley C. Oaks, Jr., PhD, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C06, 9000 Rockville Pike MSC 7610, Bethesda, MD 20892–7610, 301–496–7042, so14s@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–13475 Filed 5–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Postdoctoral Research Training.

Date: July 8–9, 1999.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Bruce K. Wetzel, PhD., Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and

Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

May 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13481 Filed 5–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Chairpersons, Boards of Scientific Counselors for Institutes, Centers and Divisions at the National Institutes of Health

Notice is hereby given of a meeting scheduled by the Deputy Director for Intramural Research at the National Institutes of Health with the Chairpersons of the Boards of Scientific Counselors. The Boards of Scientific Counselors are an advisory group to the Scientific Directors of the Intramural Research Programs at the NIH. This meeting will take place from 10 a.m. to 3 p.m. on Friday, September 24, 1999 at the NIH, 9000 Rockville Pike, Bethesda, MD, Building 1, Room 151. The meeting will include a discussion of policies and procedures that apply to the regular review of NIH intramural scientists and their work, with special emphasis on clinical research.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Audrey Boyle at the Office of Intramural Research, NIH, Building 1, Room 114, Telephone (301) 496–1921 or Fax (301) 402–4273 in advance of the meeting.

Dated: May 15, 1999.

Ruth Kirschstein,

Deputy Director, NIH.

[FR Doc. 99–13478 Filed 5–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 1, 1999.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anita Corman Weinblatt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435–1124.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–DMG (5).
Date: June 1, 1999.
Time: 7:00 p.m. to 10:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW, Washington, DC 20007.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, lrosen@csr/nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group.
Date: June 2–3, 1999.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.
Contact Person: James Deatherage, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 2–4, 1999.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group Molecular Cytology Study Section.
Date: June 3–4, 1999.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group Cell Development and Function 2.
Date: June 3–4, 1999.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 10815.
Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Pathobiochemistry Study Section.
Date: June 3–4, 1999.
Time: 8:30 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research 93.333,

93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–13476 Filed 5–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

On December 31, 1998, a notice was published in the **Federal Register** (63 FR 72321), that an application had been filed with the U.S. Fish and Wildlife Service by Waterman Realty Company, Winchester Creek Limited Partnership, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, Delmarva fox squirrels (*Sciurus niger cinereus*) on the proposed 56 acre housing development pursuant to the terms of the Home Port on Winchester Creek Housing Development Habitat Conservation Plan.

Notice is hereby given that on May 13, 1999, as authorized by the provisions of the Act, the Service issued a permit (PRT–006310), to the above named party subject to certain conditions set forth therein. The permit was granted only after it was determined that it was applied for in good faith; that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Act as amended.

Additional information on this permit action may be requested by contacting the Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland, 21401, 410–573–4500 between the hours of 8:00 a.m. and 4:00 p.m. weekdays.

Dated: May 14, 1999.

Ralph C. Pisapia,

Assistant Regional Director, Ecological Services.

[FR Doc. 13445 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–050–99–1220–00]

Emergency Closure and Restriction of Certain Uses of Public Lands Within the Dillon and Butte Field Offices, Montana

AGENCY: Dillon Field Office, Bureau of Land Management, DOI.

ACTION: Notice of emergency closure and restriction order.

SUMMARY: Effective immediately, all public lands in the corridor of the lower Madison River, from the Bear Trap Canyon Wilderness to Black's Ford fishing access are closed, or restricted to certain uses as described below. The lands affected by this closure and restriction order include all public lands within Sections 2, 10, 11, and 15 of Township 3 South, Range 1 East; and sections 25 and 35 of Township 2 South, Range 1 East; and Sections 19 and 30 of Township 2 South, Range 2 East. The closure and restriction orders are being implemented to stop the spread of noxious weeds, reduce erosion, prevent damage to cultural resources, and reduce fire hazard conditions and impacts to other natural resources, and provide for public safety.

Vehicle travel: Vehicle travel is limited in this area to the road surface of posted, designated routes. Any travel off routes is prohibited unless signed, and designated as open. This restriction is necessary to stop the spread of noxious weeds, reduce erosion, reduce fire hazards, and prevent damage to cultural resources.

Firearms: The entire area is closed to the discharge or use of firearms, except within the Bear Trap Canyon Wilderness during open hunting season. This restriction is necessary to provide for public safety in a heavily used recreation area.

Camping: The area is closed to dispersed camping, except for signed, designated sites. Designated campsites are limited to a maximum of 3 vehicles per site. This restriction is necessary to stop spread of noxious weeds, reduce erosion, reduce fire hazards, prevent damage to cultural, and other natural resources. Camping is further restricted by prior rules to a maximum of 14 days within any 28 day period, after which a person must move a minimum of five miles (**Federal Register**/ Vol. 51, No. 57/ Tuesday, March 25, 1986).

Fires: Open fires must be completely contained within one of the permanently installed metal fire grates provided. Construction of rock fire rings, or use of existing rock fire rings is prohibited. The area is also closed to the collection of firewood and any chopping or destruction of trees. This restriction is necessary to reduce fire hazards, provide for public safety, and prevent damage to cultural and natural resources.

The authority for this closure and restriction order is 43 CFR 8364.1. The order will remain in effect until a Recreation Management Plan for the area is completed.

ADDRESSES: Copies of the closure and restriction order, and maps showing the location of the affected lands are available from the Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725; Butte Field Office, 106 N. Parkmont, P.O. Box 3388, Butte, Montanna 59702; or the U.S. Forest Service, Madison Ranger District, 5 Forest Service Road, Ennis, Montana 59729.

FOR FURTHER INFORMATION CONTACT: Rick Waldrup, Outdoor Recreation Planner, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725; telephone 406–683–2337.

Dated: May 17, 1999.

Scott Powers,

Field Manager, Dillon Field Office.

Merle Good,

Field Manager, Butte Field Office.

[FR Doc. 99–13528 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–5700–10; Closure Notice No. NV–030–99–003]

Temporary Closure of Public Lands; Washoe County, Nevada

AGENCY: Bureau of Land Management, Nevada, DOI.

ACTION: Temporary closure of public lands by Carson City Field Office Manager.

SUMMARY: The Carson City Field Office Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1999 Pylon Racing Seminar and 1999 Reno National Championship Air Races.

EFFECTIVE DATES: June 25 through June 28, 1999, and September 13 through September 19, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret L. Jensen, Assistant Manager, Nonrenewable Resources, Carson City Field Office, 5665 Mill Road, Carson

City, Nevada 89701. Telephone (775) 885-6100.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼;
Sec. 16, N½ and SW¼.

Aggregating approximately 680 acres

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated: May 20, 1999.

Margaret L. Jensen,

Assistant Manager, Nonrenewable Resources, Carson City Field Office.

[FR Doc. 99–13494 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–086–6332; GP9–0187]

Emergency Closure of The Nestucca Access Road Within The Tillamook Resource Area, Salem District, Oregon

AGENCY: Bureau of Land Management.

ACTION: This action is an emergency road closure for portions of the Nestucca Access Road (3–6–13) for public safety and construction site security.

SUMMARY: A construction contract was awarded to replace two single lane bridges, rehabilitate and pave 2.6 miles, asphalt patch 2.8 miles and place chip seal on 5.4 miles of the Nestucca Access Road (NAR). Construction began on April 26, 1999. On May 14, 1999, the 9th Circuit Court granted a stay pending appeal by the Coast Range Association which resulted in a stop work order being issued to the contractor leaving the road in a hazardous condition for public use. The road is also closed for construction site security.

SUPPLEMENTARY INFORMATION: The following is a description of road closure points necessary for protection of the public: The NAR will be closed near the west end of Alder Glen Bridge; west of the junction with Bear Ridge Road (3–7–32.1); east of the junction with Hoag Pass Road (3–7–28) and at east end of gravel portion of the NAR in T.3S.,R.7W.,Sec. 24. Roads which provide access to the closed portions of the NAR will be closed at or near their junction with the NAR are the Elk Creek Road (3–7–27) and Dovre Tie Road (3–7–27.1).

Authority for this action is contained in 43 CFR 8364.1. Any person who fails to comply with a restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in 43 CFR 8360.0–7. Only delegated Federal Law Enforcement Officers, or other law enforcement and emergency personnel, or officials of the United States Department of Interior, while engaged in official duties, shall be exempt from this order.

DATES: This order is in effect May 17, 1999, and is permanent until cancelled, amended or replaced.

FOR FURTHER INFORMATION CONTACT: Dana R. Shuford, Area Manager. Bureau of Land Management, Tillamook Resource Area, 4610 Third Street, Tillamook, OR. 97141. 503–815–1100.

Dated: May 17, 1999.

Steven W. Anderson,

Acting Resource Area Manager.

[FR Doc. 99–13530 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–99–1320–01; COC 62949]

Colorado; Notice of Invitation for Coal Exploration License Application, Blue Mountain Energy, Inc.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Blue Mountain Energy, Inc., in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado:

T. 3 N., R. 101 W., 6th P.M.
Sec. 19, SE¼;
Sec. 20, all;
Sec. 21, S½NW¼, and S½;
Sec. 22, S½;
Sec. 26, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 27, all;
Sec. 28, N½, N½SW¼, and SE¼;
Sec. 34, N½NE¼, and NW¼;
Sec. 35, NW¼NE¼, and N½NW¼.

The area described contains approximately 3,680 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 62949 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the White River Field Office, 73544 Highway 64, Meeker, Colorado 81641.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register**.

Karen Purvis, Solid Minerals Team, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and

Mr. Murari Shrestha, Director of Permitting and Contracting Affairs, Western Fuels Association, Inc., P.O. Box 33424, Denver, CO 80233

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: May 18, 1999.

Karen Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 99–13532 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1220–00: GP9–0188]

Call for Nominations for the National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Call for nominations on the National Historic Oregon Trail Interpretive Center Advisory Board.

SUMMARY: The purpose of this notice is to solicit nominations for vacancies on the National Historic Oregon Trail Interpretive Center Advisory Board. Oregon residents with an interest in developing and providing advice pertinent to the management of the Oregon Trail Interpretive Center are encouraged to apply. Individuals selected will serve a 2-year term on the Advisory Board that will run through August 2001.

All nominations must be accompanied by letters of reference from represented interests and organizations, a completed background

information nomination form, as well as any other information that speaks to the nominee's qualifications. All nominations must be received by no later than close of business June 25. The Bureau of Land Management, along with the Governor's Office, will forward the nominations to the Secretary of the Interior, who will make the appointments to the Advisory Board.

The National Historic Oregon Trail Interpretive Center's Advisory Board was established and authorized in 1997 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management on the management of the Interpretive Center.

FOR FURTHER INFORMATION: Anyone interested in requesting a nomination form should inquire at the Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, OR 97918, (541) 473–3144; the Baker Resource Area Office, 3165 10th Street, Baker City, OR 97814, (541) 523–1256; or the National Historic Oregon Trail Interpretive Center, P.O. Box 987, Baker City, OR 97814, (541) 523–1845.

Penelope Dunn Woods,

Acting District Manager.

[FR Doc. 99–13526 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1430–01; NMNM 100216/G–010–G9–0253]

Public Land Order No. 7392; Withdrawal of Public Lands and Federal Minerals To Allow the Sale of Humate; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 3,716.83 acres of public lands from surface entry and mining, and 858.52 acres of federally reserved mineral interests underlying private surface estate from mining, for a period of 20 years, for the Bureau of Land Management to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM Rio Puerco Resource Area Office, 435 Montano Road NE, Albuquerque, New Mexico 87107, 505–761–8787.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location:

New Mexico Principal Meridian

T. 19 N., R. 4 W.,
Sec. 4, lots 3 and 4, S½NW¼, and SE¼;
Sec. 6, lots 3 to 7, inclusive, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 and 4;
Sec. 8;
Sec. 9, N½ and SW¼;
Sec. 16, NE¼;
Sec. 17;
Sec. 18, E½.
T. 19 N., R. 5 W.,
Sec. 5, SE¼;
Sec. 7, lots 1 and 2, E½, and E½NW¼.

The areas described aggregate 3,716.83 acres in Sandoval and McKinley Counties.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described lands are hereby withdrawn from the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect an area having potential for development of humate (a carbonaceous shale) from encumbrances due to mining claim location:

New Mexico Principal Meridian

T. 19 N., R. 4 W.,
Sec. 6, lots 1 and 2, and S½NE¼;
Sec. 7, lots 2 and 3;
Sec. 9, SE¼.
T. 19 N., R. 6 W.,
Sec. 10, W½ and W½E½.

The areas described aggregate 858.52 acres in Sandoval and McKinley Counties.

3. The surface estate of the lands described in paragraph 2 is non-Federal. If the United States subsequently acquires these lands, they will be subject to the terms and conditions of this withdrawal.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

5. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 13, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–13446 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–99–14; AZA–30895, AZA–30896, AZA–30897]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona, have been examined and found suitable for classification for lease or conveyance to the Scenic Improvement District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Scenic Improvement District proposes to use the lands for a Cemetery (AZA–30895), a Fire Station (AZA–30896), and a Waste Water Treatment Plant (AZA–30897).

Gila and Salt River Meridian, Mohave County, AZ.

T. 39 N., R. 16 W.,
Sec. 3, W½NE¼SW¼SE¼, E½NW¼SW¼SE¼, NW¼NW¼SW¼SE¼ (12.5 acres for a cemetery);
Sec. 9, NE¼NE¼NW¼NE¼ (2.5 acres for a fire station);
Sec. 9, S½NE¼NE¼SE¼, E½SE¼NW¼NE¼SE¼, E½NE¼SW¼NE¼SE¼, N½SE¼NE¼SE¼, SE¼SE¼NE¼SE¼ (15 acres for a waste water system);

Containing 30 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

5. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, AZ Strip Field Office, 345 E. Riverside Drive, St. George, UT 84790.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed classification of the lands to the Field Manager, AZ Strip Field Office, 345 E. Riverside Drive, St. George, UT 84790.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a cemetery, a fire station, and/or a waste water treatment plant. Comments on the classifications are restricted to whether the land is physically suited for the proposals, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed purposes. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ilene Anderson, Realty Specialist, (435) 688–3270.

Roger G. Taylor,

Field Manager.

[FR Doc. 99–13527 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–1110–00]

Notice of Intent for Plan Amendment

AGENCY: Bureau of Land Management.

ACTION: Notice of intent—Proposal for plan amendment for the Moab Field Office Grand Resource Management Plan, Grand County, Utah.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) proposes to amend the 1985 Grand Resource Management Plan (RMP), which includes portions of Grand County, Utah. Since completion of the RMP, antelope have expanded west from the Utah-Colorado stateline and have also become established south of I–70.

The purpose for this plan amendment is to determine whether multiple-use management goals and objectives can be achieved and also allow for an expanding self-sustaining pronghorn herd. The activities and uses authorized by BLM which could be affected are oil and gas development and livestock grazing.

The existing Management Actions for wildlife habitat requirements (pronghorns' forage, water and spatial needs) are proposed to be amended. The major issue(s) and questions to be addressed include the following:

(1) Are pronghorn compatible or competitive with other rangeland resources? Specifically, are rangeland resources adequate to support both domestic livestock and an expanding self-sustaining pronghorn herd.

How could an expanding self-sustaining pronghorn herd affect the oil and gas industry?

(2) What geographic area should be delineated as suitable pronghorn habitat?

(3) What is the desired Herd Management Goal for the Cisco Desert pronghorn herd?

The livestock grazing allotments within the amendment area include: Green River Flat, Elgin, Horse Canyon, Floy Creek, Crescent Canyon, Athena, Ruby Ranch, Ten Mile Point, Big Flat Ten Mile, Crescent Junction, Monument Wash, Highlands, Cisco, Cisco Mesa, Sulphur Canyon, Corral Wash Canyon, Corral Wash, Winter Camp, Squaw Park, Agate, Little Hole, Pipeline, Harley Dome, San Arroyo and Bar X allotments.

DATES: Members of the public are encouraged to submit comments on this proposed amendment and the issues to be addressed. BLM will accept comments for 30 days from the date of publication of this notice. Comments must be submitted on or before June 25, 1999.

ADDRESSES: Comments should be sent to Bill Stringer, Moab Field Office, Bureau of Land Management, 82 E. Dogwood Ave., Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Joe Cresto, Moab Field Office. (435) 259–2114.

SUPPLEMENTARY INFORMATION: Existing planning documents and information are available at the Moab Field Office, Bureau of Land Management, 82 E. Dogwood Ave., Moab, Utah 84532. (435) 259–6111.

Mike Pool,

Acting State Director.

[FR Doc. 99–13495 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–50265, Group 160, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin, Stayed

On Tuesday, April 13, 1999 there was published in the **Federal Register**, Volume 64, Number 70, on pages 18047–18048 a notice entitled ''Notice of Filing of Plat of Survey; Wisconsin''. In said notice was a plat depicting the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of sections 7 and 18, in Township 35 North, Range 15 West, of the 4th Principal Meridian, Wisconsin, accepted March 30, 1999.

The official filing of the plat is hereby stayed, pending consideration of questions as to the technical aspects of the survey.

Dated: June 20, 1999.

Joseph W. Beaudin,

Chief Cadastral Surveyor.

[FR Doc. 99–13529 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 89170]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 3,530.62 acres of public land to prevent unnecessary or undue degradation of the land by facilitating mine reclamation. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing and mineral material disposal under the Materials Act.

DATES: Comments and requests for a public meeting must be received by August 25, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949 or Scott Haight, 406–538–1930.

SUPPLEMENTARY INFORMATION: On May 13, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land, from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The land is described as follows:

Principal Meridian, Montana

T. 25 N., R. 24 E.,
Sec. 10, lots 7 to 11, inclusive, and NE¼SE¼;
Sec. 11, lots 8 and 9;
Sec. 12, lots 8, 11, 12, 13, 17, 18, 19, 20 and 22, and SE¼SW¼;
Sec. 13, NE¼NE¼ and W½NW¼;
Sec. 14, lots 1 to 11, inclusive, E½NE¼, SW¼NE¼, and N½SE¼;
Sec. 15, lots 4 to 18, inclusive;
Sec. 21, E½NE¼, NE¼SE¼, and W½SE¼SE¼;
Sec. 22, lot 1, lots 3 to 7, inclusive, SE¼NE¼, W½NW¼, N½SW¼, E½SW¼SW¼, SE¼SW¼, N½SE¼, E½SE¼SE¼, NW¼SE¼SE¼, E½SW¼SE¼SE¼, and NW¼SW¼SE¼SE¼;
Sec. 23, N½.

T. 25 N., R. 25 E.,
Sec. 6, lots 13 to 17, inclusive, NE¼SW¼, and SE¼;
Sec. 7, lots 5 to 9, inclusive, lots 14, 17, 18, 22, 23, and 24, lots 26 to 31, inclusive, and NW¼NE¼;
Sec. 8, SW¼SW¼;
Sec. 16, lot 2, N½NW¼SW¼, N½SE¼NW¼SW¼, S½S½SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, and SW¼SE¼;
Sec. 17, lots 3 and 4, NE¼, E½NW¼, N½N½NE¼SE¼, N½NE¼NW¼SE¼, SW¼NE¼NW¼SE¼, W½NW¼SE¼, W½SE¼NW¼SE¼, W½NE¼SW¼SE¼, W½SW½SE¼, SE¼SW¼SE¼, and S½SE¼SE¼;
Sec. 18, lots 1 to 5, inclusive, lots 8, 9, and 10, and SW¼NE¼;

The area described contains 3,530.62 acres in Phillips County.

The purpose of the proposed withdrawal is to prevent unnecessary or undue degradation of this public land by facilitating required reclamation of the Zortman and Landusky Mines, including long-term water treatment.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Existing land uses which do not interfere with reclamation activities may be allowed to continue during the segregative period with the approval of the Malta Field Office Manager.

Dated: May 20, 1999.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 99–13531 Filed 5–26–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the Advisory Committee on Construction Safety and Health (ACCSH) will meet June 10 and 11, 1999, at the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. This meeting is open to the public.

TIMES, DATES, ROOMS: ACCSH will meet from 9 a.m to 4:30 p.m., Thursday, June 10 and from 9 a.m. to Noon, Friday, June 11 in rooms N–3437 A, B, and C. ACCSH work groups will meet June 8, 9, and, if necessary, after noon on June 11.

SUPPLEMENTARY INFORMATION: For further information contact Theresa Berry, Office of Public Affairs, Room N–3647, telephone (202) 693–1999 at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–693–2350. All ACCSH meetings and those of its work groups are open to the public. Individuals needing special accommodation should contact Theresa Berry no later than June 3, 1999, at the above address.

ACCSH was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

The agenda items include:

- Remarks by the Assistant Secretary for the Occupational Safety and Health Administration, Charles N. Jeffress.
- ACCSH Work Group Updates, including:
  - Data Collection/Targeting,
  - Musculoskeletal Disorders,
  - Multi-Employer Citation Policy,
  - OSHA Form 170,
  - Safety and Health Program Standard,
  - Training.
- Reports on construction standards development.
- Policy updates.
- Special presentations including:
  - Crane Operator Certification,
- Voluntary Protection Programs (VPP)—Short Term Construction Demonstration Programs, and
- Personal Protective Equipment.

The following ACCSH Work Groups are scheduled to meet in the Francis Perkins Building:

Data Collection/Targeting—8:30 a.m. to 12:30 p.m., Tuesday, June 8, in room N–5437D.

Safety and Health Program Standard—1–5 p.m., Tuesday, June 8 in room N–5437D.

OSHA Form 170—9 a.m. to 1 p.m., Wednesday, June 9, in room S–4215C.

Musculoskeletal Disorders—2:30 to 5:00 p.m., Wednesday, June 9, in room N–3437D.

Multi-Employer Citation Policy—1:30 to 2:30 p.m., Wednesday, June 9, in room S–4215C.

Training—1p.m. to 4, Wednesday, June 9, in room N–5437D.

Other workgroups may meet after the adjournment of the ACCSH meeting on June 11, 1999. Interested persons may submit written data, views or comments, preferably with 20 copies, to Theresa Berry, at the address above. Submissions received prior to the meeting will be provided to ACCSH and will be included in the record of the meeting.

Interested persons may also request to make an oral presentation by notifying Theresa Berry before the meeting. The request must state the amount of time desired, the interest that the person represents, and a brief outline of the presentation. ACCSH may grant requests, as time permits, at the discretion of the Chair of ACCSH.

Signed at Washington, DC, this 21st day of May, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–13511 Filed 5–26–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10621, et al.]

Proposed Exemptions; MICO, Inc. (MICO)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MICO, Inc. (MICO)

Located in North Mankato, Minnesota

[Exemption Application Number D–10621]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a certain parcel of unimproved real property (the Property) from the MICO, Inc. Profit Sharing Plan (the Plan) to MICO, a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) MICO purchases the Property for $362,000, which represents the Property's current fair market value as determined by a qualified, independent appraiser;

(c) MICO additionally pays to the Plan a premium of $36,200, as determined by a qualified, independent appraiser, due to MICO's ownership of improved real property which is located adjacent to the Property;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan pays no fees or commissions in connection with the Sale.

Summary of Facts and Representations

1. MICO is a Minnesota corporation engaged primarily in the design and manufacture of hydraulic brake systems. MICO is also the sponsor of the Plan. The Plan is a defined contribution plan which allows the Plan's participants to direct their individual accounts and the Plan's trustees (the Trustees) to make all other investment decisions with respect to the Plan. The Plan, which was established on December 8, 1959, has 280 participants and approximately $20,030,206 in total assets as of June 8, 1998.

2. In 1966, the Plan purchased a lot of unimproved land (the Original Parcel), located on Marie Lane in North Mankato, Minnesota for $46,000 from Fred and Ruth Forsberg, parties unrelated to the Plan. The Property is an irregularly shaped lot comprising approximately 12.74 acres of undeveloped land zoned for I–1 ''Planned Industrial'' use and is located

adjacent to MICO's production facilities and offices. The applicant represents that the Original Parcel was acquired for investment purposes. The applicant represents that the Plan subsequently leased (the Lease) to MICO a portion of the Original Parcel and, in 1979, sold the Original Parcel portion to MICO (the Portion Sale).[1] The portion of the Original Parcel which was not transferred to MICO (i.e., the Property) continues to be held as an asset of the Plan.

3. The Plan has incurred certain holding costs as a result of its ownership of the Property. In this regard, the Plan has paid approximately $90,000 in real estate taxes with respect to the Property. Additionally, the Plan has incurred a special assessment (the Assessment) which was imposed on the Property in 1998 for a principal amount of $29,127.97. The Trustees of the Plan elected to pay the Assessment over a 10 year period at the rate of $2,913.00 per year at an interest rate of 7.5%.[2]

4. The Plan has received income from the Property through an at-will oral agreement (the Agreement) with a sharecropper who has been farming the Property since 1984. As a result, the Plan has received approximately $1,350 each year from the Agreement. The Trustees represent, however, that the sharecropper has recently given notice to the Trustees that he is considering the discontinuation of the Agreement.

5. The applicant represents that during the Plan's ownership of the Property, the Trustees received several offers to purchase a portion of the Property (the Offers). The applicant represents that the Trustees, after receiving each Offer, determined the extent to which a sale involving only a portion of the Property would reduce the value of the remaining Property. The applicant represents that the Trustees, after analyzing both the sale amount of each Offer and the resulting decline in value of the remaining Property, determined that each Offer would provide an unacceptable overall rate of return to the Plan for the Property. As a result, the Trustees determined that each Offer was not in the best interests of the Plan.

The Trustees represent they are currently not advertising the Property for sale since the Property's limited marketability makes it unlikely that any advertisement of the Property would result in the Property's sale.

6. The Property was appraised on November 26, 1997 (the Appraisal) by Gwen K. Gathercoal (Ms. Gathercoal), a Minnesota-licensed appraiser for the Robinson Appraisal Company, Inc. (the Robinson Co.). The Appraisal was reviewed by another Robinson Co. appraiser, James K. Simonson (Mr. Simonson). Ms. Gathercoal and Mr. Simonson each represent that they are independent of the Plan and MICO and their employment and compensation were not contingent on the appraised value of the Property.

Ms. Gathercoal used the sales comparison approach and examined eight different transactions before determining that, as of November 26, 1997, the Property had a fair market value of $362,000. In the Appraisal, Ms. Gathercoal concluded that the ''highest and best use'' for the Property would be a combination of residential, commercial, and industrial use.

The value of the Property was reevaluated (the Reevaluation) by Mr. Simonson on November 23, 1998. The purpose of the Reevaluation was to establish whether the Property had appreciated in value since the Appraisal and to determine the extent to which a premium on the Property was necessary in the event that the Property was sold to MICO.[3] In the Reevaluation, Mr. Simonson represented that the Property's fair market value of $362,000 had not increased since the Appraisal. As a result, Mr. Simonson estimated that the Property had a fair market value of $362,000, as of November 23, 1998. Mr. Simonson represented further that, in the event the Property was sold to MICO, an adjacent landowner, a premium valued at $36,200, or 10% above the Property's fair market value, should be paid by MICO to the Plan. As a result, Mr. Simonson estimated that any sale of the Property by the Plan to MICO should occur at a price equal to the sum of the Property's fair market value of $362,000 and the Property's assemblage value of $36,200.

7. MICO proposes to purchase the Property for $398,200 (the Purchase Price). The Purchase Price represents the sum of the Property's current fair market value of $362,000, as determined by a qualified, independent appraiser, and the Property's assemblage value of $36,200 with respect to the Sale, as determined by a qualified, independent appraiser. The Sale will be a one-time transaction for cash in which the Plan pays no fees or commissions. The Trustees represent that the Sale is in the best interests of the Plan's participants and beneficiaries since the Property's rate of appreciation has decreased in recent years despite an increase in the Property's real estate taxes. The Trustees represent further that the Assessment, when added to the increased real estate taxes incurred by the Plan, creates an inappropriate Plan expense with respect to the Property.

8. In summary, the Applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) MICO purchases the Property for $362,000, which represents the Property's current fair market value as determined by a qualified, independent appraiser;

(c) MICO additionally pays to the Plan a premium of $36,200, as determined by a qualified, independent appraiser, due to MICO's ownership of improved real property located adjacent to the Property;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan pays no fees or commissions connected to the Sale.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta at the United States Department of Labor, telephone (202) 219–8883 (this is not a toll free number).

Western Petroleum Company Profit Sharing Plan (the Plan)

Located in Eden Prairie, Minnesota [Application No. D–10743]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the individual account (the Account) of

[1] The Applicants represent that the Lease and the Portion Sale were made pursuant to ERISA section 414 (c)(2) and (c)(3). In this regard, the Department expresses no opinion herein as to whether the Lease and Portion Sale were made in accordance with the requirements of the Act.

[2] The applicant represents that in the event that the proposed transaction is granted by the Department, the Plan will be responsible for paying the outstanding balance of the Assessment on the closing date of the Sale.

[3] In the Reevaluation, Mr. Simonson stated that he customarily adjusts upward the appraised value of real property in instances where, as here, the purchaser of the real property owns real property located adjacent to the real property the purchaser seeks to buy. Mr. Simonson represents that this upward adjustment, commonly referred to as an ''assemblage'', reflects the willingness of such purchasers to pay a premium above market value so as to avoid moving or to avoid business disruptions.

James W. Emison in the Plan of certain closely-held stock (the Stock) to Mr. Emison, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Account pays no commissions nor other expenses relating to the sale; and (c) the Account receives an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan established by Western Petroleum Company (the Employer). The Employer is a Minnesota corporation and a petroleum wholesaler, located in Eden Prairie, Minnesota. As of February 8, 1999, the Plan had approximately 40 participants and beneficiaries. As of December 31, 1997, the Plan had total assets of approximately $4,012,415, and the Account had total assets of approximately $1,483,000. The trustees of the Plan are Mr. Emison and Mr. Lee Granlund. Mr. Emison (hereafter also referred to as ''the Applicant'') is also the President and a 100% shareholder of the Employer.

2. Among the assets of the Account is the Stock, which consists of 12,838 shares of Community Bank Group, Inc. (CBG), a closely-held bank holding company with four subsidiary banks: Community Bank Jordan, Community Bank Winsted, Community Bank New Ulm, and Community Bank St. Peter. The Applicant represents that the Account acquired 51 shares of the Stock in 1995 from Mr. Roy Terwilliger, an individual unrelated to the Plan and the Employer, for $82,875.00. In 1997, the Stock underwent a 100 for 1 stock split so that the Account held an additional 5,049 shares of the Stock. In 1997, the Account acquired 7,738 shares of the Stock from CBG for $154,763.00. Thus, the Account's basis in the Stock is $237,638.00. Mr. Emison has been a director of CBG since 1984. In addition, Mr. Emison owns 70,480 shares of the Stock as trustee of the James Wade Emison Trust, which shares represent approximately 24.82% of the outstanding shares of the Stock as of December 31, 1998.[4]

3. The Applicant requests an exemption to purchase all 12,838 shares of the Stock from the Account. Due to business and income tax considerations, CBG seeks to elect Subchapter S status under the Code.[5] However, section 1361 of the Code permits only ''eligible shareholders'' to hold stock in a Subchapter S corporation. Because the Account is not an eligible shareholder for purposes of the Code, the Applicant wishes to purchase the Stock from the Account in order to remove the impediment to CBG's Subchapter S election.

4. The Stock was independently appraised by Paul W. Olander, AM, and William D. Thumstedter, of Olander Advisory Services, A Division of United Bankers' Bank, located in Bloomington, Minnesota. Messrs. Olander and Thumstedter both specialize in the banking industry.

The appraisal states that, as of December 31, 1998, there were 283,990 shares of CBG issued and outstanding held by 14 shareholders, and the Stock had an estimated fair market value of $34.55 per share. In addition, it was determined that the adjusted fair market value of a non-marketable, minority interest in the Stock, including the effect of the outstanding management stock options, was approximately $34.45 per share, based upon 4,800 options outstanding with an exercise price of $29.00 per share.

The appraisal states further that the valuation of the Stock is predicated upon the financial statements of CBG and its subsidiary banks for the five years ending December 31, 1998. Messrs. Olander and Thumstedter also interviewed key management personnel of CBG and Winsted Bank, analyzed industry data, and considered the future earnings potential of CBG. Finally, they gave consideration to the eight factors in the valuation of the stock of closely-held businesses that are set forth in the Internal Revenue Service's Revenue Ruling 59–60,[6] to the extent relevant. The appraisal states that the net asset value method was the most appropriate to use in valuing the Stock, since CBG receives virtually all its income from its subsidiary banks.

5. The Applicant proposes to purchase the 12,838 shares of the Stock from the Account for the fair market value of the Stock as of the date of the sale, based upon an updated independent appraisal. Based upon an appraised value for the Stock, as of December 31, 1998, of $34.55 per share, the Stock has a total value of $443,552.90, which represents approximately 30% of the assets of the Account. Thus, the Account would realize a gain of approximately $205,914.90 as a result of the sale.

The Applicant states that the sale will be a one-time transaction for cash, and the Account will pay no commissions nor other expenses relating to the sale. The Applicant represents that the proposed transaction is in the best interests of the Account because the sale of the Stock will enhance the liquidity and diversification of the assets of the Account.

6. In summary, the Applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the Account will pay no commissions nor other expenses relating to the sale; (c) the Account will receive an amount that is no less than the fair market value of the Stock as of the date of the sale, as determined by a qualified, independent appraiser; (d) the sale will enhance the liquidity and diversification of the assets of the Account; and (e) Mr. Emison will be the only participant of the Plan to be affected by the proposed transaction.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account, and Mr. Emison is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[4] The Department expresses no opinion herein as to whether the Account's acquisition and holding of the Stock violated any of the general fiduciary responsibility provisions of Part 4 of Title I of the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of the plan.

In addition, the Department does not propose exemptive relief herein for any prohibited transaction that may have occurred with respect to the Account's acquisition and holding of the Stock. The Department notes that such acquisition and holding of the Stock by the Account raises issues under sections 406(a)(1)(D) and 406 (b)(1) and (b)(2) of the Act because Mr. Emison, as a director and shareholder of CBG, has an interest in the issuer of the Stock that may have affected his best judgment as a fiduciary for the Account. See Advisory Opinion 90–20A (June 15, 1990) for a similar analysis under section 4975(c)(1)(D) and (E) of the Code with respect to a self-directed individual retirement acount (IRA).

[5] Section 1362 of the Code contains provisions which allow a small business corporation to elect and terminate Subchapter S corporate status.

[6] See Rev. Rul. 59–60, 1959–1 C.B. 237, as modified by Rev. Rul. 65–193, 1965–2 C.B. 370, and as modified and extended by Rev. Rul. 68–609, 1968–2 C.B. 327, and Rev. Rul 77–287, 1977–2 C.B. 319.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 24th day of May, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–13497 Filed 5–26–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–20; Exemption Application No. D–10622, et al.]

Grant of Individual Exemptions; VECO Corporation (VECO), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

VECO Corporation (VECO)

Located in Anchorage, Alaska
[Prohibited Transaction Exemption 99–20
Exemption Application Number D–10622]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a certain parcel of unimproved real property (the Property) from the VECO Corporation Profit Sharing Plan and Trust (the Plan) to Norcon, Inc. (Norcon), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) Norcon will pay the greater of $2,940,000 or the fair market value of the Property on the date of the Sale as established by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to the Sale; and

(e) An independent fiduciary acting on behalf of the Plan has reviewed the terms of the Sale and has represented that the transaction is in the best interest of the Plan and protective of the Plan's participants and beneficiaries.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 8, 1999 at 64 FR 11052.

Written Comments: The Department received three letters signed by 49 current or former participants in the Plan endorsing the transaction as proposed in the Notice.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Motta of the Department, telephone (202) 219–8881. (This is not a toll-free number.

Citibank, N.A. (Citibank) and Salomon Smith Barney Inc. (SSB)

Located in New York, NY
[Prohibited Transaction Exemption 99–21; Exemption Application No. D–10674]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective October 8, 1998, to (1) the past and continued lending of securities to SSB and affiliated U.S. registered broker-dealers of SSB or Citibank (together, SSB/U.S.) and certain foreign affiliates (the Foreign Affiliates) of SSB and Citibank which are broker-dealers or banks based in the United Kingdom (SB/U.K.), Japan (SSB/Asia), Germany (SSB/Germany), Canada (SSB/Canada) and Australia (SSB/Australia), including their affiliates or successors,[1] by employee benefit plans (the Client Plans) or commingled investment funds holding Client Plan assets, for which Citibank or any U.S. affiliate of Citibank, acts as securities lending agent (or sub-agent), including those Client Plans for which Citibank also acts as directed trustee or custodian of the securities being lent; and (2) to the receipt of compensation by Citibank or any U.S. affiliate of Citibank in connection with these transactions, provided that the following conditions are met:

(a) For each Client Plan, neither Citibank, SSB nor any of their affiliates either has or exercises discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Any arrangement for Citibank to lend Client Plan securities to SSB in either an agency or sub-agency capacity is approved in advance by a Client Plan fiduciary who is independent of SSB and Citibank.[2] In this regard, the independent Client Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and SSB, although the specific terms of the Loan Agreement are negotiated and entered into by Citibank and Citibank acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to SSB is at least as favorable to such Client Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice.

(e) The Client Plan receives from SSB (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to SSB, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than Citibank, SSB or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, SSB delivers additional collateral on the following day such that the market value of the collateral again equals at least 102 percent.

(g) Prior to entering into the Loan Agreement, SSB furnishes Citibank its most recently available audited and unaudited financial statements, which are, in turn, provided to a Client Plan, as well as a representation by SSB, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has not been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, Citibank does not make any further loans to SSB unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to SSB, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of Prohibited Transaction Exemptions PTE 81–6 and PTE 82–63 as such class exemptions may be amended or superseded as well as to applicable securities laws of the United States, the United Kingdom, Japan, Germany, Canada or Australia.

(j) Each SSB borrower indemnifies and holds harmless each lending Client Plan in the United States against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer directly arising out of the use of securities of such Client Plan by such SSB borrower or the failure of such borrower to return such securities to the Client Plan. In the event that the Foreign Affiliate defaults on a loan, Citibank, as agent for the lending Client Plan, will liquidate the loan collateral to purchase identical securities for the Client Plan. With respect to a default by a Foreign Affiliate, if the collateral is insufficient to accomplish such purchase, Citibank will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, with respect to a default by the Foreign Affiliate, if such identical securities are not available on the market, Citibank will pay the Client Plan cash equal to (1) the market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment. (The amounts paid shall include the cash collateral or other collateral that is liquidated and held by Citibank on behalf of the Client Plan.)

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(l) Prior to the approval of the lending of its securities to SSB by a new Client

[1] Unless otherwise noted, SSB/U.S. and the Foreign Affiliates are collectively referred to as SSB.

[2] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than Citibank and its affiliates, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

Plan, copies of the notice of proposed exemption (the Notice) and, once published in the **Federal Register**, the final exemption, are provided to such Client Plan.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to the information described in Representation 28 of the Notice so that an independent fiduciary of the Client Plan may monitor such transactions with SSB.

(n) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to SSB; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with SSB, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with SSB, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(o) With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving the Foreign Affiliates have the following supplemental requirements:

(1) Such Foreign Affiliate is registered as a broker-dealer or bank with—

(i) The Securities and Futures Authority of the United Kingdom in the case of SB/U.K.;

(ii) The Ministry of Finance and the Tokyo Stock Exchange in the case of SSB/Asia;

(iii) The Deutsche Bundesbank and the Federal Banking Supervisory Authority in the case of SSB/Germany;

(iv) The Ontario Securities Commission and the Investment Dealers Association in the case of SSB/Canada; and

(v) The Australian Securities & Investments Commission and the Australian Stock Exchange Limited in the case of SSB/Australia.

(2) Such broker-dealer or bank is in compliance with all applicable rules and regulations thereof as well as with all requirements of Rule 15a–6 (Rule 15a–6) (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers and banks a limited exemption from United States registration requirements and interpretations and amendments thereof to Rule 15a–6 by the Securities and Exchange Commission (the SEC), to the extent applicable;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and Citibank maintains the situs of the securities Loan Agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) The Foreign Affiliate provides SSB (i.e., Salomon Smith Barney Inc.) a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on SSB (i.e., Salomon Smith Barney Inc.).

(q) Citibank and its affiliates maintain, or cause to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Citibank and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than Citibank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (r)(1).

(r)(1) Except as provided in subparagraph (r)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) are unconditionally available at their customary location during normal business hours for examination by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC;

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and (iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)–(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of SSB or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption is effective as of October 8, 1998.

For a more complete statement of the facts and representations supporting Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on March 4, 1999 at 64 FR 10493.

Written Comments

The Department received one written comment with respect to the Notice. The comment was submitted by Citibank and SSB (hereinafter, the Applicants) and it requests modifications to the conditional language and the Summary of Facts and Representations (the Summary) of the Notice for purposes of clarification or to revise several typographical errors. Following is a discussion of the Applicants' comments, the Department's responses to these comments and a comment made by the Department on its own initiative.

1. *Paragraph (g) of the Notice.* On page 10494 of the Notice, paragraph (g) provides, in part, that prior to entering the Loan Agreement, SSB will furnish Citibank its most recently available ''audited and unaudited statements'' which will be provided to the Client Plan. To clarify that the statements will be of a financial nature, the Applicants suggest that the word ''financial'' be inserted in the condition after the phrase ''audited and unaudited.'' The Applicants also suggest that the verb ''is'', which follows the word ''which'' be replaced with the verb ''are.''

In response to this comment, the Department has revised the beginning of paragraph (g) to read as follows:

> (g) Prior to entering into the Loan Agreement, SSB furnishes Citibank its most recently available audited and unaudited financial statements, which are in turn, * * *

2. *Paragraph (l) of the Notice.* On page 10494 of the Notice, paragraph (l) states that prior to the approval of the lending of its securities to SSB by a new Client Plan, copies of the proposed exemption and the final exemption will be provided to such Client Plan. The Applicants recommend that the Department revise this condition to clarify that copies of the final exemption will be made available to Client Plans once they are published in the **Federal Register**.

In response to this comment, the Department has revised paragraph (l) of the Notice to read as follows:

> (l) Prior to the approval of the lending of its securities to SSB by a new Client Plan, copies of the notice of proposed exemption (the Notice) and, once published in the **Federal Register**, the final exemption, are provided to such Client Plan.

3. *Paragraph (r)(1) of the Notice.* On page 10495 of the Notice, paragraph (r)(1) provides that the records Citibank is required to maintain for purposes of the requested exemption are to be made available at their customary location during normal business hours for certain designated persons (i.e., the Service, the Department, a Client Plan fiduciary, etc.) and their authorized representatives. For purposes of clarification, the Applicants suggest that the phrase ''for examination'' be inserted in the condition immediately following the phrase ''normal business hours.''

The Department concurs with this clarification and has modified paragraph (r)(1) of the Notice, accordingly.

4. *Preamble and General Summary Changes.* On page 10495 of the Notice, the Preamble describes the 1998 merger (the Merger) between Citicorp Inc. (Citicorp) and a subsidiary of the Travelers Group (Travelers), the restructuring of Travelers as a bank holding company and its redesignation as ''Citigroup, Inc.'' (Citigroup). The Preamble also discusses the Applicants' request that the exemption apply retroactively to pre-existing securities lending arrangements between Citibank and broker-dealers associated with Citigroup which became affiliated with Citibank following the Merger.

To clarify more accurately the status of Citibank with respect to securities lending arrangements before the Merger, the Applicants have requested that the Department modify the third sentence of the second paragraph of the Preamble to read as follows:

> Although prior to the Merger Citibank did not lend Client Plan securities to any of its then-current affiliates, upon consummation of the Merger, loans to SSB entity borrowers * * *

In addition, the Applicants request that the Department change references to the word ''Travelers'' appearing in the Preamble and elsewhere in the Summary to ''Citigroup'' to reflect the new name for the entity.

The Department concurs with the requested changes and has modified the Preamble and made corresponding changes to Representation 1(a), (b) and (d) of the Summary.

5. *Representation 1 of the Summary.* On page 10495 of the Notice, Representation 1 of the Summary provides descriptions of the Applicants and their Foreign Affiliates. To clarify that SSB is a New York corporation and not a Delaware corporation, the Applicants request that the Department modify the first sentence of the first paragraph of Representation 1(a), accordingly.

In addition, the Applicants wish to revise the sixth sentence of the first paragraph of Representation 1(a) as follows to reflect the updated financial information obtained for Citicorp:

> * * * As of December 31, 1998, Citigroup had approximately $668 billion in assets and approximately $42.7 billion in shareholders' equity.

In response to these comments, the Department has made the changes suggested by the Applicants.

6. *Representation 2 of the Summary.* On page 10496 of the Notice, Representation 2 of the Summary describes the governmental entities regulating the Foreign Affiliates. The Applicants, however, wish to point out that due to a typographical error, the verb ''is'' was omitted from the third sentence of the first paragraph of Representation 2 following the reference to ''SSB/Asia.''

In response to this comment, the Department has revised Representation 2 by inserting the missing word.

7. *Representations 4 and 5 and Footnote 8 of the Summary.* On page 10497 of the Notice, Representations 4 and 5 and Footnote 8 of the Summary describe Rule 15a–6 of the 1934 Act and its applicability to and compliance by the Foreign Affiliates. In order to be consistent with the requirements of Rule 15a–6, the Department has, on its own initiative, revised references to the terms ''U.S. major institutional investor'' and ''major institutional investor,'' which appear in Representations 4 and 5 and in Footnote 8 of the Summary, to the term ''major U.S. institutional investor.'' Moreover, for purposes of clarification, the Department has inserted the following language at the beginning of Footnote 8:

> **Note** that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by a SEC No-Action letter.

The Applicants have concurred with the foregoing changes made by the Department.

8. *Representation 12 of the Summary.* On pages 10498 and 10499 of the Notice, Representation 12 of the Summary describes the various forms of securities lending agreements that may be entered into by Client Plans with Citibank and the relevant terms of such agreements. However, to correct a typographical error, the Applicants suggest that the Department change the reference to ''Representation 10,'' in the second sentence of the third paragraph of Representation 12, to ''Representation 11.''

In response to this comment, the Department has made the requested modification.

9. *Footnote 17 of the Summary.* On page 10499 of the Summary, Footnote 17 discusses the capital adequacy requirements for the Applicants' U.S.-domiciled and Foreign Affiliates. To correct a typographical error appearing in the footnote, the Applicants request that the Department change the reference to ''SSB,'' appearing in the first sentence of Footnote 17, to ''SSB/U.S.'' In addition, the Applicants request that the Department delete one of the duplicate references to SSB/Canada, appearing in the first sentence of the second paragraph of the footnote, and substitute the Foreign Affiliate, ''SSB/Australia,'' in its stead.

In response to these comments, the Department has made the suggested changes.

10. *Representation 16 of the Summary.* On page 10499 of the Notice, Representation 16 of the Summary provides further details regarding the terms of the Agency Agreement and the Primary Lending Agreement, including the compensation paid to Citibank for its services as lending agent, custodian and manager of the cash collateral received. To emphasize that Citibank may also serve as a ''directed trustee'' to a Client Plan, the Applicants recommend that the term ''directed trustee'' be inserted immediately preceding the word ''custodian'' in the second sentence of the first paragraph of Representation 16.

In response, the Department has made the suggested change.

11. *Representations 29 and 30 of the Summary.* On page 10501 of the Notice, Representation 29 of the Summary describes the functions of the monthly report that will be provided to each Client Plan participating in the Applicants' securities lending program. The Applicants, however, request that the second sentence of Representation 29 be modified by inserting the phrase ''upon the request of the Client Plan'' immediately following the phrase ''In addition'' in order to be consistent with previously-agreed to language.

In addition, on page 10502 of the Notice, Representation 30 of the Summary discusses the requirements for securities lending by two or more Unrelated Client Plans whose assets are commingled in a group trust or a ''plan assets'' investment entity and describes an ''outside business test'' that will be imposed on the fiduciary exercising investment discretion over the commingled entity.

To correct a typographical error appearing in the Notice, the Applicants request that the Department insert the phrase ''member of the controlled group of corporations'' immediately following the phrase ''or other entity or any'' in the second paragraph of Representation 30.

In response to the comments discussed above, the Department has made the requested changes.

For further information regarding the Applicants' comment letter or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10674) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comment provided by the Applicants, the Department has made the aforementioned changes to the Notice and has decided to grant the exemption subject to the modifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Operating Engineers Local 324 Journeyman and Apprentice Training Fund (the Plan)

Located in Howell, Michigan
(Prohibited Transaction Exemption 99–22
Exemption Application No. L–10645)

Exemption

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act shall not apply to: (1) the proposed loan of $1,500,000 (the Loan) to the Plan by the International Union of Operating Engineers Local 324, AFL–CIO (the Union), a party in interest with respect to the Plan, for the repayment of certain outstanding loans (the Original Loans) made to the Plan by the Michigan National Bank (the Bank), an unrelated party; and (2) as of March 12, 1998, the pledging of certificates of deposit by the Union as security for the Original Loans; provided that the following conditions are met:

(a) The terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's-length transaction with an unrelated party;

(b) The Plan's trustees determine that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) An independent fiduciary acting on behalf of the Plan (the Independent Fiduciary) reviews the terms of the Loan and determines that the Loan is protective of and in the best interests of the Plan;

(d) The Independent Fiduciary monitors the Loan, as well as the conditions of this exemption, and takes whatever actions are necessary to safeguard the interests of the Plan under the Loan;

(e) The Loan is repaid by the Plan solely with funds the Plan retains after paying all of its operational expenses; and

(f) The terms and conditions relating to the pledging of the certificates of deposit by the Union as security for the Original Loans were in the best interest of the Plan and its participants and beneficiaries.

EFFECTIVE DATE: This exemption is effective as of March 12, 1998.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on January 21, 1999 at 64 FR 3356.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (this is not a toll free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the

fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 24th day of May, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–13496 Filed 5–26–99; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 33 -Specific Domestic Licenses of Broad Scope for Byproduct Material.

3. The form number if applicable: N/A.

4. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

5. Who will be required or asked to report: All applicants requesting a license of broad scope for byproduct material and all current licensees requesting renewal of a broad scope license.

6. An estimate of the number of responses: There are 177 NRC broad scope licensee responses and 354 Agreement State licensee responses annually for a total of 531.

7. The estimated number of annual respondents: 177 NRC broad scope licensees and 354 Agreement State licensees for a total of 531.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 4,425 hours for NRC licensees and 8,850 hours for Agreement State licensees.

9. An indication of whether section 3507(d), Pub. L. 104–13 applies:

10. Abstract: 10 CFR part 33 contains mandatory requirements for the issuance of a broad scope license authorizing the use of byproduct material. The subparts cover specific requirements for obtaining a license of broad scope. These requirements include equipment, facilities, personnel, and procedures adequate to protect health and minimize danger to life or property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 25, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0015), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13503 Filed 5–26–99; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation, Oconee Nuclear Station, Units 1, 2, and 3; Notice of Availability of the Draft Supplement to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Oconee Nuclear Station, Units 1, 2, and 3

Notice is hereby given that the U. S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–38, DPR–47, and DPR–55 for an additional 20 years of operation at the Oconee Nuclear Station (ONS), Units 1, 2, and 3, respectively. ONS is located in Oconee County, South Carolina.

The draft supplement to the GEIS is available for public inspection and duplication at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, D.C., and the Local Public Document Room located in the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina, 29691.

Any interested party may submit written comments on the proposed action and on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments must be received by August 16, 1999. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chie, Rules and Directives Branch, Division of Administrative Services, Mailstop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of electronic comments may be sent by the Internet to the NRC at *oconeeis@nrc.gov.* All comments received by the Commission, including

those made by Federal, State, and local agencies, Indian tribes or other interested persons, will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Local Public Document Room for the ONS Units 1, 2, and 3, located in the Oconee County Library.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept oral and written public comments it. The public meeting will be held at the Ramada Inn, Clemson, South Carolina, on July 8, 1999. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7:00 p.m. and will continue until 10:00 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft plant-specific supplement to the GEIS. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. James H. Wilson by telephone at 1–800–368–5642, extension 1108, or by Internet to the NRC at *oconeeis@nrc.gov* no later than July 2, 1999. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wilson's attention no later than July 2, 1999, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

Upon consideration of the comments submitted, the NRC staff will prepare a final plant-specific supplement to the GEIS. Notice of the availability of the final plant-specific supplement to the GEIS will be published in the **Federal Register**.

FOR FURTHER INFORMATION, CONTACT: Mr. James H. Wilson, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Mr. Wilson can be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 20th day of May, 1999.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13504 Filed 5–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 697]

Notice of Availability of Staff's Safety Evaluation on DOE's Topical Report on the Tritium Production Core

The U.S. Department of Energy (DOE) is responsible for establishing the capability to produce tritium, an essential material used in U.S nuclear weapons, by the end of 2005, in accordance with a Presidential decision directive. On July 30, 1998, as revised on February 10, 1999, DOE submitted a report to the U.S. Nuclear Regulatory Commission (NRC) entitled, ''Tritium Production Core (TPC) Topical Report.'' This report contained technical information related to the production of tritium using tritium-producing burnable absorber rods (TPBARs) in a commercial light-water reactor (CLWR). The NRC staff has reviewed this report and has prepared its safety evaluation.

The staff's safety evaluation, which will be issued as NUREG–1672, concluded that many technical issues have been satisfactorily addressed in the DOE topical report and identified a number of plant-specific interface issues that will need to be addressed in order to determine the acceptability of irradiating a full-core load of TPBARs in any particular CLWR facility.

NUREG–1672 is available for public inspection and copying for a fee at the Commission's Public Document Room, the Gelman Building, 2129 L Street, NW, Washington, DC. Printed copies of NUREG–1672 are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328.

FOR FURTHER INFORMATION CONTACT: J. H. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1108; e-mail *JHW1@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of May, 1999.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13502 Filed 5–26–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals

(1) *Collection title:* Application for Reimbursement for Hospital Services in Canada.

(2) *Form(s) submitted:* AA–104.

(3) *OMB Number:* 3220–0086.

(4) *Expiration date of current OMB clearance:* 7/31/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 35.

(8) *Total annual responses:* 35.

(9) *Total annual reporting hours:* 6.

(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the Railroad Retirement system. The collection obtains the information needed to determine eligibility for and the amount due for covered hospital services received in Canada.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–13533 Filed 5–26–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Rule 10A–1, SEC File No. 270–425, OMB Control No. 3235–0468

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of management and Budget for extension and approval.

Rule 10A–1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. if the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

It is expected that satisfaction of these conditions precedent to the reporting requirements will be rare and, therefore, it is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction act and are not derived form a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: May 20, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–13465 Filed 5–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41423; File No. SR–AMEX–99–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Term Notes Linked to an Index of Select Sector SPDRs

May 18, 1999.

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 7, 1999, the American Stock Exchange Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposal was amended on may 10, 1999.[3] The proposed rule change has been filed by the Amex as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[4] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to list and trade term notes linked to the Select Sector SPDR Fund Growth Portfolio Index. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex *Listing Standards, Policies and Requirements* (''Amex Listing Standards''), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] In this proposal, the Exchange seeks to list term notes (''Notes'') reflecting the performance of the Select Sector SPDR Fund Growth Portfolio Index (''Index'') under Section 107A. The eight Select Sector SPDRs℠ included in the Index, to which the notes will be linked, are shares issued by an open-end management investment company registered under the Investment Company Act of 1940 and have been approved for trading on the Exchange.[6]

The Notes will be issued by Merrill Lynch & Co., Inc. (''Merrill'') and underwritten by Merrill Lynch Pierce Fenner & Smith Incorporated. The Commission approved the listing and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated May 10, 1999.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[6] *See* Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) (''Release No. 34–40749'').

trading of: Select Sector SPDRs on December 4, 1998;[7] notes linked to individual Select Sector SPDRs on January 20, 1999;[8] and options overlying Select Sector SPDRs on July 1, 1998.[9]

The Notes will be senior, unsecured debt securities that will conform to the listing guidelines of Section 107A of the Amex Listing Standards.[10] Although a specific maturity date will not be established until the time of the offering, the Notes will provide for a maturity of between two and seven years from the date of issuance. Each note will provide for payment at maturity based in whole or in part on changes in the value of the components of the Index.

Merrill proposes to issue the Notes in an amount of between $10 and $25 per unit with an aggregate offering in an amount equal to at least $10 million. Merrill has prepared a preliminary prospectus for the Notes which will be available for distribution to investors.

The Exchange believes that the Notes are appropriately linked to the Index because the component Select Sector SPDRs are shares of an open-end management investment company, and have been previously approved to underlie notes similar to those being proposed. Further, all the component Select Sector SPDRs are approved for options trading. For these reasons, the Exchange believes that any concerns with respect to potential manipulation or market impact upon settlement of the Notes at maturity are minimized.[11]

The Index, to which the Notes will be linked, comprises eight Select Sector SPDRs which are shares of a management investment company holding liquid and highly capitalized stocks included in the S&P 500 Index. A comprehensive discussion of the composition and maintenance of each of the Select Sector SPDRs in the Index is contained in the order approving their listing and trading on the Amex.[12] In addition, copies of the prospectus pertaining to the Select Sector SPDRs are available.

Index Calculation. The Index will be calculated by the Amex based on fixed component weightings. The following is a description of the methodology. Each of the Select Sector SPDR components will account for the following percentage of the Index's value:

Select sector SPDR	Initial weight (percent)
Technology	25
Consumer Services	18
Consumer Staples	16
Financials	15
Energy	8
Industrials	7
Basic Industries	6
Cyclical/Transportation	5

Although the foregoing weightings may be revised, all such revisions to Index component weightings, in the aggregate, will not exceed 5% of the value of the Index (*e.g.*, the initial weighting for Basic Industries may be revised to 8% and for Cyclical/Transportation to 3%). A multiplier will be determined for each Select Sector SPDR based on the initial weights set forth above and the then current sale prices of each Select Sector SPDR so that the Index value on the pricing data equals 100 and the Index value at any time will equal the sum of the Select Sector SPDRs' last sale prices multiplied by the number of shares in the Index for each Select Sector SPDR. There will be no periodic rebalancing of the Index to reflect changes in relative performance among the Select Sector SPDRs. Because the Notes are designed to provide investors with a percentage of the appreciation in the Index as measured over a specified period of time, and are essentially a passive investment, the Index will not be actively maintained like other derivatively-based index products, except as discussed below. The shares for each component Select Sector SPDR remain fixed during the life of the Note, except in the event of certain actions, taken by the management investment company, such as anti-dilution events including a split in the value of the Select Sector SPDR or capital gains distributions. In the event the Index is adjusted for a dilution event, the Amex will adjust the multiplier of the affected Select Sector SPDR in the Index so that the Index value remains unchanged after the share price is adjusted to reflect the distribution. In the event a Select Sector SPDR ceases to trade, the Exchange may determine to replace it with a substitute Sector SPDR or a successor Sector SPDR (if available), or undertake to include the index value relating to the former Select Sector SPDR's value.

Dissemination of Index. Similar to other index values which underlie exchange-traded products, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Surveillance. Surveillance procedures similar to those in pace and used to surveil the trading in Merrill Lynch Euro Fund MITTS[13] (''Eurofund MITTS'') and notes linked to individual Select Sector SPDRs[14] will be used to surveil trading in the term notes linked to the Index. Accordingly, the Exchange will monitor trading in the Notes and in the Select Sector SPDRs. Similar to the Euro Fund MITTS and the notes linked to individual Select Sector SPDRs, if the Exchange detects unusual activity in the Notes, it will examine, if necessary, activity in the stocks held by the Select Sector SPDRs as well as the redemption activity in the SPDRs themselves. As discussed in the order approving the trading of Select Sector SPDRs, Merrill currently has in place procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the component Select Sector SPDRs.[15]

Settlement. Holders of the Notes will not receive any interest payments. However, holders of the Notes will receive at maturity settlement payment equal to the principal amount of the Notes plus a ''Supplemental Redemption Amount,'' based on the percentage increase, if any, in the Index value from the starting value to the adjusted ending value.

The starting value will equal the value of the Index at the close of business on the pricing date and the adjusted ending value will equal the average value of the closing Index value on five consecutive trading days shortly prior to maturity,[16] as reduced by an annual adjustment factor. The adjustment factor, generally in an amount between .5% to 3%, will be applied to the Index value on a pro rata basis each day for purposes of determining the adjusted ending value. The actual adjustment factor will be

[7] *Id.*

[8] Securities Exchange Act Release No. 40956 (January 20, 1999), 64 FR 4480 (January 28, 1999) (''Release No. 34–40956'').

[9] Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (''Release No. 34–40157'').

[10] Section 107A of the Amex Listing Standards states that the Exchange will consider listing any security not otherwise covered by the Exchange's listing requirements, provided the security satisfies the capitalization, distribution and other criteria described therein.

[11] The risks associated with trading of the Index components are discussed in detail in previous released. *See* Release Nos. 34–40749, 34–40956 and 34–40157.

[12] The nine Select Sector SPDRs currently approved for trading on the Exchange include the Basic Industries, Consumer Services, Consumer Staples, Cyclical/Transportation, Energy, Financial, Industrial, Technology and Utilities Select Sector SPDRs. *See* Release No. 34–40749. The Utilities Select Sector SPDR will not be a component security of the Notes.

[13] Securities Exchange Act Release No. 40367 (August 26, 1998), 63 FR 47052 (September 3, 1998).

[14] Release No. 34–40956.

[15] *See* Release No. 34–40749.

[16] This five day period is described in the prospectus.

determined on the pricing date and disclosed in the prospectus to investors. Upon maturity, the Notes will be cash settled. The Exchange notes that the formula may produce a total return at maturity that is lower than the return a holder of all of the corresponding Select Sector SPDRs might receive during the same period. At maturity, holders of the Notes will not receive less than 100% of the initial issue price.

Similar to other Exchange traded index-linked notes, both the issue and the issuer will meet the general criteria set forth in Section 107A of the Amex Listing Standards. Furthermore, the issuer will have a minimum tangible net worth in excess of $100,000,000 and otherwise substantially exceed the earnings requirements set forth in Section 101 of the Amex Listing Standards.[17]

Exchange Rules Applicable to the Notes. Because the Notes are linked to a portfolio of Select Sector SPDRs, which are subject to the Exchange's equity floor trading rules, the Amex's existing equity floor trading rules and standard equity trading hours (9:30 a.m. to 4:00 p.m. Eastern Standard Time) will apply to the trading of the Notes. Pursuant to Amex Rule 411, the exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Further, the Notes will be subject to the equity margin rules of the Exchange.[18] 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 regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommendation transaction, including those highlighted, and is financially able to bear the risks of the recommended transaction. Lastly, as with other structured products, the Exchange will closely monitor activity in the Notes to identify and deter any potential improper trading activity in the Notes.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[19] of the Act in general and furthers the objectives of Section 6(b)(5)[20] in particular in that is it designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder[22] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[23]

The Exchange has requested that the rule change be accelerated to become operative fifteen days from filing of the proposal, because such proposal contemplates a hybrid derivative product that changes only the composition of the underlying securities without raising new regulatory issues. Since the proposed derivative product is sufficiently similar to previously approved and currently traded products, the Commission finds that accelerating the operative date of the rule change is consistent with the protection of investors and the public interest, and thus designates May 25, 1999 as the operative date of this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and auguments 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, N.W., Washington, D.C. 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 ralating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–99–17 and should be submitted by June 17, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–13467 Filed 5–26–99; 8:45 am]

BILLING CODE 8010–01–M

[17] Section 101 of the Amex Listing Standards requires that an issuer have pre-tax income of $750,000 in its last fiscal year, or in two of its last three fiscal years.

[18] *See* Amex Rule 462.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CRF 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(3)(C).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41431; File No. SR–EMCC–99–5]

Self-Regulatory Organizations; The Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Revision of EMCC's Fee Schedule

May 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 19, 1999, Emerging Markets Clearing Corporation (''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 primarily by EMCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change corrects a typographical error in EMCC's fee schedule.

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

The proposed rule change corrects a typographical error in the monthly account maintenance fee EMCC charges members. Since the inception of EMCC's operations, EMCC members have been charged an account maintenance fee of $500. This fee is in conformity with the monthly account maintenance fee approved by EMCC's Board of Directors at its September 15, 1997, meeting. However, Addendum F to EMCC's Rules erroneously lists the account maintenance fee to be $200. The proposed rule change corrects this error by changing the listed fee from $200 to $500.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and pursuant to Rule 19b–4(f)(2)[4] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by EMCC. 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 purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–5 and should be submitted by June 14, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc 99–13520 Filed 5–26–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41421; File No. SR–NYSE–98–10]

Self-Regulatory Organizations; New York Stock Exchange, Inc,; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change To Amend Exchange Rule 115 Regarding Disclosure of Specialists' Orders

May 18, 1999.

I. Introduction

On March 17, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 115 regarding disclosure of specialists' orders. On June 23, 1998, the NYSE filed Amendment No. 1 to the proposal.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on July 8, 1998.[4] On February 25, 1999, the NYSE filed Amendment No. 2 to the proposal.[5] The Commission received two comment letters regarding the proposal. This notice and order approves the proposed rule change, as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Agnes M. Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Davison of Market Regulation (''Division''), Commission, dated June 17, 1998 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 40146 (June 30, 1998), 63 FR 36985.

[5] *See* Amended 19b–4 Filing (''Amendment No. 2''). In Amendment No. 2, the Exchange proposes to withdraw the provision of the proposal that would have permitted specialists to disclose information about buying and selling interest, but not stop orders, to a listed company in the company's stock.

amended, and solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposal

The Exchange is proposing to amend NYSE Rule 115 to permit a specialist, acting solely in his or her capacity as a market maker (*i.e.*, while on the Floor), and responding to a market probe by a member, to give any information concerning buying and selling interest of orders the specialist holds on the Specialist's Book (''Book'') in a stock.[6] This proposal would delete the existing limitation that such disclosed interest be ''at or near the prevailing quote.'' However, with respect to stop orders on the Book for a stock,[7] the Exchange proposes to allow a specialist to disclose this information when the specialist judges that the member conducting the market probe intends to trade in the stock at a price at which such stop orders would be relevant. the Exchange believes that the additional restriction on the disclosure of stop orders will permit disclosure in legitimate circumstances, *e.g.*, when a proposed trade would be effected at a price that would trigger stop orders.

The proposal would also permit the specialist to disclose the identity of any buyer or seller represented on his Book without being required to have express authorization from the member who entered the order (as is currently the case), *i.e.*, the members or member organizations who are representing the buying and selling interest. Nevertheless, a member may request that the identity of a buyer or seller *not* be disclosed at any time, or with respect to a particular order left with a specialist. The rule will continue to require a specialist to make any information available in a fair and impartial manner.

[6] The proposal includes not only orders on the Book, but also any percentage orders held by the specialist. Under the amended NYSE Rule 115, percentage orders will be disclosed similarly to other orders, other than stop orders. *See* Amendment No. 1, *supra* note 3. A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a ''live'' order capable of execution in one of two ways: (i) all or part of the order can be ''elected'' as a limit order on the Book based on trades in the market; or (ii) all or part of the order can be ''converted'' into a limit order to make a bid or offer or to participate directly in a trade. *See* NYSE Rule 13.

[7] A stop order is an order to buy or sell at the market when a definite price is reached either above (on a buy) or below (on a sell) the price that prevailed when the order was given. A stop order becomes a market order after a transaction at the stop price occurs. A stop-limit order is a stop order that designates a price limit. A stop-limit order becomes a limit order when a transaction takes place at the stop price. *See* NYSE Rule 13.

III. Comments

The Commission received two comment letters on the proposal.[8] The comment letters generally supported the proposed rule change's increased disclosure of information on the specialist's book to members but raised concerns about the issuer-specialist contact provision. One commenter believed that the issuer-specialist contact provision, unless it was extended to all market participants, would give issuers an unfair advantage over others.[9] The other commenter asserted that the provision would provide ''[o]ne class of equity market participant (the issuing companies) * * * a significant, non-competitive and arbitrary economic advantage over other investors.'' [10]

In Amendment No. 1, which was filed before the Commission received the two comment letters, the Exchange explained its belief that the issuer-specialist contact provision of the proposal was consistent with other Exchange initiatives designed to foster and enhance positive issuer-specialist relations.[11] The Exchange also explained its belief that the issuer-specialist contact provision was not unfairly discriminatory because ''[t]he information which a specialist [could] provide [under the proposal] is the same type of information available to all market participants through a member's probe, namely, buying and selling interest in a stock.'' [12] Nevertheless, in Amendment No. 2 the Exchange withdrew this provision.[13]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[14] and, in particular, with the requirements of Section 6(b)(5),[15] 11A(a)(1)(C)(iii),[16] and 11(b) of the Act.[17] Section 6(b)(5) of the Act [18] requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In Section 11A(a)(1)(C)(iii) of the Act [19] Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for the transactions in securities. Section 11(b) of the Act,[20] among other things, prohibits a specialist or Exchange official from disclosing information with respect to orders that is not available to all members of the Exchange to any person other than an official of the Exchange, a representative of the Commission, or a specialist who may be acting for such specialist.

Presently Exchange Rule 115 prohibits specialists from disclosing Book information to other exchange members who are probing the market, unless the market probe is made at or near the prevailing quote. The proposed rule change would liberalize the specialist disclosure provisions by permitting specialists, in response to a market probe by a member, to give any information concerning buying and selling interest or orders the specialist holds on the Book in a stock. All market participants, including individual investors and issuers, will be able to obtain the Book information through a member's probe. The Commission believes that this provision should promote the objectives of Sections 6(b)(5) and 11A of the Act [21] by increasing price transparency, broadening the public dissemination of market information, and enhancing the ability of investors to develop strategies and make informed investment decisions. Moreover, because the proposed amendments to NYSE Rule 115 will make Book information available to all member organizations on a non-exclusive basis and requires a specialist to disclose information in a fair and impartial manner, the proposal is consistent with Section11(b) of the Act.[22]

[8] *See* letters from Peter Jenkins, Director of Global Equity Trading, Scudder Kemper Investments and Mike Cormack, Manager, Equity Trading, American Century Investment Management to Richard Strasser, Assistant Director, Division, Commission, respectively dated November 24, 1998 and December 15, 1998. (The ''Scudder Kemper Letter'' and the ''American Century Letter,'' respectively).

[9] *See* Scudder Kemper Letter.

[10] *See* American Century Letter.

[11] *See* Amendment No. 1, note 3, *supra*.

[12] *See id*.

[13] *See* note 5, *supra*.

[14] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–l(a)(1)(C)(iii).

[17] 15 U.S.C. 78k(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–l(a)(1)(C)(iii).

[20] 15 U.S.C. 78k(b).

[21] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k–l.

[22] 15 U.S.C. 78k(b).

Stop orders, however, are treated differently than orders that are not price-triggered under the proposed rule change. Under the proposed rule change, specialists may disclose information about stop orders when the specialist judges that the member conducting the market probe has the intention to trade in the stock at a price at which such stop orders would be relevant. Orders other than stop orders may be disclosed without restriction in response to a member's probe. The Commission believes that because stop orders held on the book may be far away from the market the proposal's special treatment of top orders is reasonable. The Commission believes that it is reasonable that specialists only disclose stop order information when a member's market probe reasonably indicates an intention to trade at a price at which the stop orders would be relevant. This restriction should help safeguard against potential market manipulation and provide investors who place stop orders with a level of protection and confidence that Exchange members will not be permitted to obtain information regarding stop orders unless they have a legitimate market interest in that information.

The proposed rule change also alters the presumption for the non-disclosure of an investor's identity. Under the proposal, a specialist may disclose to a member the identify of any buyer or seller on the Book, unless the buyer or seller expressly requests that his or her investment anonymity be maintained at all times or with respect to a specific order. The Commission believes that this provision strikes a reasonable balance between the public interest in the broad dissemination of market information and the private interest of a specific investor to have his or her identity withheld from the public for legitimate and strategic investment purposes.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 withdraws from the proposed rule change the provision that appeared in the proposal as originally filed which would have permitted specialists to disclose information about orders, but not stop orders, to listed companies. Both comment letters received by the Commission raised concerns that the proposal would allow direct specialist-issuer contact, but did not provide for similar specialist access for other non-member market participants.[23] The Commission believes that by withdrawing the issuer-specialist contact provision the Exchange has helped to ensure that the proposal complies with Section 6(b)(5) of the Act[24] which prohibits exchange rules from unfairly discriminating between customers, issuers, brokers or dealers. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[25] to approve Amendment No. 2 to the proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–10 and should be submitted by June 21, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSE–98–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–13466 Filed 5–26–99; 8:45 am]

BILLING CODE 8010–01–M

[23] *See* note 8, *supra.*

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5) and 78s(b).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41430; File No. SR–PCX–99–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Amending PCX Rule 15—''PCX Application of the OptiMark System''

May 20, 1999.

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 22, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a stated policy and practice with respect to the meaning and administration of Rule 15 of the Exchange's of Board of Governors—''PCX Application of the OptiMark System.'' The Exchange's proposed policy and practice clarifies the meaning and administration of the PCX Application of the OptiMark System (''PCX Application'') and makes a few technical amendments to Rule 15.

The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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

1. Purpose

Background. The PCX Application is a new, computerized, screen-based trading service intended for use by Exchange members and their customers (''Users'').[3] As described in the Approval Order, it provides automatic order formulation, matching, and execution capabilities in the equity securities listed or traded on the Exchange (''PCX Securities''). The PCX Application is intended to be used in addition to the Exchange's traditional floor facilities by allowing Users to submit expressions of trading interest known as ''Profiles'' anonymously from their computer terminals.

Method of Operation. As stated in the Approval Order, the PCX Application consists of two distinct system operations: (1) The central information processing system and related administrative and communications terminal network of the OptiMark System, which includes computers that collect and process data, log activities, and switch messages from and to other systems and carriers, as well as the communications network linking such computers with customer terminals; and (2) the computer hardware and software needed (collectively, the ''PCX Interfaces'') for the OptiMark System to communicate with PCX's computerized order system and other facilities to permit execution and reporting.

The Exchange has direct ownership and control over the PCX Interfaces. The OptiMark System is operated on a non-exclusive basis by OptiMark Services, Inc. (''OSI''), a wholly-owned subsidiary of OptiMark Technologies, Inc. (''OTT''). The OptiMark System has been developed by OTI and OTI is licensing the OptiMark System to OSI for purposes of the PCX Application. OSI is responsible for day-to-day operation and maintenance of the OptiMark System. The primary site of the OptiMark System, which houses the computer software and hardware complex that conducts the central processing of Profiles on a periodic basis, is located in Toronto.

Users located off the Exchange trading floors log onto the OptiMark System from their own computer terminals and communicate with the OptiMark System over any customary information services and network of their choice. OSI, in its capacity as a facility operator for the PCX Application, provides telecommunications access support (either directly to such Users or to third party network vendors servicing such Users), enabling the Users to enter Profiles into the OptiMark system and receive the reports of any resulting trades from their own computer terminals. The computerized data entry system located at any such User site linked to the OptiMark System is not a part of the PCX Application.

Users located on the Exchange trading floors must obtain access to the OptiMark System from designated terminal locations approved by the Exchange. PCX Specialist are provided with a uniquely designed electronic interface through the P/COAST terminals located at their posts to facilitate representation of their limit order book interest in the OptiMark System. The P/COAST terminal interface is a part of the PCX Interfaces and a part of the PCX Application. As for the PCX floor brokers, they are expected to use existing proprietary terminals from the member firm booths located on the trading floors to communicate with the OptiMark System. The proprietary computerized terminal system located at any such member firm booth—while maintained with the Exchange's consent—is not part of the PCX Interfaces and not a part of the PCX Application.

The Exchange will assure that, at all relevant times, the PCX Application complies fully with the applicable rules of the Exchange, including adherence to the Exchange's system integrity an capacity standards. The system operations of both the PCX Interfaces and the OptiMark System will be monitored on an ongoing basis under the Exchange's inspection, surveillance and compliance programs. In this regard, the PCX notes that both the PCX Interfaces and the OptiMark System have been reviewed pursuant to the Commission's automation oversight program and the Exchange's internal audit and control procedures in accordance with the Automation Review Policy (''ARP'') policy statements.[4]

Exchange members that are Users or Designated Brokers as defined in PCX Rule 15.1 will be assessed transaction charges for the use of the new trading service, as set forth in the Schedule of Fees and Charges for Exchange Services and filed with the Commission. These charges are, in part, derive from a processing fee that the Exchange will pay to OSI, for OSI's services as an exchange facility manager responsible for operating portions of the PCX Application and delivering the trading service to Exchange members and their customers.[5] There are no transaction fees payable directly by Users or Designated Brokers to OSI related to the PCX Application.

The Exchange also proposed to make a few technical amendments to Rule 15 to correct typographical errors and obsolete references.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6(b)(5)[6] of the Act, in that PCX Application is a facility that is designed to promote just and equitable principles of trade and protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the PCX believes that the proposed rule change is consistent with the provisions of Section 11A(a)(1)(B)[7] of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

According to the PCX, the foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section

[3] For a detailed description of the PCX Application, *see* Securities Exchange Act Release No. 39086 (Sep. 17, 1997), 62 FR 50036 (Sep. 24, 1997) (''Approval Order'').

[4] *See* Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (ARP II); Securities Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) (ARP I).

[5] *See* Securities Exchange Act Release No 40442 (Sep. 16, 1998), 63 FR 50951 (Sep. 23, 1998).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78K–1(a)(1)(B).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

19(b)(3)(A)(i) of the Act[9] and subparagraph (f)(1) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–12 and should be submitted by June 17, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 99–13468 Filed 5–26–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, the Social Security Administration (SSA) is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Request for Information—0960–NEW. The information collected on this form will be used by SSA's Office of the Inspector General (OIG) to conduct periodic eligibility reviews of beneficiaries residing in foreign countries. The form is designed to replace the current time-consuming and expensive method of conducting these reviews by selecting sample cases and conducting in person interviews. The form will permit OIG to review all beneficiary residents of the foreign country under study, thereby narrowing the scope of the beneficiaries requiring in person visits to those who do not respond or to those who provide questionable evidence. The respondents are Social Security beneficiaries residing in foreign countries.

Number of Respondents: 900.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 450 hours.

2. Application for Parent's Insurance Benefits—0960–0012. The information collected on form SSA–7 is used by the Social Security Administration to determine entitlement of an individual to parent's insurance benefits. The respondents are parents who were dependents on the worker for at least one-half of their support.

Number of Respondents: 1,400.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 350 hours.

3. 0960–NEW. State Partnership Initiative (SPI) Cooperative Agreements. Executive Order 13078 dated March 13, 1998, Increasing Employment of Adults With Disabilities, orders that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force ''evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities.''

To comply with the EO, SSA released cooperative agreement announcements in 1998 to approximately 650 State agencies nationwide to conduct demonstration projects that assist States in developing service delivery models that increase the rates of gainful employment of people with disabilities. Eighteen State agencies have been selected to participate in the demonstration projects.

SSA has employed a monitoring and technical assistance contractor to collect information from the State awardees' databases on behalf of SSA. The Contractor will use the information to evaluate whether and to what extent the service delivery models achieve the overall goals of the demonstration projects and will report project results to SSA. SSA will use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions.

Following is a table that outlines the public reporting burden of the 18 State agencies for this project:

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden (hours)
Demonstration Site Form	16 (electronic)	One Time	1 minute	.3
	2 (manual)	One Time	1 minute	.1
Participant Demographic Data Form	3,080 (electronic)	One Time	15 minutes	770
	300 (manual)	One Time	20 minutes	100

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden (hours)
Participant Employment Data Form	3,080 (electronic)	One Time	5 minutes	257
	300 (manual)	One Time	7 minutes	35
Participant Update Form	12,320 (electronic)	Quarterly	4 minutes	821
	1,200 (manual)	Quarterly	5 minutes	100
Change in Employment Status	1,540 (electronic)	Completed only if employment changes.	3 minutes	77
	150 (Manual)		4 minutes	10
State Quarterly	72	Quarterly	15 minutes for each report.	18
State Semiannual	36	Semiannual		9
Annual Reports	18	Annual		4.5
Stakeholder Interviews	50	Varies per Stakeholder	10 minutes	8.3
Total				2,210.2

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Current Rule Regarding Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516. The information collected by the Social Security Administration will be used to determine if a recipient of Supplemental Security Income benefits, who is temporarily institutionalized, is eligible to receive a full benefit. The respondents will be such recipients and their physicians.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 5,000 hours.

2. Request for Review of Hearing Decision/Order—0960–0277. The information collected on form HA–520 is needed to afford claimants their statutory right under the Social Security Act to request review of a hearing decision. The data will be used to determine the course of action appropriate to resolve each issue. The respondents are claimants denied or dissatisfied with a decision made regarding their claim.

Number of Respondents: 103,932.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 17,322 hours.

3. Statement Regarding Date of Birth and Citizenship—0960–0016. The information collected on form SSA–702 is used by the Social Security Administration in conjunction with other evidence to establish a claimant's age or citizenship when better proofs are not available. The respondents are individuals who have knowledge of the birth and citizenship of the applicant.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 200 hours.

4. Disability Update Report—0960–0511. The Social Security Act requires a periodic review of the disabled status of recipients whose benefits are based on disability to determine whether they continue to be eligible for these benefits. SSA uses the information collected on the SSA–455 to identify those beneficiaries who have medically improved and/or returned to work and have substantial earnings, and to decide whether a full medical continuing disability review should be conducted or deferred to a later date. The respondents are recipients of supplemental security income and/or social security disability benefits.

Number of Respondents: 900,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 225,000 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: May 20, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–13246 Filed 5–26–99; 8:45 am]

BILLING CODE 4190–29–U

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 99-3 (5)]

McQueen v. Apfel; Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 99-3 (5).

EFFECTIVE DATE: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-0446.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of

administrative review within the Fifth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after May 27, 1999. If we made a determination or decision on your application for benefits between February 17, 1999, the date of the Court of Appeals' decision, and May 27, 1999, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(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; 96.005 - Special Benefits for Disabled Coal Miners; 96.006 - Supplemental Security Income.)

Dated: May 4, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 99-3 (5)

McQueen v. *Apfel*, 168 F.3d 152 (5th Cir. 1999)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.[1]

Issue: Whether the Social Security Administration (SSA) is required to find that a claimant close to retirement age (60-64) and limited to sedentary or light work has ''highly marketable'' skills before determining that the claimant has transferable skills and, therefore, is not disabled.

Statute/Regulation/Ruling Citation: Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)); 20 CFR 404.1520(f)(1), 404.1563(d), 404.1566(c), 416.920(f)(1), 416.963(d), 416.966(c); 20 CFR Part 404, Subpart P, Appendix 2, sections 201.00(f) and 202.00(f); Social Security Ruling 82-41.

Circuit: Fifth (Louisiana, Mississippi and Texas).

McQueen v. *Apfel*, 168 F.3d 152 (5th Cir. 1999).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels of review (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: The claimant, Orie W. McQueen, applied for disability insurance benefits claiming he had not worked since he suffered an injury on September 10, 1992. Following the denial of his application for benefits at both the initial and reconsideration steps of the administrative review process, the claimant requested and received a hearing before an ALJ, which was held on July 11, 1994. Mr. McQueen, who had worked as a traveling insurance salesman, turned 60 years old on September 29, 1994, during the period following the hearing and prior to the ALJ's decision on April 24, 1995.

The ALJ issued a decision finding that Mr. McQueen was not disabled and denying his claim for disability benefits. The ALJ determined that although Mr. McQueen's impairment was severe and prevented him from doing his past work as a traveling insurance salesman, he possessed work skills that were ''readily transferable to jobs within his vocational profile'' and, therefore, must be found not disabled. In reaching this decision, the ALJ relied, in part, on the testimony of a vocational expert who testified that Mr. McQueen's skills in insurance sales could be transferred to an in-office insurance job. Mr. McQueen requested Appeals Council review of the ALJ's decision and the Appeals Council denied his request for review.

The claimant sought judicial review of SSA's decision in district court. The claimant contended, among other things, that the ALJ failed to apply the correct legal standard applicable to the claimant's age category in determining that Mr. McQueen was not disabled. The case was referred to a magistrate judge who found that the district court had no jurisdiction to consider whether the ALJ applied the wrong legal standard. The magistrate also recommended upholding the ALJ's findings. The district court adopted the magistrate's recommendations.

Mr. McQueen appealed to the Court of Appeals for the Fifth Circuit. On appeal, the claimant argued that the ALJ adjudicated his claim as if he were a person younger than 60 years old and applied the wrong standard under the disability regulations. The claimant contended that the ALJ was required under the regulations to find that he had skills that were ''highly marketable''—and not just ''readily transferable''—before deciding that he was not disabled. The Court of Appeals for the Fifth Circuit determined that the district court had jurisdiction to decide the issue of whether the ALJ applied the correct legal standard in deciding Mr. McQueen's claim. Because the issue was properly raised to the district court, the court of appeals concluded that the issue was properly before it on appeal.

Holding: The Fifth Circuit noted that a claimant for disability benefits bears the burden of proof for the first four steps of the five-step sequential evaluation process for determining disability. Once a claimant has satisfied his or her burden of proving at step four that he or she is unable to perform his or her previous work as a result of a severe impairment, the burden shifts to SSA at step five to show the existence of other work in the national economy that the claimant can perform, considering the claimant's residual functional capacity, age, education and work experience. The court observed that 20 CFR 404.1563(d) of the regulations provides rules relating to the consideration of a claimant's age for determinations at step five of the evaluation process for persons age 55 or

[1] Although the court of appeals' decision in *McQueen* concerned the interpretation of certain provisions of the title II disability program regulations, the title XVI disability program regulations contain provisions identical to those at issue in *McQueen*. Therefore, this Ruling extends to both title II and title XVI disability claims.

over.[2] Section 404.1563(d) states that if a claimant is of advanced age (55 or over), has a severe impairment, and cannot do medium work (see section 404.1567(c)), such claimant may not be able to work unless he or she has skills that can be transferred to less demanding jobs which exist in significant numbers in the national economy. In addition, section 404.1563(d) states that ''[i]f you are close to retirement age (60-64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.''

The court of appeals observed that none of the hypothetical questions concerning sedentary work which the ALJ posed to the vocational expert at the hearing, and in subsequent written interrogatories, asked the vocational expert whether a claimant with Mr. McQueen's residual functional capacity and vocational characteristics could still be expected to adjust to other work at age 60. The court further observed that there was nothing in the hypothetical questions posed to the vocational expert, on whose testimony the ALJ relied, to indicate that the ALJ considered the standard in section 404.1563(d) for claimants close to retirement age.

In addition, the court noted that the Fifth Circuit had not yet addressed the issue of whether section 404.1563(d) requires SSA to ''specifically find that a 60- to 64-year-old claimant has 'highly marketable' skills in order to deny him disability benefits.'' The court further noted that a number of other circuits and district courts have found that the failure to make a specific finding on high marketability renders [SSA's] decision unsupported by substantial evidence.'' The court of appeals stated that it agreed with these circuits and district courts. The court indicated that as of September 29, 1994, the date Mr. McQueen turned 60 years old, Mr. McQueen was ''close to retirement age'' for purposes of section 404.1563(d). The court of appeals held, therefore, that with respect to benefits for the period beginning on that date, SSA was required by the regulation to find that Mr. McQueen possessed ''highly marketable'' skills before it could find that Mr. McQueen had transferable skills and deny disability benefits. The court determined that with respect to disability benefits denied Mr. McQueen for that period, ''the ALJ's decision cannot stand because it includes no finding that McQueen possessed highly marketable skills.''

The court of appeals found that the ALJ's decision, as it related to the period beginning September 29, 1994, was not supported by substantial evidence, because it failed to treat Mr. McQueen as ''close to retirement age'' and denied him disability benefits without a finding under section 404.1563(d) that he possessed ''highly marketable'' skills. In addition, the court stated that SSA's ''disregard for its own standards concerning McQueen's advanced age does not constitute good cause for the failure to incorporate [into the administrative case record] necessary evidence'' regarding the marketability of the claimant's skills, ''[n]or does the record evince any other good cause for that failure.'' The Fifth Circuit thereupon reversed the judgment of the district court with instructions to remand the case to SSA to grant Mr. McQueen's application and to calculate the disability benefits due the claimant pursuant to the court's opinion.

Statement As To How McQueen Differs From SSA's Interpretation Of The Regulations

At step five of the sequential evaluation process, SSA considers a claimant's chronological age in conjunction with residual functional capacity, education and work experience to determine whether a claimant can do work other than past relevant work. SSA takes into account how age affects a claimant's ability to adapt to new work situations and do work in competition with others in the workplace.

To this end, SSA's regulations provide that in order to find that a claimant whose sustained work capability is limited to light work or less and who is close to retirement age (60-64) possesses skills that can be used in (transferred to) other work, ''there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.'' 20 CFR Part 404, Subpart P, Appendix 2, section 202.00(f). SSA's regulations provide the same rule for a claimant whose sustained work capability is limited to sedentary work and who is of advanced age (55 and over). 20 CFR Part 404, Subpart P, Appendix 2, Section 201.00(f). If the claimant's skills are transferable to other work under this standard, SSA will consider such skills ''highly marketable'' under 20 CFR 404.1563(d) and 416.963(d). SSA's regulations do not require a specific, separate and distinct finding that a claimant's skills are ''highly marketable'' in reaching a conclusion that the claimant has transferable skills.

The Fifth Circuit interpreted 20 CFR 404.1563(d) to require SSA to make an additional finding regarding the marketability of a claimant's skills in order to determine whether the skills of a claimant close to retirement age are transferable to sedentary or light work. The court held that in the absence of a finding by SSA that the skills of such a claimant are ''highly marketable,'' SSA may not conclude that the claimant possesses transferable skills and is not disabled.

Explanation of How SSA Will Apply the McQueen Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides in Louisiana, Mississippi or Texas at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

In the case of a claimant whose sustained work capability is limited to sedentary or light work as a result of a severe impairment, who is close to retirement age (age 60-64), and who has skills, an adjudicator will make a separate finding regarding the marketability of the claimant's skills when determining whether the claimant's skills are transferable to other work under the standard specified in section 201.00(f) or 202.00(f) of 20 CFR Part 404, Subpart P, Appendix 2. Unless the adjudicator finds that the claimant's skills are ''highly marketable,'' the adjudicator will conclude that the claimant's skills are not transferable to other work even if the standard for finding transferability of skills specified in section 201.00(f) or 202.00(f) is otherwise met. For purposes of this Ruling, an adjudicator will consider the claimant's skills to be ''highly marketable'' only if the skills are sufficiently specialized and coveted by employers so as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty. In determining whether a claimant's skills meet this definition of ''highly marketable,'' an adjudicator will consider:

(1) whether the skills were acquired through specialized or extensive education, training or experience; and

(2) whether the skills give the claimant a competitive edge over other, younger, potential employees with

[2] Section 404.1563 and the corresponding title XVI regulation, section 416.963, are entitled ''Your age as a vocational factor.'' Sections 404.1563(b)-(d) and 416.963(b)-(d) specify three age categories: ''Younger person'' (under age 50); ''Person approaching advanced age'' (age 50-54); and ''Person of advanced age'' (age 55 or over). The last category includes a subcategory—a person close to retirement age (age 60-64).

whom the claimant would compete for jobs requiring those skills, giving consideration to the number of such jobs available and the number of individuals competing for such jobs.[3]

SSA intends to clarify the regulations at issue in this case, 20 CFR 404.1563 and 416.963, through the rule making process and may rescind this Ruling once such clarification is made.

[FR Doc. 99–13510 Filed 5–26–99; 8:45 am]

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[3] Although the court did not adopt SSA's interpretation of ''highly marketable'' skills, the Fifth Circuit in *McQueen* also did not set forth specific, alternative criteria for determining when a claimant's skills may be considered ''highly marketable.'' Therefore, in the absence of a statement by the Fifth Circuit of a specific definition, we have adopted, for purposes of this Ruling, the standard articulated in *Preslar* v. *Secretary of Health and Human Services*, 14 F.3d 1107 (6th Cir. 1994), for which we published Acquiescence Ruling 95-1(6), for determining when the skills of a claimant close to retirement age may be considered ''highly marketable.'' Although this standard was not specifically adopted or discussed by the court in *McQueen*, the court did cite the *Preslar* decision in support of its holding in *McQueen*.

STATE JUSTICE INSTITUTE

Sunshine Act Meeting; Notice of Public Meeting

DATE: Saturday, July 31, 1999, 9:00 am–5:00 pm.

PLACE: Williamsburg Lodge, Colonial Williamsburg, Williamsburg, VA 23187–1776.

MATTERS TO BE CONSIDERED: Consideration of concept papers submitted for Institute funding.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board of Directors' committee meetings.

CONTACT PERSON: David Tevelin, Executive Director, State Justice Institute, 1650 King Street Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 99–13577 Filed 5–24–99; 4:28 pm]

BILLING CODE 6820–SC–M

TENNESSEE VALLEY AUTHORITY

Stabilization of Unfinished Dam Structure of The Columbia Dam and Reservoir Project

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's implementing procedures. TVA has decided to implement the dam site stabilization Option 2 identified in its Final Environmental Impact Statement (EIS), Use Of Lands Acquired For The Columbia Dam Component Of The Duck River Project. The Final EIS was made available to the public in April 1999. A Notice of Availability of the Final EIS was published in the **Federal Register** on April 16, 1999.

The Final EIS also analyzed various uses of the property acquired for the Columbia Project. TVA has not yet made a final decision on the use of these properties, but expects to decide this soon. When the land use decision is made, another Record of Decision will be issued. Although the dam structure is located on project property, stabilizing the existing dam structure will have no effect on the land use decision. TVA has determined that the two actions are independent of each other.

FOR FURTHER INFORMATION CONTACT: Linda B. Oxendine, Senior NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (423) 632–3440 or e-mail lboxendine@tva.gov.

SUPPLEMENTARY INFORMATION: In 1968, TVA proposed the Duck River Project that involved the construction of two dams and reservoirs on the Duck River in middle Tennessee, south of Nashville. As proposed, one dam was to be built at River Mile 248 near Normandy and the other at River Mile 136 near Columbia. Congress began appropriating money for the Duck River Project in December 1969. Construction of Normandy Dam and Reservoir began in June 1972 and was completed in 1976. Construction of the Columbia Dam and Reservoir was begun in August 1973 but was halted in 1983 because of the potential to jeopardize the continued existence of several endangered mussel species within the Duck River.

In 1995, after efforts to transplant endangered mussels to other stream reaches failed, TVA decided the Columbia Dam Project could not be completed. Accordingly, TVA proposed to address future use of the lands acquired for the project and what should be done about the unfinished dam structure.

The Columbia Project lands are located in the Duck River watershed between the city of Columbia (on the west) and U.S. Route 431, Lewisburg-Franklin Pike (on the east), in Maury County, Tennessee. The reach of the Duck River included in this study extends from approximately River Mile 130, in Columbia, upstream to River Mile 165, at Carpenters Bridge, 3 kilometers (2 air miles) west of U.S. Route 431.

When construction of Columbia Dam was halted in 1983, the Columbia Project was about 45 percent complete. The concrete portion of the dam was about 90 percent complete and the earth-filled section was about 60 percent complete. The river had been diverted through a 600-meter (2000-foot) long constructed channel located along the east side of the work site (the diversion channel) and a dike had been built to keep normal stream flow out of the construction site. Approximately 46 percent of the land required for the reservoir (5200 of 11,140 hectares [12,800 of 27,500 acres]) had been acquired, and approximately half of the 72 kilometers (45 miles) of roads affected by the reservoir had been relocated.

On February 25, 1995, TVA issued a Notice of Intent to prepare an EIS on alternatives for use of lands acquired for the Columbia Project. The Tennessee Duck River Development Agency, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service decided to cooperate in the preparation of this EIS. A public scoping meeting was held at Culleoka School near the Project site on April 18, 1995. The Notice of Availability of the Draft EIS was published on January 6, 1997. The public and interested agencies were invited to submit written comments on the draft or to attend a public meeting on January 27, 1997 at Columbia Senior High School.

TVA received a total of 2,890 separate sets of comments which included input from over 4,600 individuals, three federal agencies, four state agencies, six identified county and local governmental agencies, and over 20 other organizations. The comments indicated that most people and agencies want the Columbia Project lands to be available for a variety of public uses and little or none of this land used for industrial, commercial, or residential development. Only 43 comments were received about the existing dam structure and what should be done about it. Comments were mixed, but most supported implementation of Option 2, stabilization of the dam with a lower profile. The Notice of Availability of the Final EIS was published on April 16, 1999.

Alternatives Considered

To address the effects of the existing dam structure, construction dike, and diversion channel on the river and its flow, three dam site stabilization options were evaluated. Under *Option 1—Maintain Current Status of the Dam Structures*, TVA would remove or minimize possible safety and environmental hazards on and around the dam and diversion channel site. Under *Option 2—Stabilize Existing Flood Profile*, TVA would modify the existing concrete and earthen components of the dam to stabilize the present control on flood flows. The concrete and earthen portions of the dam would be demolished and reshaped at a lower elevation to maintain existing upstream flood elevations and preserve downstream flood benefits. Under *Option 3—Restore Original Hydraulic Conditions*, TVA would remove enough of the concrete and earthen structures at the dam site to reestablish pre-construction hydraulic conditions along this part of the river. Option 2 was identified as TVA's preferred alternative.

Decision

TVA has decided to implement Option 2 because this would stabilize flood elevations at their current levels, address public safety concerns, and avoid substantial additional construction in the river. Option 1 would not address public safety concerns as effectively as Option 2. Under Option 1, the existing dam structure would be left largely intact and in place and have a continuing effect on the visual setting of the area. Option 3 would fully address public safety concerns and return the river to its pre-construction hydraulic level, but completely removing the dam structure would increase downstream flood elevations and have required considerable more work in the river with associated environmental impacts.

Environmentally Preferable Alternative

Except for aesthetic impacts, TVA has concluded that Option 1 is the environmentally preferred alternative because it would minimize potential adverse impacts to the pond and fringe wetlands which exist adjacent to the concrete part of the dam. However, Option 2 would more effectively address public safety concerns at the dam site. Under Option 2, the shape and height of the modified dam would also have less of a visual impact on the landscape. Although Option 2 could involve some work in the river, TVA has determined that the potential environmental impacts of Option 2 will be insignificant.

Environmental Mitigation

Standard construction, demolition, and best management practices would be followed in all aspects of the dam stabilization project to minimize noise, erosion, dust, and other potential impacts. Disturbed areas will be seeded and planted with native vegetation to help stabilize the site and to promote the re-establishment of the natural ecosystem.

Dated: May 17, 1999.

Ruben O. Hernandez,

Acting Executive Vice President, River System Operations and Environment.

[FR Doc. 99–13534 Filed 5–26–99; 8:45 am]

BILLING CODE 8120–08–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Petitions To Accelerate Tariff Elimination Under Provisions of the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notification of an opportunity to file petitions requesting accelerated tariff elimination under the North American Free Trade Agreement.

SUMMARY: Section 201(b) of the North American Free Trade Agreement Implementation Act of 1993 (''the Act'') grants the President, subject to the consultation and lay-over requirements of section 103(a) of the Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico, and Canada under Article 302(3) of the North American Free Trade Agreement (''the NAFTA''). This notice solicits new petitions requesting accelerated tariff elimination under the NAFTA, describes the procedures for filing petitions, and sets forth the procedure for further consideration of previously filed petitions. Similar notices are being published by the Governments of Canada and Mexico.

FOR FURTHER INFORMATION CONTACT: North American Affairs, Office of the United States Trade Representative, Room 522, 600 17th Street, NW, Washington, DC 20508; telephone: (202) 395–3412; fax: (202) 395–9517; email:naftaacceleration@ustr.gov.

SUPPLEMENTARY INFORMATION: Since 1989, five tariff acceleration exercises have been completed in North America. The first three were conducted under provisions of the United States-Canada Free Trade Agreement (USCFTA), and the most recent two, with the addition of Mexico, under the NAFTA. In response to the interest of their private sectors, the NAFTA governments have been successful in accelerating tariff elimination on approximately $4 billion in trade.

The NAFTA governments have agreed on the amended process outlined below for future tariff acceleration activity. These changes expand the role of interested parties in the initial petitioning stage, streamline the process for consideration of requests, and allow for further consideration of petitions filed during the second NAFTA accelerated tariff elimination exercise.

On January 1, 1998, the United States and Canada eliminated all remaining tariffs on goods subject to the NAFTA. Tariffs are being eliminated between the United States and Mexico and Canada and Mexico as set out in the NAFTA, with 6 annual reductions implemented to date. Given the tariff reductions and eliminations that have already occurred, the scope of potential future accelerated tariff reduction activity is more limited than that of prior exercises, and now involves only trade between Mexico and the United States and Mexico and Canada.

I. Petition Requirements for New Requests

(See II below for additional requirements for reconsidering requests included in the second NAFTA Accelerated Tariff Elimination Exercise).

A. Petitions Must Be Jointly Submitted and Must Be Non-Controversial

Petitions must be submitted by interested parties in at least two of the NAFTA countries to their governments for accelerated duty elimination. That is, petitions must cover U.S.-Mexico and/or Canada-Mexico trade. Governments encourage petitioners to explore submitting petitions from all three countries. Documentation must be provided demonstrating producers in each of the relevant countries have reached a consensus to support mutual accelerated tariff elimination. An exception to the requirement for joint submissions can be made in cases where the equivalent subheadings are already provided duty-free treatment under MFN or NAFTA by one or both of the non-petitioning countries. In such cases, documentation is required only from the producer industries in those countries which have remaining duties in place. The governments will expect the petitioners to have contacted all

producers in the relevant countries and to have received no objections to the petitions as it is being submitted. Where industry associations exist that represent all producers, petitions or statements of support from these organizations are acceptable and in fact preferred. Governments will not consider a petition if they have information indicating that a consensus view does not exist.

B. Scope and Coverage of Petitions

Governments encourage interested parties to review the broadest appropriate range of tariff headings and to submit petitions that reflect a consensus reached after such a broad-based review. A single petition can thus include requests covering multiple tariff headings. Petitions should cover entire 8-digit tariff subheadings, and may also be submitted at the 6 or 4 digit level where the intent is to cover all subsidiary duties still in place.

C. Timing

All requests for accelerated tariff elimination must be received at the address below by July 1,1999, for earliest consideration. Requests received after that date will be considered annually with a closing date of March 1 until full implementation of the NAFTA tariff eliminations.

D. Review of Petitions

After petitions are accepted for consideration, each government will conduct the consultation and review process required under its domestic procedures. This is done with the expectation that no opposition will be found based on the joint nature of the petition submissions. The governments will consider and adopt modifications to the original petitions throughout this process for technical reasons, to consolidate duplicate petitions, to ensure parity of product coverage among the countries, or to accommodate minor objections which arise during review. However, requests that are controversial will not be acted on. When the internal review process is completed, governments will finalize an agreed list of articles to be considered for accelerated tariff elimination and begin the required domestic implementation procedures.

II. Petition Requirements for Further Consideration of Requests Submitted During the Second NAFTA Accelerated Tariff Elimination Exercise

Tariff subheadings that were published by the respective governments in 1997 for consideration and for which no agreement to accelerate duty elimination has yet been reached can be further considered where there is interest in doing so, as indicated by a petition filed pursuant to this notice. For the United States, the relevant headings are those that were published in the **Federal Register** of October 21, 1997, page 54671, and which were not included in the list of tariffs eliminated in the **Federal Register** notice of August 5, 1998, page 41951. The notices for Canadian subheadings appeared in the Gazette on October 18, 1997, and July 31, 1998, respectively, and for Mexico, the Diario notices of November 3, 1997, and June 26, 1998.

Petitions requesting further consideration for these subheadings must be submitted using the form in the annex, and the documentation showing the requests to be non-controversial in all the relevant NAFTA countries must be included. Such petitions must specifically address the opposition that arose that prevented a decision to implement accelerated duty elimination at that time.

III. Format of Petitions

A model petition format and the information requested is shown in the annex to this notice. In order to be considered, petitions for accelerated tariff elimination must conform to the model format and contain all essential data elements.

If a submission contains business confidential material, the specific material must be so identified in order to receive confidential treatment. In such cases, both a non-confidential and a business confidential version of the petition, each clearly marked as to its status, must be submitted. None of the information provided in sections A, B, and C of the petition may be designated business confidential.

A copy of the petition format and this notice can be obtained from North American Affairs staff, Office of the United States Trade Representative (USTR), 600 17th Street, NW, Washington, DC 20508, telephone (202) 395–3412. Petitioners are encouraged to submit requests to USTR via the Internet or on a properly formatted computer disk. The form and instructions for electronic submissions can be obtained, beginning June 1, 1999, from the USTR Internet home page: www.ustr.gov under the ''What's New'' heading.

IV. General Instructions

Numbered paragraphs below refer to fields in the model petition provided in the annex.

Section A. Scope and Petitioner Identification

1. Note format of submission—hard copy, computer disk, or via Internet e-mail.

2. Identify the countries that would be accelerating tariff elimination as a result of this petition. This must include at least two countries, except in cases where one or two parties have already eliminated all corresponding duties. All petitions should be fully reciprocal, that is, each participating country would be expected to accelerate duty elimination to the same degree.

3.–17. Contact Information. The petitioner contact will be the single entity notified by the United States government in cases where information beyond that required by the petition is needed. The contact need not be a producer organization. The petitioner contact would be responsible for disseminating information among participating organizations in that country. A private-sector producer organization contact should also be provided for *each* participating country.

Section B. Tariff Heading Information

18.–19. The petition should provide a concordance for the two or three relevant countries indicating the respective tariff classifications of all products of interest. Petitions should indicate those headings which will already be duty free on or before January 1, 2000, and those items which, while necessary to show a full concordance, are not being requested for accelerated tariff elimination. Requests for accelerated tariff elimination should be listed at the 8-digit subheading level or above (i.e., 6- or 4-digit level). Requests at the 4- or 6-digit level can be considered, as long as the petitioners have agreed and are in fact proposing that all remaining tariffs contained within those classifications are being proposed for accelerated tariff elimination. The NAFTA governments will consider requests for immediate tariff elimination. Requests for tariff elimination on another accelerated timetable will only be considered in extraordinary circumstances and only when the additional administrative burdens and benefits associated with such action can be justified. To simplify petitions, if a large majority of tariff subheadings in a specific product category are proposed for accelerated tariff elimination with very few exceptions, the exceptions should be listed under 19.

Section C. Supporting Producer Organizations in Each Country

20. To be acted on, petitions must represent a consensus agreement among the producers of the relevant products in all participating countries. To be considered, petitions submitted by other than producer organizations must list in this section the individual producing firms or the industry associations representing such firms. Firms or associations which do not include producing firms must not be listed in this section, but can be included in Section D. This information will be used to verify petition support, as necessary.

Section D. Supplemental Information

21.–22. This section of the petition should be used to provide information supplementing that provided in numbers 1 through 20 (specify the relevant number(s) being supplemented), or any other relevant information that may assist in consideration of the petition. Petitions for further consideration must note here the opposition that arose during the prior exercise which prevented a decision to accelerate duty elimination at that time, and must provide information showing such opposition no longer exists.

V. Submission of Petitions

1. Electronic submissions: USTR prefers that petitions be submitted in electronic form, either interactively via the Internet, or by submission of computer disk. If disks are being submitted, only one hard copy of each petition should be enclosed, and this copy must indicate that an electronic version is being submitted. If multiple requests are being filed, they may be submitted on a single disk, with a hard copy list of all the covered HTS numbers. The form and instructions for electronic submissions can be obtained, beginning June 1, 1999, from the USTR Internet home page: www.ustr.gov under the ''What's New'' heading. Technical questions regarding electronic submission may be made by contacting the USTR computer operations office at (202) 395–3417 during business hours.

2. Paper submissions: Petitions must be type-written and submitted in 10 copies, in English, to: North American Affairs, Office of the United States Trade Representative, Room 522, 600 17th Street, NW, Washington, DC 20508, Attention: NAFTA Tariff Acceleration desk.

3. Petitions may submit hard copies in order to confirm receipt of electronic submissions. However, such hard copies must be marked to indicate an electronic version is also being filed.

VI. Consideration of Petitions

All petitions received by July 1, 1999, and containing complete and correct information as required in this notice will be reviewed and a decision made as to which articles will be proposed to the Government of Mexico for possible accelerated tariff elimination. As noted above, petitions for articles on which the duty is currently scheduled for elimination on or before January 1, 2000, in Annex 302.2 of the NAFTA, as modified, cannot be considered. Requests received after July 1, 1999, will be considered annually each March 1 until full implementation of the NAFTA tariff eliminations.

Petitions not containing complete and accurate information required cannot be considered.

Jon Huenemann,

Assistant United States Trade Representative for North American Affairs.

Annex—1999 Model Petition To Accelerate the Removal of Tariffs Under the North American Free Trade Agreement

Section A. Scope and Contact Identification

(A contact point should be provided as indicated below for each of the countries involved)

1. This petition is being submitted via: ☐ Internet e-mail ☐ Computer Disk ☐ Paper Original
2. Accelerated duty elimination is requested for: ☐ United States ☐ Mexico ☐ Canada
3. U.S. Petitioner Contact: _____
4. Address: _____
5. U.S. Private-Sector Contact: _____
6. Telephone: ( ) _____
7. E-mail address: _____
8. Mexico Petitioner Contact: _____
9. Address: _____
10. Mexican Private-Sector Contact: _____
11. Telephone: ( ) _____
12. E-mail address: _____
13. Canada Petitioner Contact: _____
14. Address: _____
15. Canadian Private-Sector Contact: _____
16. Telephone: (____) _____
17. E-mail address: _____

Section B. Tariff Heading Information

18. The product[s] are classified in the following 1999 tariff headings or subheadings:

United States	Mexico	Canada
(_____)	(_____)	(_____)
(_____)	(_____)	(_____)
(_____)	(_____)	(_____)

[List each tariff subheading and its equivalent in the relevant country or countries on a separate line. Indicate those already duty free with an asterisk [*] and those not being requested with brackets [☐].]

19. As an alternative to completing question 18, list in 18 the items produced by the petitioning industry at a 6- or 4-digit level and list in 19 the 8-digit items not being included in this request:

(_____)	(_____)	(_____)
(_____)	(_____)	(_____)

Section C. Supporting producer organizations in each country

The following producing firms and/or industry associations have been contacted and agreed to support or not oppose this request (copy this page as necessary to list additional organizations):

Name	Contact Person	Phone/Fax & e-mail

20.a. In the United States:

(_____) (_____) (_____)
(_____) (_____) (_____)

20.b. In Mexico:

(_____) (_____) (_____)
(_____) (_____) (_____)

20.c In Canada:

(_____) (_____) (_____)
(_____) (_____) (_____)

Section D. Supplemental Information

21. Information regarding further consideration of requests published in 1997:
22. Other supplemental information:
Signature of person filing the petition: (_____) Date: (_____)
Organization: (_____) Title or position: (_____)

[FR Doc. 99–13552 Filed 5–26–99; 8:45 am]
BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–118]

Mexican Practices Affecting High Fructose Corn Syrup (HFCS)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of results of section 302 investigation.

SUMMARY: The United States Trade Representative (USTR) has conducted an investigation initiated under section 302(a) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(a)), with respect to certain acts, policies and practices of the Government of Mexico that affect access to the Mexican market for high fructose corn syrup (HFCS). The USTR initiated this investigation on May 15, 1998, in response to a petition filed by the Corn Refiners Association, Inc. Because the matters investigated suggest that the Government of Mexico unreasonably encouraged and supported an agreement between representatives of the Mexican sugar industry and the Mexican soft drink bottling industry to limit the soft drink industry's purchases of HFCS, the USTR has determined that it would be appropriate to explore further the nature and consequences of Mexican Government involvement in this matter and to continue consultations with the Government of Mexico on issues related to trade in HFCS, with the aim of securing fair and equitable market opportunities for U.S. producers.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: John Melle, Senior Director, North American Affairs, (202) 395–3412 or Demetrios Marantis, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: On April 2, 1998, the Corn Refiners Association, Inc. filed a petition pursuant to section 302(a) of the Trade Act alleging that certain acts, policies and practices of the Government of Mexico affecting HFCS are actionable under section 301 of the Trade Act because they are unreasonable and deny fair and equitable market opportunities for U.S. exporters of HFCS. In particular, the petition alleged that, with the support and encouragement of the Government of Mexico, representatives of the Mexican sugar industry and the Mexican soft drink bottling industry entered into an agreement in September 1997 to limit the soft drink industry's purchases of HFCS. According to the petition, the purpose and effect of this agreement was to restrict both the volume of HFCS imports from the United States and the purchases of HFCS by the U.S. companies that have made investments in Mexican production facilities. The petition further alleged that the Government of Mexico actively supports this agreement, which has reduced U.S. exports of HFCS to Mexico and therefore burdens and restricts U.S. commerce.

On May 15, 1998, the USTR determined that an investigation should be initiated under section 302(a) of the Trade Act. Section 304(a) of the Trade Act requires the USTR to issue a determination in cases, such as this, which do not involve a trade agreement, within twelve months after the date on which the investigation is initiated.

The matters investigated suggest that the Government of Mexico unreasonably encouraged and supported an agreement between representatives of the Mexican sugar industry and the Mexican soft drink bottling industry to limit the soft drink industry's purchases of HFCS. Press reports indicate that Mexican Government officials have applauded the conclusion of this agreement and endorsed the goal of avoiding an increase in imports of HFCS; and the Government of Mexico has not refuted these allegations. Therefore, the USTR has determined that it would be appropriate to explore further the nature and consequences of Mexican Government involvement in this matter. In this regard, the United States will, as a high priority, continue consultations with the Government of Mexico on issues related to trade in HFCS, with the aim of securing fair and equitable market opportunities for U.S. producers.

Demetrios J. Marantis,
Acting Chairman, Section 301 Committee.

[FR Doc. 99–13489 Filed 5–26–99; 8:45 am]
BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In April 1999, there were 10 applications approved. This notice also includes information on one application, approved in March 1999, inadvertently left off the March 1999 notice. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency:
City of Chico, California.
Application Number: 99–03–C–00–CIC.
Application type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: 89,300.
Earliest Charge Effective Date: June 1, 1999.
Estimated Charge Expiration Date: February 1, 20001.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Terminal building improvements
Passenger boarding ramp/life
Decision Date: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Town of Islip, New York.
Application Number: 99–03–C–00–ISP.
Application Type: Impose and use of PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $180,000.
Earliest Charge Effective Date: July 1, 2012.
Estimated Charge Expiration Date: September 1, 2012.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.
Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Long Island Mac Arthur Airport.
Brief Description of Projects Approved for Collection and Use:
Rehabilitation of runway 15L/33R
Rehabilitation of taxiways C and B–3
Decision Date: April 7, 1999.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (516) 227–3812.

Public Agency: Broome County Department of Aviation, Binghamton, New York.
Application Number: 99–04–C–00–BGM.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,547,500.
Earliest Charge Effective Date: January 1, 2002.
Estimated Charge Expiration Date: August 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filling FAA Form 1800–31.
Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Binghamton Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Apron expansion (west ramp)
Maintenance building (design)
PFC administration
Brief Description of Project Approved for Use: Terminal building rehabilitation.
Brief Description of Projects Approved for Collection: Maintenance building (construction).
Decision Date: April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 227–3800.

Public Agency: County of Emmet, Pellston, Michigan.
Application Number: 99–08–U–00–PLN.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $22,750.
Charge Effective Date: June 1, 1997.
Estimated Charge Expiration Date: September 1, 2002.
Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.
Brief Description of Projects Approved for Collection and Use:
Replace aircraft rescue and firefighting (ARFF) vehicle
Emergency standby generator
Acquire handicap loading device
Decison Date: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jon Gilbert, Detroit Airports District Office, (734) 487–7281.

Public Agency: Port of Portland, Portland, Oregon.
Application Number: 99–06–C–00–PDX.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $194,309,000.
Earliest Charge Effective Date: April 1, 2002.
Estimated Charge Expiration Date: August 1, 2009.
Class of Air Carriers Not Required to Collect PFC's: Air Taxi and commercial operators.
Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Portland International Airport.
Brief Description of Projects Approved for Collection and Use: Terminal expansion south—phase 2.
Decision Date: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: Johnstown-Cambria County Airport Authority, Johnstown, Pennsylvania.
Application Number: 98–04–C–00–JST.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $496,540.
Earliest Charge Effective Date: July 1, 1999.
Estimated Charge Expiration Date: April 1, 2003.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Johnstown-Cambria County Airport.
Brief Description of Project Approved for Collection and Use: Terminal building construction.
Decision Date: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: John Carter, Harrisburg Airports District Office, (717) 730–2832.

Public Agency: Susquehanna Area Regional Airport Authority, Middletown, Pennsylvania.
Application Number: 99–02–C–00–MDT.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $2,076,083.
Earliest Charge Effective Date: July 1, 1999.
Estimated Charge Expiration Date: July 1, 2000.
Class of Air Carriers Not Required to Collect PFC's: Non-scheduled on-demand air carriers.
Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Harrisburg International Airport.
Brief Description of Project Approved for Collection and Use:

Deicing system database/permits
Loading bridge replacements
Deicing system design studies
Revolving security door replacement
Taxiway guidance signs
Trackless plow/blower
Equipment storage building
Runway overlay, phase 1
Deicing truck/tank
Dozer/spreader
ARFF Titan 4X4 vehicle
ARFF 6X6 vehicle
Master plan
Multi-user flight information display system
Commuter concourse expansion
PFC application development

Decision Date: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Oscar Sanchez, Harrisburg Airports District Office, (717) 730–2834.

Public Agency: City of Tyler, Texas.

Application Number: 99–03–C–00–TYR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,123,700.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: October 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use:

New passenger terminal building area (final design and bidding phase)
PFC application fee

Decision Date: April 20, 1999.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Jacksonville Port Authority, Jacksonville, Florida.

Application Number: 99–04–C–00–JAX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

total PFC Revenue Approved in This Decision: $5,010,000.

Earliest Charge Effective Date: September 1, 2000.

Estimated Charge Expiration Date: June 1, 2001.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Jacksonville International Airport.

Brief Description of Project Approved for Collection and Use: ARFF vehicle.

Brief Description of Project Approved in Part for Collection and Use: Terminal development planning and preliminary design.

Determination: Partially approved. Based on initial analysis in the 1997 terminal area master plan study, a portion (18 percent) of the new terminal development would not meet PFC requirements under § 158.15(b)(1) or (6) or Airport Improvement Program (AIP) eligibility requirements in accordance with paragraph 551(d) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Accordingly, 18 percent of the planning and preliminary design costs for the new terminal development would not be PFC eligible.

Brief Description of Projects Disapproved: Land acquisition.

Determination: Disapproved. Based on information the public agency submitted in its application and during the FAA's review of the application, the FAA has determined that the public agency has not adequately justified this land acquisition project. Furthermore, the FA has determined that this land acquisition project is not eligible under PFC criteria, § 158.15(b)(1), or AIP criteria, paragraphs 711(d), 602(c), 553(a), and 600(d) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Specifically, the public agency did not provide information indicating that non-compatible development of the land to be acquired is highly likely, that local land use controls are inadequate to prevent non-compatible development, or that the access roads would be located on airport property and exclusively serve airport traffic. In addition, that portion of the land that the public agency indicated would provide areas for non-aviation development is not PFC or AIP eligible. In addition, the entire acreage of five of the parcels appears to be more property than would be required for the construction of cargo and access roads. Finally, the public agency did not provide any information justifying the acquisition of he entire parcels rather than the minimum needed for the roads.

Runway 31 extension and related taxiway improvements: environmental assessment.

Determination: Disapproved. Based on information the public agency submitted in its application, the FAA has determined that the public agency did not provide adequate justification for the runway extension. Specifically, the public agency did not submit information demonstrating that the primary runway orientation provides less than 95 percent wind coverage. Nor did the public agency provide information which would justify a runway extension to accommodate current or forecast aircraft operations needs. Since environmental assessments must be accomplished within the near term of the planned development in order to be valid, and since the public agency could not adequately justify the planned development at this time, the FAA has concluded that an environmental assessment would not meet one or more of the objectives in § 158.15(a) and, thus, disapproved the project.

Decision Date: April 29, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Owen, Orlando Airports District Office, (407) 812–6331.

Public Agency: Missoula County Airport Authority, Missoula, Montana.

Application Number: 99–02–C–00–MSO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,067,747.

Earliest Charge Effective Date: July 1, 1999.

Estimated Charge Expiration Date: October 1, 2003.

Classes of Air Carriers Not Required to Collect PFC's: (1) Air taxi's; (2) charter carriers which provide on-demand and unscheduled service.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual emplanements at Missoula International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal enhancements
Security access system
Air carrier apron rehabilitation

Brief Description of Project Approved in Part for Collection and Use: Terminal access road.

Determination: Partially approved. The terminal passenger parking lot improvements are not PFC eligible and are being disapproved. The remainder of the project is eligible.

Brief Description of Project Disapproved: Land.

Determination: Disapproved. The FAA has determined that this project was included in PFC application 92–01–C–00–MSO, approved June 8, 1992, and was subsequently removed by amendment 92–01–C–02–MSO, approved December 12, 1995. As stated in the FAA's December 12, 1995, letter, this project may not be re-submitted in a subsequent PFC application until it

has been implemented. The public agency did not submit any information showing the project has been implemented.

Decision Date: April 30, 1999.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 99–12–C–00–CHO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved ion This Decision: $160,000.

Earliest Charge Effective Date: December 1, 2004.

Estimated Charge Expiration Date: April 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Charlottesville-Albemarle Airport.

Brief Description of Project Approved for Collection and Use: Terminal building rehabilitation

Decision Date: April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Art Winder, Washington Airports District Office, (703) 661–1363.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
96–01–C–02–MDT, Middletown, PA	03/26/99	$4,700,000	$4,765,166	06/01/99	07/01/99
95–01–C–01–SHR, Sheridan, WY	04/05/99	211,299	218,988	09/01/01	12/01/01
93–01–C–02–YUM, Yuma, AZ	04/07/99	4,397,107	11,285,444	06/01/03	12/01/27
92–01–C–02–UNV, University Park, PA	04/12/99	1,657,146	1,724,197	06/01/99	09/01/99
92–01–C–04–PLN, Pellston, MI	04/14/99	133,574	124,127	09/01/02	09/01/02
94–02–U–02–PLN, Pellston, MI	04/14/99	65,350	56,752	09/01/02	09/01/02
96–03–U–01–PLN, Pellston, MI	04/14/99	28,157	28,953	09/01/02	09/01/02
94–02–C–01–OAK, Oakland, CA	04/15/99	8,999,000	10,348,850	07/01/99	10/01/99
94–03–C–01–OAK, Oakland, CA	04/15/99	15,827,091	17,127,741	07/01/99	10/01/99
95–04–U–01–OAK, Oakland, CA	04/15/99	8,671,000	9,971,650	07/01/99	10/01/99
96–06–C–01–OAK, Oakland, CA	04/15/99	4,063,541	4,673,072	07/01/99	10/01/99

Issued in Washington, DC on May 18, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–13436 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Houghton County Memorial Airport, Hancock, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, MI 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Sandra D. LaMothe, Airport Manager of the Houghton County Airport Committee at the following address: Route 1, Box 94, Calumet, MI 49913.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Houghton County Airport Committee under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 4, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Houghton County Airport Committee was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 10, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–07–C–00–CMX.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1999.

Proposed charge expiration date; May 1, 2001.

Total estimated PFC revenue: $113,389.00.

Brief description of proposed projects: PFC audit reimbursement; PFC preparation reimbursement; sanitary sewer upgrade gravity sewer, Phase II; sanitary sewer upgrade forcemain, Phase III; mobile manual wheelchair lift; Cost Benefit Analysis Runway 13/31; construct and light Taxiway ''C'' to Runway ''13''. Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Houghton County Airport Committee.

Issued in Des Plaines, Illinois, on May 19, 1999.

Philip Smithmeyer,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–13437 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Rochester International Airport, Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Steven W. Leqve, Airport Manager of the City of Rochester, Rochester, MN at the following address: Helgerson Drive Southwest, Rochester, MN 55902.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Rochester under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4350. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Rochester International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 30, 1999 the FAA determined that the application to use the revenue from a PFC submitted by City of Rochester was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 30, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–03–U–00–RST

Level of the PFC: $3.00.

Actual charge effective date: May 1, 1996.

Estimated charge expiration date: April 1, 1999.

Total approved net PFC revenue: $1,160,582.00.

Brief description of proposed project: Acquire land for extension of runway 2/20.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled Part 135 air taxis/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Rochester.

Issued in Des Plaines, Illinois on May 10, 1999.

Philip Smithmeyer,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–13438 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4008; Notice 2]

Grant of Application for A Decision of Inconsequential Noncompliance With Federal Motor Vehicle Safety Standard 108—Lamps, Reflective Devices and Associated Equipment

General Motors Corporation (GM) determined that certain 1998 GMC Sonoma pickup trucks, GMC Jimmy and Oldsmobile Bravada sport utility vehicles are equipped with daytime running lights (DRLs) that fail to meet the spacing requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108—*Lamps, Reflective Devices and Associated Equipment.* Pursuant to 49 U.S.C. 30118 and 30120, GM applied to the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential to motor vehicle safety. GM submitted a 49 CFR Part 573 noncompliance notification to the agency in accordance with 49 CFR 556.4(b)(6).

A notice of receipt of application was published in the **Federal Register** (63 FR 40781) on July 20, 1998. Opportunity was afforded for comments until September 21, 1998. One comment was received, from JCW Consulting (JCW). The comment opposed granting the petition.

GM stated that DRLs on the subject vehicles utilize the upper beam headlamps operating at reduced intensity, with a maximum intensity of approximately 6,700 candela per lamp. FMVSS No. 108 requires these DRLs to be located so that the distance from their lighted edge to the optical center of the nearest turn signal lamp is not less than 100 mm, with four exceptions that do not apply to these GM vehicles. However, one of the exceptions permitted vehicles manufactured before October 1, 1995 that used an upper beam headlamp as a DRL to have a spacing of less than 100 mm from the turn signal lamp if the turn signal were sufficiently bright that it could have been spaced less than 100 mm from a lower beam headlamp.

GM stated that 122,455 vehicles involved provide less than 100 mm clearance between the DRL and the turn signal and that as a result, they fail to meet FMVSS No. 108 requirements. GM believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The subject vehicles meet the requirements of CMVSS No. 108 (the

Canadian requirement) and the DRL requirements in FMVSS No. 108 for vehicles manufactured before October 1, 1995.

2. CMVSS No. 108 requires turn signals that are located less than 100 mm from a DRL to have increased intensities of 2½ times the minimum photometric values to help assure that the turn signals are readily visible. The subject vehicles have turn signals that are much brighter. When photometered, the subject turn signals were more than four times brighter than the minimum required intensities. This increased brightness helps in preventing turn signal masking by the DRL.

3. The method for determining the optical center of the turn signal is open to some interpretation. Traditionally, automobile manufacturers have used the filament axes as the determining factor. Transport Canada has supported this methodology. More recently some manufacturers have used the centroid of the lamp as the optical center. Depending on the method used, the turn signal of the subject vehicles is either 71mm (using the centroid) or 85 mm (using the filament axes) away from the DRL. Therefore the subject condition is within 15%, or using the more conservative figure, within 30% of the requirement. (Note: GM used the centroid method in this petition.)

4. Regardless of whether the distance is within 15% or 30% of the 100 mm requirement, the turn signal and the DRL are diagonal to each other. Therefore the closest lighted edge of the DRL is the corner of the lamp. (Note: Sketches submitted by GM are found in the petition which is filed in the docket). This portion of the lamp does not significantly contribute to the DRL beam pattern, and therefore does not have a significant potential to mask the turn signal.

5. Photometric values of the turn signal 71 mm from the subject DRL are not significantly different than a turn signal 100 mm from the subject DRL. To demonstrate this, on-vehicle evaluations of the turn signal output were made using a video-based photometer (digital CCD camera system). First, the photometric output of the turn signal was measured with the subject DRL activated. Then a portion of the DRL was blocked (to simulate the necessary spacing) at the corner nearest the turn signal (Note: a sketch illustrating this was included in the GM petition and is available in the public docket). The output of the turn signal was re-measured with the modified DRL activated. The zonal values of the turn signal changed an average of just 12.7%. The largest difference in turn signal output was found in zone 5, closest to the DRL and it only changed 17.5%.

6. Subjective evaluations were run using GM personnel whose jobs do not involve vehicle lighting. They were asked to rate the relative visibility of turn signals on the subject vehicles and other vehicles that meet the FMVSS No. 108 spacing requirement. The results shown in the bar graph in Figure 3 of the petition (which can be found in the docket) indicate that the visibility of the subject turn signals is substantially better than vehicles that just meet the minimum requirement. In addition the subject turn signals are rated nearly identical to vehicles modified to be fully compliant to the requirements, and rated only slightly lower than turn signals on the Chevrolet Blazer (which is a similar vehicle whose turn signal/DRL spacing meets the requirements of FMVSS No. 108).

7. The turn signals on the subject vehicles are 116 sq. cm., larger than typical turn signals found on similar vehicles. FMVSS No. 108 requires the functional lighted area of a front turn signal lamp on these vehicles to be a minimum of 22 sq. cm. Therefore, the subject turn signals provide 5.3 times the minimum area to meet the requirement. The larger size of the turn signal helps to minimize any potential for masking by the DRL.

GM believes that the subject noncompliance is inconsequential to motor vehicle safety, and petitioned that it be exempted from the notification and remedy provisions of the Safety Act for this specific noncompliance with FMVSS No. 108.

JCW Consulting (JCW), the lone commenter, opposed the grant of the petition. JCW stated that these vehicles use the DRL design with the ''most objectionable'' levels of glare (low voltage upper beam headlamps). JCW asserted that critical turn signal or hazard warning flasher recognition could be masked by these DRLs if the oncoming driver is very glare-sensitive. However, JCW presented no data to substantiate its opinion that turn signal masking will be a problem on these vehicles.

NHTSA has been sensitive to the need to prevent DRLs from masking turn signals. The agency conducted research specifically designed to investigate possible turn signal masking by DRLs (DOT HS 808 221, Daytime Running Lights and Turn Signal Masking). The agency used older drivers to represent the drivers most likely to be susceptible to turn signal masking by DRLs. One of the findings of this research was that it is possible to reduce turn signal masking by increasing turn signal intensity regardless of separation distance. Equivalent detection was found for turn signals separated from DRLs by only 50 mm with that of turn signals separated from DRLs by 100 mm, if the intensity of the 50 mm turn signal was increased to three times that of the 100 mm turn signal. Side-by-side and above-and-below headlamp and turn signal configurations were studied. For both configurations, larger headlamps and turn signals result in less masking than smaller headlamps and turn signals.

In this case, the vertical and horizontal dimensions of the turn signals on these GM vehicles are larger than most and provide 5.3 times the minimum required area. In addition, GM has measured the turn signals and found them to be four times brighter than the minimum required intensity. This is significant because NHTSA's research showed high turn signal intensity to be very important in preventing masking. GM's subjective evaluation tests also confirmed the effectiveness of higher turn signal intensity in preventing masking. Based on the evidence presented by GM, the agency does not deem this specific noncompliance on these vehicles to have a consequential effect on safety .

NHTSA wants to make clear that the issue in this proceeding is the adverse safety consequences from possible turn signal masking by this particular DRL-turn signal combination, not the glare levels from upper beam headlamp DRLs. NHTSA has an open rulemaking proposal to substantially reduce glare from DRLs. The notice of proposed rulemaking was published on August 7, 1998 (63 FR 42348). The agency will address the concerns expressed in JCW's comment about the high intensity and the high mounting height of the GM DRLs in that rulemaking.

In addition, NHTSA would like to provide some information in response to the statement in GM's petition regarding uncertainty as to how one determines the optical center of a turn signal. There should be no such uncertainty. The agency has answered a letter specifically asking whether the optical center of the turn signal lamp is the same as the filament position when measuring the spacing relationship between a turn signal lamp and a DRL (Caire, March 14, 1996). NHTSA's interpretation explains:

''To determine the optical center of the turn signal lamp, we must refer for an answer to SAE J588 NOV84, *Turn Signal Lamps For Use on Motor Vehicles Less than 2032MM in Overall Width.* The answer depends on the design of the turn signal lamp. If the lamp primarily employs a reflector (for

example, one of parabolic section) in conjunction with a lens, spacing is measured from the geometric centroid of the front turn signal function lighted area to the lighted edge of the lower beam headlamp (paragraph 5.1.5.4.2, SAE J588 NOV84). The ''geometric centroid'' is the ''optical center'' for purposes of Standard No. 108. If the front turn signal is a direct light source type design, that is a lamp that is primarily employing a lens and not a reflector to meet photometric requirements, spacing is measured from the light source to the lighted edge of the DRL. The filament center of the light source is the ''optical center'' for purposes of Standard No. 108. If the distance is less than 100 mm, the requirements of S5.3.1.7 apply and the minimum intensity of the turn signal must be at least 2.5 times that normally required.''

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance required by 49 U.S.C. 30118, and remedy, required by 49 CFR 30120.

Authority: 49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 24, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13536 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4029; Notice 3]

Pipeline Safety: One-Call Systems Study

AGENCY: Research and Special Programs Administration (RSPA); Office of Pipeline Safety (OPS).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a two-part public symposium RSPA will conduct with the National Transportation Safety Board to report the progress in various efforts currently underway in damage prevention of underground facilities. Last year, RSPA established a study team to evaluate existing damage prevention methods to reduce the risk of damage to underground facilities, as called for by the Transportation Equity Act for the 21st Century (TEA–21). Members of the ''Common Ground'' Study Team will discuss this report at this symposium. OPS will discuss and take suggestions regarding criteria for awarding authorized grants provided in TEA–21 to one call centers. RSPA will also provide an update on current damage prevention projects, most notably those dealing with public education. The Damage Prevention Quality Action Team (DAMQAT), will report on the pilot test, results from the ''Call Before You Dig'' public education campaign and the next steps that will be necessary to make the campaign a nationwide effort.

DATES: The symposium will be held on Wednesday, June 30, 1999, from 9:00 am to 4:30 pm.

ADDRESSES: The symposium and ceremony will be held at the Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005. Reservations can be made by calling (202) 737–2200. A block of rooms is being held under ''U.S. Department of Transportation/ Damage Prevention Public Meeting.''

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this notice.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Eben Wyman at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

SUPPLEMENTARY INFORMATION:

1. Report on Damage Prevention Best Practices

The morning session of this symposium will focus on the ''Common Ground'' Damage Prevention Best Practices Study Team. RSPA's Office of Pipeline Safety established this team to identify effective underground facility damage prevention practices, consistent with TEA–21. Section 6105 of TEA–21 authorized DOT to undertake a study of damage prevention practices associated with existing one-call notification systems. The purpose of the study was to evaluate and identify damage prevention practices that are most effective in protecting the public, excavators, and the environment and in preventing disruptions to public services and damage to underground facilities. RSPA established the Common Ground Team to conduct the study. TEA–21 also authorized grant funding for Fiscal Years 2000–2001, subject to appropriations. The grants will be used as an incentive to improve operational efficiency and reliability of one-call systems. Such improvements will bring increased protection of all underground facilities and will benefit the general public. RSPA will provide comments on planning for the grant program in the afternoon session of this symposium, and RSPA and NTSB invite comments and suggestions on how these grants should be allocated.

The Common Ground Study identifies and evaluates existing practices related to damage prevention programs that are most effective in protecting the public, excavators, and the environment and in preventing disruptions and damage to public services and underground facilities. Study Team participants represent a broad range of utilities and distribution systems, highway departments, railroads, excavators, municipal governments, trade associations and academia. This report represents an unprecedented multi-industry, multi-disciplinary collaboration working toward the goal of improving the protection of all underground facilities.

The team will suggest many paths forward to continuous improvement and emphasize the need for data collection and evaluation in order to measure improvements. The team will discuss the criticality of communication among all the parties to construction around underground facilities and the need for collective responsibility for successful excavation: careful planning and design, appropriate and timely one-call center actions, accurate locating and marking, as well as careful digging of the soil. The report focuses on how to challenge the full spectrum of participants in the damage prevention process.

2. Presentation of National Public Education Campaign

The afternoon portion of the symposium will address other damage prevention initiatives, especially public education programs. RSPA established the joint government/industry Damage Prevention Quality Action Team (DAMQAT), in October 1996. DAMQAT's mission is to increase awareness of the need to protect underground facilities and to promote safe digging practices. DAMQAT is composed of representatives from federal and state government agencies, gas and hazardous liquid pipeline trade associations, a contractor, a one-call systems association, and the insurance and telecommunications industries. The

team launched a successful nationwide damage prevention public education campaign in Virginia, Georgia, and Tennessee that ran from May through October 1998. By use of radio public service announcements, trade press ads, bill inserts, public relations events, promotional materials, and a training video, the campaign promoted education and increased communication among all parties involved at a construction site. DAMQAT's efforts increased stakeholder knowledge on underground damage prevention, including use of one-call systems, and effective ways to locate underground facilities at excavation sites. RSPA and members of DAMQAT will provide information regarding their current activities at the symposium.

3. Other Damage Prevention Initiatives

Aside from discussion of the grant provision contained in TEA–21, other damage prevention and public education topics will be discussed. These include other examples of what damage prevention programs might look like. Examples are promotion of a nationwide toll-free number and a decal program for excavation equipment. The nationwide toll-free number is sponsored by One Call Systems International to facilitate routing of phone calls when excavators do not have the center number or there are multiple state one call centers. Peter King, Executive Director of the American Public Works Association, will speak on the pilot testing of a decal program, which promotes the placement of pictograph decals, which include the toll free number, for new and ''after market'' equipment. These decals serve as the last line of defense against facility damage. At the symposium, RSPA and NTSB will solicit an open discussion of the best way to implement these initiatives.

4. Recognition of Volunteers

RSPA and NTSB recognize the contributions of over 170 volunteers who developed the report on best practices in damage prevention and who served on the DAMQAT. A wide variety of interests and organizations participated in these efforts, including six associations representing underground facility owners and operators, three associations representing contractors, two associations representing public utilities and one call centers, two federal agencies within DOT, two associations representing state pipeline and utility regulatory agencies, an association of railroads, an association of contract locators, and nine different state DOTs.

RSPA and NTSB encourages the public to attend and participate in this public symposium.

Issued in Washington, DC on May 21, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–13447 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5442; Notice 1]

Chevron Pipe Line Company; Petition for Waiver

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice.

SUMMARY: Chevron Pipe Line Company (CPL) has petitioned the Research and Special Programs Administration for a waiver from compliance with 49 CFR 19.612(b)(3), which requires that gas pipeline facilities in the Gulf of Mexico found to be exposed on the seabed or constituting a hazard to navigation be reburied so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–99–5442; Notice 1, and be mailed to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. All comments and docket material may be viewed in the Dockets Facility. You may contact the Dockets Facility at (800) 647–5527, for copies of this notice or other material that is referenced herein. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. You may submit comments to the docket electronically. To do so, log on to their Web Site: http://dms.dot.gov. Click on Help & Information to obtain instructions for filing a document electronically.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick by telephone at 202–366–5523, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, DPS–10, 400 Seventh Street, SW, Washington, DC 20590, or via e-mail to le.herrick@rspa.dot.gov regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 1998, Chevron Pipeline Company (CPL) performed a shallow water, side-scan sonar survey of the various pipelines within the path of Hurricane Georges. The survey revealed exposed sections on both the 16-inch and 12-inch pipelines of the Chandeleur Block 15 (east of the Chandeleur Islands). Approximately 1400 feet of the 16-inch pipeline and 1300 feet of the 12-inch pipeline was exposed in shallow waters as the distance increased from the islands. The sea bottom material in this area is sugar sand with shoal like conditions.

CPL Marked the exposed pipe in accordance with 49 CFR 192.612 and 33 CFR 64. Another survey of the exposed pipelines was performed on January 17, 1999, to determine if natural spoil was building at these areas and to determine if other areas that were closer to the islands had become exposed. Upon receipt of the new data, CPL discovered that some exposed areas had gained natural cover, while other areas had lost cover. Another 450 foot section of the 16-inch pipeline was found to be exposed in shallow water close to the islands.

Regulatory Requirements

After an exposed pipeline has been discovered, the owner must clearly mark the pipeline in accordance with 49 CFR 192.612. The operator has six months to cover the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation. The exposed CPL pipelines are required to have 36 inches of cover.

CPL stated reasons for not covering the pipeline with natural cover to comply with 192.612(b)(3):

(1) The exposed pipelines are high pressure gas lines (normal operating pressure of 650–700 psi.) connecting Chevron's Main Pass 41 and Mobile Bay gas fields with the Chevron Pascagoula refinery. These pipelines are the main source of fuel gas for the refinery, as being the only outlet for natural gas produced on the various offshore platforms. When performing burial and line lowering operations, CPL's safety programs specifies that the pressure must be lowered to less than 150 psi in the pipeline. This is necessary for safe placement of the jetting sled equipment on the exposed pipelines and for safe

reburial of the exposed pipelines. CPL asserts that the required pressure reduction is not feasible because the refinery and natural gas wells would have to be closed down during the jetting operations.

(2) In addition, the mechanical jet sled must be towed across the pipeline. The vessels used to tow the sled have a greater draft than the water depth in the shallower exposure areas. Uncertain wind and sea conditions could shut down the jetting operation and result in uncontrollable delays.

(3) In order to safely lower the exposed sections of line, bottom material will be disturbed well beyond the actual exposed area of the pipeline in a lateral direction to avoid subjecting the pipe to abnormal stress. Because the vessels used to tow the mechanical jet sled draft more water than is available in much of this area, there could be adverse environmental impact to the surrounding area.

Request for Waiver

CPL has proposed to install concrete mesh blanket units to protect the pipeline from damage in lieu of the 36 inches of cover required by [192.612(b)(3)]. Each concrete mesh blanket unit is a 20-foot by 8-foot by 9-inch section constructed from 160 individually cast 17-inch by 17-inch by 9-inch beveled concrete briquettes inter-connected with ¾-inch polypropylene UV stabilized line.

We propose to grant the waiver with the provision that CPL also install a rock shield over the pipeline before installation of the blanket. The rock shield must be of at least 3/8-inches of thickness constructed of an appropriate material. With the addition of the rock shield we believe there is no reason to anticipate a lesser level of safety than would be achieved by a 36-inch pipeline burial. With these conditions, it appears that the requested waiver of compliance with 192.612(c)(3) would not be inconsistent with pipeline safety. We propose to grant the waiver. Interested parties are invited to comment on the proposed waiver by submitting, in duplicate, data, views, or arguments relevant to the proposed grant of waiver. We specifically request comments on the adequacy of the proposed concrete mat to reduce the hazard to navigation posed by the exposed pipeline and on any impact the mat may have on fishing vessel operations. Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590–0001.

All comments received on or before, June 28, 1999 will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place to be set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

(Authority: 49 U.S.C. 60118(c); 49 CFR 1.53)

Issued in Washington, DC, May 21, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–13448 Filed 5–26–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 573X)]

CSX Transportation, Inc.—Abandonment Exemption—in Midland County, MI

On May 7, 1999, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 1.85-mile portion of its Detroit Service Lane, Dean Subdivision, between milepost CB–17.37 and milepost CB–19.22, in Midland, Midland County, MI. The line traverses U.S. Postal Service Zip Code 48642. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 25, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 16, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 573X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Charles M. Rosenberger, 500 Water Street-J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before June 16, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–13546 Filed 5–26–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 20, 1999.

The Department of 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 June 28, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0988.

Form Number: IRS Form 8609 and Schedule A.

Type of Review: Extension.

Title: Low-Income Housing Credit Allocation Certification (8609); and Annual Statement (Schedule A).

Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law.

Respondents: Business or others for-profit, Individuals or households, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 120,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
8609	8 hr., 37 min	2 hr., 17 min	2 hr., 31 min.
Schedule A (Form 8609)	6 hr., 41 min	47 min	56 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,447,400 hours.

OMB Number: 1545–1031.

Form Number: IRS Form 8697.

Type of Review: Extension.

Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

Description: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1996, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue Code (IRC) section 469(b)(3). The IRS uses Form 8697 to determine if the interest has been figured correctly. Taxpayers may compute interest using the actual method (Part I) or the Simplified Marginal Impact Method (Part II).

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law of the form	Preparing, copying, assembling, and sending the form to the IRS
8697 (Part I)	8 hr., 37 min	2 hr., 23 min	2 hr., 38 min.
8697 (Part II)	9 hr., 20 min	2 hr., 5 min	2 hr., 20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 63,360 hours.

OMB Number: 1545–1186.

Form Number: IRS Form 8825.

Type of Review: Extension.

Title: Rental Real Estate Income and Expenses of a Partnership or an S corporation.

Description: Form 8825 is used to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property. The form is filed with either Form 1065 or Form 1120S.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 705,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hr., 28 min.
Learning about the law or the form—34 min.
Preparing the form—1 hr., 38 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 6,295,650 hours.

OMB Number: 1545–1395.

Form Number: IRS Form 8838.

Type of Review: Extension.

Title: Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.

Description: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 32 min.
Learning about the law or the form—2 hr., 10 min.
Preparing the form—3 hr., 16 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10,220 hours.

OMB Number: 1545–1409.

Form Number: IRS Form 8842.

Type of Review: Extension.

Title: Election to Use Different Annualization Periods for Corporate Estimated Tax.

Description: Form 8842 is used by corporations (including S corporations), tax-exempt organizations subject to the unrelated business income tax, and private foundations to annually elect the use of an annualization period in section 6655(e)(2)(c)(I) or (ii) for purposes of figuring the corporation's estimated tax payments under the annualized income installment method.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,700.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 55 min.
Learning about the law or the form—18 min.
Preparing and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,335 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 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. 99–13517 Filed 5–26–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Evaluation and Extension of National Customs Automation Program Test: Electronic Cargo Declarations

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces an extension of the National Customs Automation Program test concerning the electronic submission of certain inward vessel manifest information and discusses the result of an interim evaluation by Customs of the test. Testing of this program has been occurring since February 11, 1997. The test allows participating Automated Manifest System vessel carriers to electronically file complete cargo information prior to a vessel's arrival in the U.S., which in turn enables Customs to electronically release cargo to carriers and other participating parties and facilitate the control and processing of cargo that would otherwise have to await the filing of applicable paper Customs Forms.

DATES: The test is extended at least until December 31, 2000. Applications to participate in the test and comments concerning the test will be accepted throughout the testing period.

FOR FURTHER INFORMATION CONTACT: For operational or policy matters: Robert Watt (202) 927–0360; for systems or automation matters: Kim Santos (202) 927–0651; and for legal matters: Larry L. Burton (202) 927–1287.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1997, Customs commenced a one-year National Customs Automation Program (NCAP) test concerning the electronic submission of cargo declaration information. One of the goals of the program test was to eliminate the requirement that participating Automated Manifest System (AMS) vessel carriers must also submit a paper Cargo Declaration (Customs Form 1302). Other objectives of this test included whether the trade community could realize certain time savings and whether Customs law enforcement responsibilities, *e.g.*, such as targeting examinations, could be enhanced. *See*, the notice published in the **Federal Register** (61 FR 47782) on September 10, 1996, announcing this NCAP test and informing the public of the eligibility requirements for participation in the test. On December 19, 1997, it was announced that the test period for this NCAP was extended for an additional year and that the program test was to be modified concerning the manifesting of empty containers. *See*, the notice published in the **Federal Register** (62 FR 66719) on December 19, 1997.

The modification concerning the manifesting of empty containers could not be implemented at the time that the test was extended because the module in the AMS was not yet developed. Now that the AMS module has been developed, Customs needs to further test the program.

This document announces an extension of the NCAP test concerning the electronic submission of certain inward vessel manifest information and discusses the result of an interim evaluation by Customs of the test. Customs intends to continue testing this NCAP until such time as all program elements are fully tested and final regulations are promulgated that permanently provide for the electronic submission of inward vessel manifest information in the Customs Regulations (19 CFR chapter I). Anyone interested in participating in the test should refer to the test notice published in the **Federal Register** on September 10, 1996, for eligibility and application information.

Evaluation Methodology

Customs evaluated this NCAP test by developing certain performance criteria and measuring over time the test population's overall compliance with these performance criteria from baseline measurements. The composition of the test population and the methodology of the evaluation follow.

Size of Test Population and Extent of Data Evaluated

Overall, 17 carriers participated in the program test. These 17 carriers transported approximately 40% of all the cargo imported by vessel during the time period of the test. Customs evaluation of the program test is based on the test population's overall compliance with the nine performance criteria developed and measured by Customs. The data was collected over the period February 11–December 31, 1997.

Three questionnaires were also developed to take account of all participants' concerns: two for carrier participants and one for port directors that participated in the program test. The comments/responses generated by these questionnaires, while helpful to Customs, were not factored into the evaluation report that follows.

Evaluation Process

To evaluate the achievement of the program test to date, Customs established National Standard Operating (NSO) procedures and developed performance criteria to measure such operational issues as whether participants could meet the requirements of transmitting timely, complete, and accurate cargo data, and the benefits to the trade community. The NSO procedures were established to ensure that Customs personnel uniformly collected the same data. Baseline performance measurements for each participant carrier were recorded and subsequent performance measurements were taken monthly and averaged quarterly. The nine performance criteria developed sought to measure each aspect of the electronic filing test—from the completeness of the information to the time it was transmitted—that participants had to comply with.

To evaluate the various performance statistics, the raw data was compiled into a spreadsheet data-base program and the following factor ratings were used in measuring participant's compliance:

If the criterion was met 100% of the time, an ''Excellent'' rating was ascribed;

If the criterion was met 90–99% of the time, a ''Very Good'' rating was ascribed;

If the criterion was met 80–89% of the time, a ''Good'' rating was ascribed;

If the criterion was met 70–79% of the time, a ''Fair'' rating was ascribed; and

If the criterion was met less than 70% of the time, a ''Poor'' rating was ascribed.

Overall, a ''Good'' compliance rating was scored by the participants evaluated to date, which convinces Customs that this program test has been successful in achieving its goals and time-saving and law-enforcement objectives. Further, Customs found that the carrier industry can sustain both the electronic and policy standards established for this NCAP.

Regarding the questionnaires, the two questionnaires sent to carrier participants inquired into the overall effectiveness of the program test for the carriers and posed specific questions regarding problems encountered with the manifesting of Foreign Freight Remaining On Board (FROB) cargo. The questionnaire sent to port director participants inquired if the program test resulted in enhanced internal operations. The comments and responses to these questionnaires by each group of respondents showed again that the program test was successful. The trade community, represented by the Customs Electronic System Action Committee (CESAC), stated that participant carriers showed increased efficiency, experienced excellent communications with the local Customs office, and had reduced paper costs and a labor savings that averaged $100,000 per carrier. Customs personnel involved with this test also cited increased efficiency and excellent communications with carriers, and also enhancements to internal operating procedures.

The following composite evaluation report identifies the performance criteria measured and shows the average compliance rating for the test population evaluated to date.

Performance Criteria and Results of Evaluation

Customs evaluation of the 17 test participants' performance is based on their proficiency as a group in meeting the following performance criteria:

Criterion A measured whether participating vessel operators informed Customs if other carriers were shipping cargo on the subject vessel and, if they were, whether the other carriers were using the vessel pursuant to a vessel sharing or chartering agreement arrangement, and whether the participating vessel operators correctly listed those carriers. This criterion was designed to help Customs know if these other carriers were correctly reporting their cargo information, otherwise required by Customs Form 3171 (Application-Permit-Special License-Unlading-Lading-Overtime Services). Customs evaluation of the data shows that 92% of the time participating vessel operators accurately indicated when other carriers' were shipping cargo on board the subject vessel, and correctly identified those carriers to Customs, which is a ''Very Good'' compliance rating.

Criterion B measured whether participating vessel operators timely submitted—at least 48 hours prior to the vessel's arrival (a new time requirement)—the data required by Customs Form 3171. This criterion was designed to determine if participants could submit the data in advance of arrival, thus, giving Customs advanced notice of the vessel's arrival so that appropriate administrative and enforcement measures could be readied. Customs evaluation of the data shows that 92% of the time the required data was submitted at least 48 hours prior to the vessel's arrival, which is a ''Very Good'' compliance rating.

Criterion C measured whether, in those instances when multiple participating carriers were sharing or chartering space on board the same vessel, each test participant transmitted the identical vessel name as the vessel operator. This criterion was designed to measure if each AMS carrier, which separately transmits its own portion of the vessel's cargo declaration, could accurately identify the name of the vessel. (If the vessel name is not correctly identified by each carrier, then the AMS cannot associate the separately transmitted cargo declarations as part of the same arriving vessel and manifest, resulting in cargo information not being properly reviewed by Customs enforcement and regulatory teams.) Customs evaluation of the data shows that 98% of the time test participants correctly identified the same vessel name as the vessel operator, which is a ''Very Good'' compliance rating.

Criterion D measured whether test participants transmitted the correct arrival date and time of the vessel. This criterion was designed to help Customs assess the impact of date/time data received by Customs on such time-sensitive procedures as general order, quota, and formal vessel entry. Customs evaluation of the data shows test participants transmitted the correct arrival date and time of the vessel only 74% of the time, which is a ''Fair'' compliance rating.

Criterion E measured whether test participants timely submitted—at least 48 hours prior to the vessel's arrival or, for ''short haul'' voyages, by the time of arrival— complete cargo declaration information. This criterion was designed to determine how far in advance of arrival participants could submit the cargo declaration data so that Customs could ready appropriate enforcement and cargo control measures based on the vessel's cargo information. Further, advance notice of the vessel's cargo expedites the cargo release process, which saves time for the trade community. Customs evaluation of the data shows that 85% of the time the cargo declaration data was timely submitted, which is a ''Good'' compliance rating.

Criterion F measured whether test participants transmitted complete and accurate bill(s) of lading information with the cargo declaration data. This criterion was designed to determine whether all of the data element fields were being completed, so that appropriate manifest targeting and audit procedures could be readied. Customs evaluation of the data shows that 83% of the time complete and accurate bill(s) of lading information was transmitted with the cargo declaration data, which is a ''Good'' compliance rating.

Criterion G measured whether test participants timely transmitted all FROB cargo data upon arrival at the first port of entry. Although this data could have been measured within criterion F, it was separately measured because this type of cargo data had never been required by AMS before. Customs evaluation of the data shows that 92% of the time all FROB cargo data was timely transmitted upon arrival at the first port of entry, which is a ''Very Good'' compliance rating.

Criterion H measured whether test participants released any cargo prior to receiving an electronic release from Customs. This criterion was designed to measure the compliance of test participants in observing the cargo release procedures established by Customs. Customs evaluation of the data shows that 100% of the time no merchandise was released without proper electronic notice, which is an ''Excellent'' compliance rating.

Criterion I measured whether any penalties were assessed against participants because of manifest discrepancies or improper cargo releases. Again, this criterion was designed to measure the compliance of test participants in observing the test procedures established by Customs. Customs evaluation of the data shows that 100% of the time no penalties were issued, which is an ''Excellent'' compliance rating.

The factor ratings for individual test participants were:

7 had an overall rating of ''very good';
8 had a rating of ''good';
1 had a rating of ''fair'; and
1 had a rating of ''poor'.

The test group's compliance ratings for criterion A, B, C, G, H, and I—all more than 90% compliant—are considered sufficiently high enough to be acceptable without further comment. However, Customs acceptance of the compliance ratings for criterion D, E, and F merits further explanation.

Customs evaluation of the criterion D data, which measured whether the date and time transmitted by the test participant was the same as that recorded by the Customs officer processing the entrance of the vessel, revealed that the low compliance rating (only 74% of the time was the correct data transmitted by test participants, a ''Fair'' compliance rating) had more to do with the time element than the date element, and that the discrepancy noted was of marginal significance: the time transmitted by participants was usually off by no more than an hour or two. Accordingly, Customs does not consider the 74% compliance rate as detrimental to the test.

Criterion E, which measured how timely complete cargo declaration information could be transmitted, and criterion F, which measured whether complete and accurate bill(s) of lading information was also transmitted when the cargo declaration information was transmitted, are considered together because the timeliness and accuracy of the data measured are essential for Customs to be able to perform its law-enforcement mission. Customs believes that the marginally acceptable compliance ratings scored (85% for criterion E and 83% for criterion F, ''Good'' compliance ratings) were based on performance criteria measures that were contingent on procedural, rather than substantive, reasons that are inherent in shipping programs and that the discrepancies noted, again, are of marginal significance.

For criterion E, Customs analysis of the data shows that the compliance level for this criteria fell below 90% for one reason: short-haul voyages, *i.e.*, vessels arriving in the U.S. at the nearest port of entry directly from Canada, the Caribbean, or Mexico with the voyage lasting less than 48 hours. In many instances, voyages lasted less than 24 hours. Affected participants stated that such short-haul voyages could not easily comply with the time of arrival transmission requirement being measured, since complete cargo data is often not electronically compiled timely enough to be transmitted to Customs. Since Customs retains the authority to prohibit the release of cargo until a manifest is presented and/or to require the master of the vessel to present the manifest on the paper CF 1302 upon arrival, Customs believes that there is no good substantive reason to allow this skewed performance measure to adversely affect the other successes of this test program.

For criterion F, Customs analysis of the data again shows that the compliance level for this criteria fell below 90% for one reason: the allowance of amendments to manifest information for 60 days. Since amendments to manifest information are allowed, this procedural circumstance compromised the ''completeness of the information'' data being measured. However, because the test compliance rate (83%) is comparable to the completeness of cargo data compliance measure for carriers filing paper CF 1302s, Customs does not view this test compliance rating as significant. Further, Customs notes that while a couple of the participants were rated well below the 83% compliance level at the time of the evaluation, by subsequently working with these participants, Customs has seen remarkable improvement in the compliance results of these test participants.

The Future of the Program

Customs planned to modify the initial program test 2 years ago regarding the submission of empty container information. However, the hoped for new module in AMS was not available at that time and is only now being readied for testing. (The proposed modified procedure will allow empty container information to be manifested by container number listing only the port of loading along with the equipment identification, instead of by the current AMS procedure which requires the use of a bill of lading indicating the container number in the description field and the U.S. port of discharge.) Until this new module becomes generally available for testing, empty container information must be manifested either by providing the information on a CF 1302 or by using the current AMS procedure; this aspect of the program test remains subject to the general manifesting requirements of § 4.7 of the Customs Regulations (19 CFR 4.7).

Although the overall performance rating for the manifesting of FROB cargo information was ''very good,'' this measure of the program test called Customs attention to a peculiar problem, which ultimately required that vessels on certain routes submit FROB cargo information on a CF 1302. In those situations where FROB cargo arrived in the U.S. on a vessel, then left on the same vessel for unlading in a foreign port, no significant problems were encountered. In other situations, however, where FROB cargo arrived in the U.S. on a vessel and that vessel later arrived at a foreign port where the FROB cargo was unladened and reladened onto another vessel for discharge in the U.S., Customs discovered that although there were two vessels involved, the bill of lading information for the FROB cargo remained the same for each vessel. There were also other peculiar scenarios such as a vessel's voyage number changes. Presently AMS cannot accommodate these circumstances. Therefore, participating carriers must constantly juggle bill(s) of lading information and manipulate bill numbers to submit correct FROB cargo data or present the changing FROB cargo information on a CF 1302.

Customs will try to make programing changes that address these problems and has already informed the trade that enhancements to the AMS module will be made. Comments concerning these problems and any other aspect of this NCAP test are welcome.

Conclusion

Customs evaluation to date of the performance criteria established for this NCAP test shows that, overall, a ''Good'' compliance rating was scored by the participants. Although certain compliance ratings are only marginally acceptable, Customs believes the performance criteria measured were contingent on procedural, rather than substantive, reasons that are inherent in shipping programs, and that the discrepancies discovered are of marginal significance. Accordingly, Customs believes that the program test has been successful so far in achieving its time-saving and law-enforcement objectives. Further, Customs has found that the carrier industry can sustain both the electronic and policy standards established for the test program, and that the trade community is benefitting from and is satisfied with the program.

Until all elements of this program are tested and final regulations are developed that permanently provide for the program the testing of this NCAP will continue at least until December 31, 2000. Customs hopes that the success of this program test so far will convince other carriers to participate, and will continue to accept applications for participation throughout the further testing of this NCAP.

Dated: May 21, 1999.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 99–13498 Filed 5–26–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Loan Application Register.

DATES: Submit written comments on or before July 26, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0021. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to ''public.info@ots.treas.gov'', and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Gilda Morse, Corporate Policy and Special Examinations, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6238.

SUPPLEMENTARY INFORMATION:

Title: Loan Application Register.

OMB Number: 1550–0021.

Form Number: Not applicable.

Abstract: The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801, requires this collection of information. In accordance with the Act, the Federal Reserve Board (FRB) promulgates and administers HMDA regulations. HMDA forms and collection and recordkeeping requirements are approved under OMB Control No. 7100–0247. The FRB supporting statement should form the decisional basis for the OMB action. This submission discusses the burden imposed by the Office of Thrift Supervision (OTS) by requiring that ''Reason for Denial'', an optional column on the approved FRB HMDA form, be completed, whenever applicable, by all institutions regulated by OTS.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 3,000,000.

Estimated Time Per Respondent: 0.03 hours.

Estimated Total Annual Burden Hours: 90,000 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 20, 1999.

Frank DiGialleonardo,

CIO and Director, Office of Information Systems.

[FR Doc. 99–13469 Filed 5–26–99; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Notice of Receipt of Cultural Property Request From the Government of the Kingdom of Cambodia

AGENCY: United States Information Agency.

ACTION: Notice of receipt of cultural property request from the Government of the Kingdom of Cambodia.

The Government of the Kingdom of Cambodia made a cultural property request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on May 20, 1999, by the United States Information Agency. It seeks U.S. protection of certain categories of archaeological material the pillage of which, it is alleged, jeopardizes the national cultural patrimony of Cambodia. In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 *et seq.*) the request will be reviewed by the Cultural Property Advisory Committee which will develop recommendations before a final determination is made.

Dated: May 21, 1999.

Harriet L. Elam,

Acting Director, United States Information Agency.

[FR Doc. 99–13512 Filed 5–26–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Notice of Meeting of the Cultural Property Advisory Committee

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

The Cultural Property Advisory Committee will meet on Monday, June 14, 1999, from approximately 9:30 a.m. to approximately 5 p.m., and on June 15 from approximately 9 a.m. to approximately 12 noon, at the U.S. Information Agency, Room 840, 301 4th St., SW., Washington, DC, to review a cultural property request from the Government of the Kingdom of Cambodia to the Government of the United States seeking protection of certain archaeological materials. A portion of the meeting, from approximately 9:30 a.m. to approximately 11 a.m. on June 14, will be open to interested parties wishing to provide comment to the Committee that may have relevance to this request. The Cambodia request, submitted under Article 9 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, will be considered in accordance with the provisions of the Convention on Cultural Property Implementation Act

(19 U.S.C. 2601 *et seq.*, Pub. L. 97–446). Since review of this matter by the Committee will involve information the premature disclosure of which would be likely to significantly frustrate implementation of proposed action, the meeting from approximately 11 a.m. to approximately 5 p.m. on June 14, and from approximately 9 a.m. to 12 noon on June 15, will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). Persons wishing to attend the open portion of the meeting on June 14 from approximately 9:30 a.m. to approximately 11 a.m., must notify the cultural property office at (202) 619–6612 no later than 5 p.m. (EDT) Thursday, June 10, 1999, to arrange for admission.

Determination to Close Portion of the Meeting of the Cultural Property Advisory Committee, June 14 and 15, 1999

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the portion of the Cultural Property Advisory Committee meeting on June 14, 1999, from approximately 11 a.m. to approximately 5 p.m., and on June 15, 1999, from approximately 9:30 a.m. to approximately 12 noon, at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed.

Dated: May 21, 1999.

Harriet L. Elam,

Acting Director, United States Information Agency.

[FR Doc. 99–13513 Filed 5–26–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 102

Thursday, May 27, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 97-D014]

Defense Federal Acquisition Regulation Supplement; Single Process Initiative

Correction

In rule document 99–7136, beginning on page 14398, in the issue of Thursday, March 25, 1999, make the following correction(s):

252.211-7005 [Corrected]

1. On page 14399, in the second column, in section 252.211-7005, paragraph (b), in the ninth line, ''www.dcmc.hg.dla.mil/spi/dbreport/modified.xls.''should read ''www.dcmc.hq.dla.mil/spi/dbreport/modified.xls.''

2. On page 14399, in the second column, in section 252.211-7005, paragraph (d), in the third line, ''Contract'' should read ''Contractor''.

[FR Doc. C9–7136 Filed 5-26-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

Correction

In notice document 99–11742 beginning on page 25312 in the issue of Tuesday, May 11, 1999, make the following corrections:

1. On page 25312, in the second column, ''**N017252-2**'' should read ''**N01752-2**''.

2. On page 25313, in the first column, ''**NO1752-3**'' should read ''**N01752-3**''.

[FR Doc. C9–11742 Filed 5–26–99; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

Correction

In notice document 99–11401 appearing on page 24394 in the issue of Thursday, May 6, 1999, make the following correction:

In the second column, under the first *Agreement No.* entry ''202-011526-002'' should read ''203-011526-002''.

[FR Doc. C9–11401 Filed 5–26–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-4]

Amendment of Class E Airspace; Thomson, GA

Correction

In rule document 99–12277, appearing on page 26656, in the issue of Monday, May 17, 1999, make the following correction:

§ 71.1 [Corrected]

On page 26656, in the third column, under the heading **ASO GA E5 Thomson, GA [Revised]**, in the second line, ''long. 82°31′100″W)'' should read ''long. 82°31′00″W''.

[FR Doc. C9–12277 Filed 5-26-99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
May 27, 1999

Part II

General Services Administration

41 CFR Chapter 301 et al.

Federal Travel Regulation: Maximum Per Diem Rates in Colorado, Florida, Georgia, Massachusetts, Minnesota, and New York; and Travel and Relocation Expenses Test Programs; Final Rules

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 81]

RIN 3090–AH00

Federal Travel Regulation; Maximum Per Diem Rates in Florida, Massachusetts, and Minnesota

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) Amendment 75, as corrected, published in the **Federal Register** on Wednesday, February 10, 1999 (64 FR 6550), to combine certain localities and increase the maximum lodging amounts in the States of Florida, Massachusetts, and Minnesota, and to remove an entry in the State of Massachusetts.

DATES: This final rule is effective May 27, 1999, and applies to travel performed on or after May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Office of Governmentwide Policy, Travel and Transportation Management Policy Division, at 202–501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), after an analysis of additional data, has determined that current lodging allowances for the localities of St. Petersburg, Tampa, and Tallahassee, Florida; Middlesex County, Massachusetts; and Dakota County, Minneapolis, and St. Paul, Minnesota, do not adequately reflect the cost of lodging in those areas. To provide adequate per diem reimbursement for Federal employee travel to those areas, the maximum lodging allowances are changed. Also, the per diem localities of St. Petersburg and Tampa, Florida, and Minneapolis and St. Paul, Minnesota, are revised to combine the localities within each State; and the per diem locality of Lowell (Middlesex County (except Cambridge)), Massachusetts, is removed.

B. Regulatory Flexibility Act

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

C. Executive Order 12866

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

D. Paperwork Reduction Act

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

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Appendix A to chapter 301 is amended by removing the entry Lowell (Middlesex County (except Cambridge)) under the State of Massachusetts, and by revising the entries under the State of Florida, St. Petersburg, Tallahassee and Tampa; under the State of Massachusetts, Cambridge; and under the State of Minnesota, Dakota County, Minneapolis, and St. Paul, to read as follows:

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

* * * * *

Per diem locality		Maximum Maximum lodging amount (room rate only-no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem amount rate rate 4 (c)
Key city [1]	County and/or other defined location 2, 3					
* *	* *	*		*		*
FLORIDA						
* *	* *	*		*		*
St. Petersburg/Tampa	Pinellas and Hillsborough.					
(January 1–April 30)	105	38				143
(May 1–December 31)	86	38				124
* *	* *	*		*		*
Tallahassee	Leon	65		34		99
* *	* *	*		*		*
MASSACHUSETTS						
* *	* *	*		*		*
Cambridge	Middlesex County	109		46		155
* *	* *	*		*		*
MINNESOTA						
* *	* *	*		*		*
Dakota County	Dakota County	75		34		109

Per diem locality		Maximum Maximum lodging amount (room rate only-no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem amount rate rate 4 (c)
Key city [1]	County and/or other defined location 2, 3					
* *	* *	*		*		*
Minneapolis/St. Paul	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group Detachment BRAVO), Rosemount; and Ramsey County.	85		46		131
* *	* *	*		*		*

Dated: May 18, 1999.

David. J. Barram,

Administrator of General Services.

[FR Doc. 99–13123 Filed 5–26–99; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

RIN 3090–AG98

[FTR Amendment 82]

Federal Travel Regulation; Maximum Per Diem Rates in Colorado, Georgia, and New York

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) Amendment 75, as corrected, published in the **Federal Register** on Wednesday, February 10, 1999 (64 FR 6550), to increase the maximum lodging amounts in the States of Colorado, Georgia and New York.

DATES: This final rule is effective May 27, 1999, and applies to travel performed on or after May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Office of Governmentwide Policy, Travel and Transportation Management Policy Division, at 202–501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), after an analysis of additional data, has determined that current lodging allowances for the localities of Adams County (Adams County), Denver (Denver County), and Jefferson County (Jefferson County), Colorado; Cobb County (Cobb County) and DeKalb County (DeKalb County), Georgia; and Nassau County (Nassau County) and Suffolk County (Suffolk County), New York, do not adequately reflect the cost of lodging in those areas. To provide adequate per diem reimbursement for Federal employee travel to those areas, the maximum lodging allowances are changed. Also, under the State of New York, the per diem localities of Great Neck and Nassau County are revised to more clearly define the applicable county and/or other defined location.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

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

D. Paperwork Reduction Act

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

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Appendix A to chapter 301 is amended by revising the entries under the State of Colorado, Adams County, Denver (Denver County) and Jefferson County; under the State of Georgia, Cobb County and DeKalb County; and under the State of New York, Great Neck (Nassau County), Nassau County and Suffolk County, to read as follows:

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

* * * * *

Per diem locality		Maximum lodging amount (room rate only-no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
Key city [1]	County and/or other defined location [2,3]					
* *	* *	*		*		*
	COLORADO					
Adams County	Adams County	73		38		111

Per diem locality		Maximum lodging amount (room rate only-no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
Key city [1]	County and/or other defined location [2,3]					
* *	* *	*		*		*
Denver	Denver	83		42		125
* *	* *	*		*		*
Jefferson County	Jefferson County	69		34		103
* *	* *	*		*		*
	GEORGIA					
* *	* *	*		*		*
Cobb County	Cobb County	78		34		112
* *	* *	*		*		*
DeKalb County	DeKalb County	78		34		112
* *	* *	*		*		*
	NEW YORK					
* *	* *	*		*		*
Great Neck	That part of Nassau County defined as north of the Southern States Parkway (see Nassau County).	190		42		232
* *	* *	*		*		*
Nassau County	That part of Nassau County not defined as north of the Southern States Parkway (see Great Neck).	120		38		158
* *	* *	*		*		*
Suffolk County	Suffolk County	155		38		193
* *	* *	*		*		*

Dated: May 18, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–13124 Filed 5–26–99; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 300–80

RIN 3090–AG88

[FTR Amendment 83]

Federal Trade Regulation; Travel and Relocation Expenses Test Programs

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) to add authority to implement sections of the Travel and Transportation Reform Act of 1998, which authorize Federal agencies to conduct travel and relocation expenses test programs when determined by the Administrator of General Services to be in the interest of the Government. This change will permit agencies to test new and innovative methods of reimbursing travel and relocation expenses without seeking a waiver of current rules or authorizing legislation. It will also assist the Government in determining whether such innovations provide advantageous and effective travel and transportation costs and processes.

EFFECTIVE DATE: May 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Travel Team Leader, Travel and Transportation Management Policy Division (MTT), telephone 202–501–0483.

SUPPLEMENTARY INFORMATION: On October 19, 1998, the President signed into law the Travel and Transportation Reform Act of 1998 (the Act) (Pub. L. 105–264). This change will implement the provisions of the Act authorizing travel and relocation expenses test programs designed to enhance cost savings or other efficiencies that may accrue to the Government. This final rule is written in the plain language style of regulation writing as a continuation of GSA's effort to make the FTR easier to understand and use. A proposed rule with request for comments was published in the **Federal Register** on Wednesday, February 10, 1999 (64 FR 6590). No comments were received.

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

C. Paperwork Reduction Act

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

D. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Part 300–80

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 300–80 is added to read as follows:

PART 300–80—TRAVEL AND RELOCATION EXPENSES TEST PROGRAMS

Sec.

300–80.1 What is a travel and relocation expenses test program?
300–80.2 Who may authorize such test programs?
300–80.3 What must be done to apply for test program authority?
300–80.4 How many test programs may be authorized by GSA throughout the Government?
300–80.5 What factors will GSA consider in approving a request for a travel or relocation expenses test program?
300–80.6 May the same agency be authorized to test travel and relocation expenses programs at the same time?
300–80.7 What limits are there to test programs?
300–80.8 What is the maximum duration of test programs?
300–80.9 What reports are required for a test program?
300–80.10 When does the authority of GSA to authorize test programs expire?

Authority: 5 U.S.C. 5707, 5710, 5738, and 5739.

PART 300–80—TRAVEL AND RELOCATION EXPENSES TEST PROGRAMS

§ 300–80.1 What is a travel and relocation expenses test program?

It is a program to permit agencies to test new and innovative methods of reimbursing travel and relocation expenses without seeking a waiver of current rules or authorizing legislation.

§ 300–80.2 Who may authorize such test programs?

The Administrator of General Services may authorize an agency to conduct such tests when the Administrator determines such tests to be in the interest of the Government.

§ 300–80.3 What must be done to apply for test program authority?

The head of the agency or designee must design the test program to enhance cost savings or other efficiencies to the Government and submit in writing to the Administrator of General Services (Attention: MTT), 1800 F Street, NW, Washington, DC 20405:

(a) An explanation of the test program;

(b) If applicable, the specific provisions of the FTR from which the agency is deviating (travel and/or relocation);

(c) An analysis of the expected costs and benefits; and

(d) A set of criteria for evaluating the effectiveness of the program.

§ 300–80.4 How many test programs may be authorized by GSA throughout the government?

No more than 10 travel expense test programs and 10 relocation expense test programs may be conducted at the same time.

§ 300–80.5 What factors will GSA consider in approving a request for a travel or relocation expenses test program?

The following factors will be considered:

(a) Potential savings to the Government.

(b) Application of results to other agencies.

(c) Feasibility of successful implementation.

(d) Number of tests, if any, already authorized to the same activity.

(e) Whether the request meets the requirements of § 300–80.3.

(f) Other agency requests under consideration at the time of submission.

(g) Uniqueness of proposed test.

§ 300–80.6 May the same agency be authorized to test travel and relocation expenses programs at the same time?

Yes, if authorized, both test programs may be conducted by the same agency at the same time.

§ 300–80.7 What limits are there to test programs?

None. When authorized by the Administrator of General Services, the agency may pay any necessary travel or relocation expenses in lieu of payments authorized or required under chapters 301 and 302 of this title.

§ 300–80.8 What is the maximum duration of test programs?

The test program may not exceed 24 months from the date the test is authorized to begin.

§ 300–80.9 What reports are required for a test program?

Two reports are required:

(a) The Administrator of General Services must submit a copy of an approved test program to Congress at least 30 days before the effective date of the authorized test program.

(b) The agency authorized to conduct the test program must submit a report on the results of the test program to the Administrator of General Services (Attention: MTT), 1800 F Street, NW, Washington, DC 20405, and to Congress within 3 months after completion of the program.

§ 300–80.10 When does the authority of GSA to authorize test programs expire?

The authority to conduct test programs expires on October 20, 2005.

Dated: May 7, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–13125 Filed 5–26–99; 8:45 am]

BILLING CODE 6820–34–P

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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.

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H.R. 432/P.L. 106–29

To designate the North/South Center as the Dante B. Fascell North-South Center. (May 21, 1999; 113 Stat. 54)

H.R. 669/P.L. 106–30

To amend the Peace Corps Act to authorize appropriations for fiscal years 2000 through 2003 to carry out that Act, and for other purposes. (May 21, 1999; 113 Stat. 55)

H.R. 1141/P.L. 106–31

1999 Emergency Supplemental Appropriations Act (May 21, 1999; 113 Stat. 57)

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