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WHEN: Tuesday, April 17, 2001 at 9:00 a.m.

WHERE: Office of the Federal Register
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Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–14–AD; Amendment 39–12164; AD 2001–06–17]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R and 172S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2001–06–17, which was published in the **Federal Register** on March 30, 2001 (66 FR 17345), and concerns certain Cessna Aircraft Company (Cessna) Models 172R and 172S airplanes. The FAA incorrectly referenced the AD number as ''AD 2001–06-14'' instead of ''AD 2001–06–17.'' This AD requires a one-time inspection for proper engine idle speed and fuel control mixture setting, adjustment as necessary, and incorporation of engine operating procedures into the pilots operating handbook (POH) and FAA-approved airplane flight manual (AFM). This action corrects the AD to reflect the correct AD number.

EFFECTIVE DATE: The effective date of this AD remains April 20, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On March 24, 2001, FAA issued AD 2001–06–17, Amendment 39–12164 (66 FR 17345, March 30, 2001), which applies to certain Cessna Models 172R and 172S airplanes. The AD currently requires a one-time inspection for proper engine idle speed and fuel control mixture setting and adjustment, as necessary. This AD also requires incorporating engine operating procedures into the POH/AFM.

Need for the Correction

We incorrectly referenced the AD number as ''AD 2001–06–14'' instead of ''AD 2001–06–17.'' If we did not correct the AD number, then the logbooks of the affected airplane would reference compliance with the wrong AD.

Correction of Publication

Accordingly, the publication of March 30, 2001 (66 FR 17345), of Amendment 39–12164; AD 2001–06–17, which was the subject of FR Doc. 01–7831, is corrected as follows:

§ 39.13 [Corrected]

On page 17346, in § 39.13, in the third column, the 22nd line from the bottom of the page, correct ''2001–06–14'' to ''2001–06–17''.

Action is taken herein to correct this reference in AD 2001–06–17 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains April 20, 2001.

Issued in Kansas City, Missouri, on April 4, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8746 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–63–AD; Amendment 39–12169; AD 2001–07–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 750 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 750 airplanes, that requires removal of a certain existing bulkhead web doubler, installation of left and right bulkhead web doublers, and enlargement of the lightening holes. This action is necessary to prevent jamming of the roll control system, due to inadequate clearance between the control cable and the web, which could result in reduced controllability of the airplane.

DATES: Effective May 15, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to certain Cessna Model 750 airplanes was published in the **Federal Register** on August 8, 2000 (65 FR 48401). That action proposed to require removing a certain existing bulkhead web doubler, installing new left and right bulkhead web doublers, and enlarging the lightening holes.

Comments Received

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

Request To Withdraw the Proposed AD

The commenter, the manufacturer, states that all affected airplanes have already complied with the requirements of the proposed AD. Therefore, the commenter requests that the FAA withdraw the proposed AD.

The FAA does not agree. We acknowledge that the manufacturer has stated that all affected airplanes have accomplished the actions specified in Cessna Service Bulletin SB750–53–19, dated January 20, 2000 (the appropriate service information specified in the final rule). However, we have determined that it is necessary to issue a final rule to prevent an inadvertent installation of a bulkhead web doubler having part number (P/N) 6711093–38 on any airplane. As explained in the preamble of the proposed AD, installation of that doubler could cause jamming of the roll control system (ailerons and spoilers) and result in reduced controllability of the airplane. Therefore, no change to the final rule is necessary.

Conclusion

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

Cost Impact

The FAA estimates that approximately 95 Cessna Model 750 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $45,600, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–07–04 Cessna Aircraft Company: Amendment 39–12169. Docket 2000–NM–63–AD.

Applicability: Model 750 airplanes, having manufacturer's serial numbers –0001 through –0102 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the roll control system (ailerons and spoilers), which could result in reduced controllability of the airplane, accomplish the following:

Inspection and Removal

(a) Within 200 flight hours or 180 days after the effective date of this AD, whichever occurs first, inspect the bulkhead web for an existing round bulkhead web doubler, in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB750–53–19, dated January 20, 2000. If there is a round bulkhead web doubler having part number (P/N) 6711093–38, prior to further flight, remove the doubler in accordance with the service bulletin.

Installation

(b) Within 200 flight hours or 180 days after the effective date of this AD, whichever occurs first, install a new right bulkhead web doubler having P/N 6791213–4 and a left bulkhead web doubler having P/N 6791213–3 and enlarge the lightening holes, in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB750–53–19, dated January 20, 2000.

Spares

(c) As of the effective date of this AD, no person shall install a bulkhead web doubler having P/N 6711093–38, on any airplane.

Alternative Method of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Cessna Service Bulletin SB750–53–19, including Supplemental Data, dated January 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 15, 2001.

Issued in Renton, Washington, on April 2, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8611 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–157–AD; Amendment 39–12170; AD 2001–07–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by General Electric or Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes powered by General Electric or Pratt & Whitney engines, that requires repetitive inspections to detect discrepancies of the aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary. This AD also provides an optional terminating action for the repetitive inspections. These actions are necessary to prevent fatigue cracking in primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine. This action is intended to address the identified unsafe condition.

DATES: Effective May 15, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 2001.

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

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes powered by General Electric or Pratt & Whitney engines was published in the **Federal Register** on October 10, 2000 (65 FR 60124). That action proposed to require repetitive inspections to detect discrepancies of the aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections.

Comments

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

Request To Limit Area of Inspection or Give Credit for Previous Inspections

Several commenters request that the FAA revise paragraph (a) of the proposed AD to limit the area of the inspections to the two aft-most holes of the horizontal tangs of the midspar fitting of the strut, as shown in Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000, rather than requiring inspections of the four aft most holes. The commenters state that the two aft-most holes are the most susceptible to fatigue cracking because of the higher stresses in this area of the midspar fitting. The commenters conclude that, as long as the two aft-most holes are uncracked, the next two holes would be uncracked as well. One commenter suggests reducing the interval for the repetitive inspections of the two aft-most holes in lieu of expanding the inspection area to the four aft-most holes. Other commenters request that, if the FAA finds it necessary to require inspections beyond the area specified in the service bulletin, the initial inspection per paragraph (a) be deferred to 1,500 flight cycles if inspections of the two aft-most holes have been accomplished before the effective date of this AD per the service bulletin.

The FAA partially concurs with the commenters' requests. While, in theory, if the two aft-most holes are not cracked, the next row of holes should not be cracked either, the FAA has not found this to be the case, as discussed in the notice of proposed rulemaking (NPRM). On certain Model 747 series airplanes, which have fittings and loading conditions similar to those found on the Model 767 series airplanes subject to this AD, the aft-most row of fasteners of the midspar fittings was not cracked, but the next row of fasteners was. Based on this experience, the FAA does not concur with the commenters' request to reduce the inspection interval in lieu of requiring inspections of both rows of fasteners.

However, the FAA does concur that the initial compliance time for the inspection of the four aft-most fasteners can be extended for airplanes on which the two aft-most fasteners have been inspected per the service bulletin before the effective date of this AD. The FAA finds that, for these previously inspected airplanes only, the compliance time for paragraph (a) of this AD can be extended from 600 flight hours to 1,500 flight hours. Accordingly, a new paragraph (b) has been added to this final rule and subsequent paragraphs have been reordered.

Request To Reference Revised Service Information

One commenter questions whether the FAA will revise the proposed rule to reference a new revision of the service bulletin. The commenter points out that the proposed requirement to inspect the four aft-most fasteners is a difference from the service bulletin and questions whether the FAA will provide an alternative method of compliance (AMOC) for this requirement, or whether a local approved authority will

have to carry out the proposed extra work until a new revision of the service bulletin is approved.

The FAA does not concur that any change to this final rule is necessary in this regard. The FAA cannot revise this final rule to reference a new revision of the service bulletin because the FAA has received no such revision. In response to the commenter's question about issuance of an AMOC, no AMOC is required for the requirements of this AD, because the requirements of an AD take precedence over the procedures listed in a service bulletin. No change to the final rule is necessary in this regard.

Request To Approve AMOC

One commenter requests that the FAA revise the proposed rule to approve the use of GE RTV108 sealant as an alternative to the BMS sealant specified in the service bulletin. According to the commenter, the airplane manufacturer has approved the use of GE RTV108 sealant. The commenter also states that fasteners on the inboard fitting aft of the aft vapor barrier do not need sealant. The commenter further notes that it has requested that Boeing revise its service bulletin to reflect these changes.

The FAA does not concur with the commenter's request to revise the final rule to approve the use of an alternative sealant and to specify that sealant does not need to be applied to certain fasteners. The service bulletin has not yet been revised, and FAA has not received any technical justification for the changes requested by the commenter. However, if the commenter can provide data that shows that an acceptable level of safety can be achieved through the methods of compliance it describes, the commenter may request approval of an AMOC in accordance with paragraph (e) of this AD. No change to the final rule is necessary in this regard.

Request To Revise Cost Impact Information

One commenter states that the cost impact in the NPRM is totally unrealistic because it does not account for the time to gain access to the inspection area or to return the airplane to service.

The FAA does not concur with what it infers is a request to revise the cost estimate. The FAA stated in the ''Cost Impact'' section of the NPRM that, ''The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.'' The FAA's position on this matter has not changed since issuance of the NPRM. Thus, no change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 636 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 235 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $14,100, or $60 per airplane, per inspection cycle.

It will take approximately 3 work hours per airplane to accomplish the required eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $42,300, or $180 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–07–05 Boeing: Amendment 39–12170. Docket 2000–NM–157–AD.

Applicability: Model 767 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and reduced structural integrity of the strut, which could result in

separation of the strut and engine, accomplish the following:

Repetitive Inspections

(a) Except as provided by paragraph (b) of this AD, before the accumulation of 10,000 total flight cycles, or within 600 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the inspections required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) Perform a detailed visual inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect cracking, in accordance with Part 1, ''Detailed Visual Inspection,'' of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. If no cracking is detected, repeat the inspection thereafter at the applicable intervals specified in Table 1, ''Reinspection Intervals for Part 1—Detailed Visual Inspection'' included in Figure 1 of the service bulletin.

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

(2) Perform a high frequency eddy current inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect discrepancies (cracking, incorrect fastener hole diameter), in accordance with Part 2, ''High Frequency Eddy Current (HFEC) Inspection,'' of the Accomplishment Instructions of the service bulletin. Accomplish the requirements specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable; and repeat the inspection thereafter at the applicable intervals specified in Table 2, ''Reinspection Intervals for Part 2—HFEC Inspection'' included in Figure 1 of the service bulletin.

(i) If no cracking is detected and the fastener hole diameter is less than or equal to 0.5322 inch, rework the hole in accordance with Part 3 of the Accomplishment Instructions of the service bulletin.

(ii) If no cracking is detected and the fastener hole diameter is greater than 0.5322 inch, accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD.

(b) For airplanes on which the two aft-most fasteners have been inspected in accordance with Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000, prior to the effective date of this AD: Perform the initial inspection of the four aft-most fasteners in accordance with paragraph (a) of this AD before the accumulation of 10,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

Corrective Actions

(c) If any cracking is detected after accomplishment of any inspection required by paragraph (a) of this AD, before further flight, accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Accomplish the terminating action specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. Accomplishment of this paragraph terminates the requirements of this AD.

(2) Replace the midspar fitting of the strut with a serviceable part, or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Repeat the applicable inspection thereafter at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(d) If any discrepancies (cracking, incorrect fastener hole diameter) are detected during any inspection required by paragraph (a) of this AD, for which the service bulletin specifies that the manufacturer may be contacted for disposition of those repair conditions: Before further flight, accomplish the corrective actions (including fastener hole rework and/or midspar fitting replacement) in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraphs (c)(2) and (d) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on May 15, 2001.

Issued in Renton, Washington, on April 2, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8612 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–178–AD; Amendment 39–12171; AD 2001–07–06]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires a modification involving nondestructive test inspections of the 34 fastener holes in each rear wing spar, corrective action, if necessary, and cold working of the holes to increase fatigue life of the rear spar web. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking, which could result in fuel leakage and reduced structural integrity of the wings.

DATES: Effective May 15, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on January 16, 2001 (66 FR 3516). That action proposed to require a modification involving nondestructive test inspections of the 34 fastener holes in each rear wing spar, corrective action, if necessary, and cold working of the holes to increase fatigue life of the rear spar web.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 64 work hours per airplane to accomplish the required inspections and modification, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer without cost to the operators. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $11,520, or $3,840 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–07–06 SAAB Aircraft AB: Amendment 39–12171. Docket 2000–NM–178–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –003 through –063 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage and reduced structural integrity of the wings due to fatigue cracking, accomplish the following:

Modification

(a) Except as required by paragraph (b) of this AD: Prior to the accumulation of 13,000 total flight cycles, accomplish the modification of the rear spar on both wings (including applicable nondestructive test inspections to detect discrepancies (including cracking, scratches, or other damage, and incorrect hole size) and cold working of fastener holes), in accordance with Saab Service Bulletin 2000–57–037, dated April 13, 2000.

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

Repair

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and who will then send the requests and comments to the Manager, International Branch, ANM–116.

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

Special Flight Permits

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

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Saab Service Bulletin 2000–57–037, dated April 13, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive 1–157, dated April 13, 2000.

Effective Date

(f) This amendment becomes effective on May 15, 2001.

Issued in Renton, Washington, on April 2, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8613 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–43–AD; Amendment 39–12173; AD 2001–07–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped With Pratt & Whitney Model PW4400 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4400 series engines. This action requires revising the Airplane Flight Manual (AFM) to advise the flight crew of applicable operational limits. This action is necessary to ensure that the flight crew is informed of applicable limitations in airplane performance, and to prevent reduced acceleration and climb performance relative to performance data in the AFM, which could result in the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain. This action is intended to address the identified unsafe condition.

DATES: Effective April 25, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 11, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–43–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has found that the Operational Limits specified in the Limitations Section of the Airplane Flight Manual (AFM) for McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4400 series engines do not adequately list the performance correction sections in the AFM. Section 4B, the applicable performance correction section for Model MD–11 series airplanes with Pratt & Whitney Model PW4462 engines, is not listed. Model PW4462 engines are rated for higher thrust than other Model PW4400 series engines. Omitting the reference to Section 4B in the required performance correction paragraph of the Operational Limits subsection in the Limitations Section of the AFM could cause the flight crew to be incorrectly informed about limitations in airplane performance.

Also, the FAA has received reports that Pratt & Whitney Model PW4400 series engines with certain early-production fan blades (Phase 0/1, FB2B), as installed on certain McDonnell Douglas Model MD–11 series airplanes, do not produce the amount of thrust indicated in the AFM. This thrust shortfall is due to erosion of the fan blade's leading edge. This condition causes a thrust shortfall of 2.5 percent at high-thrust settings. The flight crew has no indication of this shortfall in thrust. This condition could result in reduced acceleration and climb performance relative to performance data in the AFM, which, if not corrected, could lead to the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure that the flight crew is informed of applicable limitations in airplane performance, and to prevent reduced acceleration and climb performance relative to performance data in the AFM, which could result in the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain. This AD requires revising the Limitations Section of the AFM, and, for certain airplanes, Section 4A or 4B of the Performance Section of the AFM, to advise the flight crew of applicable operational limits.

Interim Action

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

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the

Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–43–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–07–08 McDonnell Douglas: Amendment 39–12173. Docket 2001–NM–43–AD.

Applicability: All Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4400 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is informed of limitations in airplane performance, and to prevent reduced acceleration and climb performance relative to performance data in the Airplane Flight Manual (AFM), which could result in the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain, accomplish the following:

AFM Revision: Limitations Section

(a) Within 30 days after the effective date of this AD, revise Section 1, Limitations, of the FAA-approved AFM to include the following information under Subsection 3, Operational Limits. This may be accomplished by inserting a copy of this AD into the AFM.

''Required Performance Corrections in Section 4A or 4B must be applied as applicable.''

AFM Revision: Performance Section 4A or 4B

(b) For airplanes with Pratt & Whitney Model PW4460 or PW4462 engines with FB2C fans installed: Within 30 days after the effective date of this AD, revise the Performance Section of the FAA-approved AFM to include the following information under Section 4A or 4B, as applicable. This may be accomplished by inserting a copy of this AD into the AFM.

''When operating with one PW4460 engine, one PW4462 engine (operated at PW4460 thrust rating), or one PW4462 engine installed, apply the following performance corrections:

Weight must be reduced by:
Takeoff—1.3%
Enroute—2.5%
Landing—1.3%

When operating with more than one PW4460 engine and/or PW4462 engine (operated at PW4460 thrust rating), or more than one PW4462 engine installed, apply the following performance corrections:

Weight must be reduced by:
Takeoff—2.5%
Enroute—2.5%
Landing—2.5%.''

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on April 25, 2001.

Issued in Renton, Washington, on April 3, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8725 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–36]

Amendment to Class E Airspace; Bowling Green, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Bowling Green, MO.

EFFECTIVE DATE: 0901 UTC, May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 31, 2001 (66 FR 8359). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 17, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 27, 2001.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 01–8710 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–37]

Amendment to Class E Airspace; Grant, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Grant, NE.

EFFECTIVE DATE: 0901 UTC, May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 31, 2001 (66 FR 8358). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 17, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 27, 2001.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 01–8711 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–38]

Amendment to Class E Airspace; Ogallala, NE; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Ogallala, NE, and corrects an error in the airport designation as published in the **Federal Register** on January 31, 2001 (66 FR 8357)

EFFECTIVE DATE: 0901 UTC, May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final final rule with a request for comments in the **Federal Register** on January 31, 2001 (66 FR 8357, Airspace Docket No. 00–ACE–38). An error was subsequently discovered that the airport designation of Searle Field, NE should be Ogallala, Searle Field, NE. This action corrects that error. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 17, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace designation as published in the **Federal Register** on January 31, 2001 (66 FR 8358), (**Federal Register** Document 01–1280; page 8358, column 1, is corrected as follows:

§ 71.1 [Corrected]

* * * * *

ACE NE E5 Ogallala, NE [Corrected]

On page 8358, in the first column, line sixty one, correct the airport designation by removing ''Searle Field, NE'' and adding ''Ogallala, Searle Field, NE.''

* * * * *

Issued in Kansas City, MO on March 27, 2001.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 01–8712 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–39]

Amendment to Class E Airspace; Bassett, NE; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Bassett, NE, and corrects an error in the airport designation as published in the **Federal**

Register on January 31, 2001 (66 FR 8362)

EFFECTIVE DATE: 0901 UTC, May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** January 31, 2001 (66 FR 8362, Airspace Docket No. 00–ACE–39). An error was subsequently discovered that the airport designation of Rock County Airport, NE should be Bassett, Rock County Airport, NE. This action corrects that error. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 17, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace designation as published in the **Federal Register** on January 31, 2001 (66 FR 8363), (**Federal Register** Document 01–1546; page 8363, column 3, is corrected as follows:

§ 71.1 [Corrected]

* * * * *

ACE NE E5 Bassett, NE [Corrected]

On page 8363, in the third column, line seventeen, correct the airport designation by removing ''Rock County Airports, NE'' and adding ''Bassett, Rock County Airport, NE.''

* * * * *

Issued in Kansas City, MO on March 27, 2001.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 01–8713 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30242; Amdt. No. 428]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to that required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0910 UTC, May 17, 2001.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid converge that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involves matters of flight safety and operational efficiency in the National airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on April 3, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 428; Effective Date, May 17, 2001]

From	To	MEA
§ 95.101—Direct Routes—U.S. Bahamas Routes—063V is Amended to Read in Part		
Freeport, BS VOR/DME	Cegur, BS FIX	*2,000
*1,400–MOCA		
Cegur, BS FIX	Burbo, BS FIX	*2,000
*1,300–MOCA		
Burbo, BS FIX	Bayru, BS FIX	**10,000
**1,300–MOCA		
Bayru, BS FIX	Hankx, BS FIX	*10,000
*1,300–MOCA		
Bahamas Routes—069V is Amended to Read in Part		
Benzi, BS FIX	Jamax, BS FIX	*3,000
*1,200–MOCA		
Jamax, BS FIX	Freeport, BS VOR/DME	*2,000
*1,400–MOCA		
Bahamas Routes—071V is Added to Read		
Freeport, BS VOR/DME	Wopop, BS FIX	*2,000
*1,400–MOCA		
Wopop, BS FIX	Wlker, BS FIX	*3,000
*1,200–MOCA		
§ 95.6001 Victor Routes—U.S.		
§ 95.6037 VOR Federal Airway 37 is Amended to Read in Part		
Columbia, SC VORTAC	*BLOTS, SC FIX	2,300
*4,000–MRA		
Blots, SC FIX	*Great, SC FIX	2,300
*4,000–MRA		
Great, SC FIX	Riche, SC FIX	2,300
Riche, SC FIX	Charlotte, NC VOR/DME	2,500
§ 95.6053 VOR Federal Airway 53 is Amended to Read in Part		
Columbia, SC VORTAC	*Wider, SC FIX	2,200
*4,000–MRA		
Wider, SC FIX	*Bubba, SC FIX	2,300
*4,000–MRA		
Bubba, SC FIX	Wills, SC FIX	2,200
§ 95.6054 VOR Federal Airway 54 is Amended to Read in Part		
Dilla, GA FIX	*Whety, SC FIX	**7,000
**6,200–MOCA		
*8,000–MRA		
Whety, SC FIX	*Sunet, SC FIX	**7,000
*8,000–MRA		
6,200–MOCA		
Sunet, SC FIX	Cleva, SC FIX	6,000
*5,300–MOCA		
§ 95.6066 VOR Federal Airway 66 is Amended to Read in Part		
Bard, AZ VORTAC	*Mohak, AZ FIX	4,000
W BND		6,000
E BND		
*6,000–MCA Mohak, AZ FIX E BND		
Mohak, AZ FIX	*Judth, AZ FIX	**6,000
**4,000–MOCA		
*6,000–MCA Judth, AZ FIX W BND		
Judth, AZ FIX	Gila Bend, AZ VORTAC.	
W BND		6,000
E BND		4,000
§ 95.6068 VOR Federal Airway 68 is Amended to Read in Part		
San Antonio, TX VORTAC	*Braun, TX FIX	3,100
*5,500–MRA		
Braun, TX FIX	Marcs, TX FIX	3,100

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 428; Effective Date, May 17, 2001]

From	To	MEA
Marcs, TX FIX	Crays, TX FIX	*2,900
*2,000–MOCA		
Crays, TX FIX	Industry, TX VORTAC	2,500
Industry, TX VORTAC	Sealy, TX FIX	2,100
Sealy, TX FIX	Hobby, TX VOR/DME	2,000
§ 95.6076 VOR Federal Airway 76 is Amended to Read in Part		
Industry, TX VORTAC	Sealy, TX FIX	2,100
Sealy, TX FIX	Hobby, TX VOR/DME	2,000
§ 95.6105 VOR Federal Airway 105 is Amended to Read in Part		
Lucky, NV FIX	*Hiden, CA FIX	14,000
*14,000–MRA		
Hiden, CA FIX	Beatty, NV VORTAC.	
NW BND		*11,000
SE BND		*12,000
*8,400–MOCA		
Beatty, NV VORTAC	Coaldale, NV VORTAC	*11,000
*9,600–MOCA		
§ 95.6135 VOR Federal Airway 135 is Amended to Read in Part		
Goffs, CA VORTAC	*Whigg, CA FIX	**12,000
*12,000–MRA		
**9,500–MOCA		
Whigg, CA FIX	Clarr, CA FIX	*12,000
*9,900–MOCA		
Clarr, CA FIX	*Hiden, CA FIX	**12,000
*14,000–MRA		
**8,500–MOCA		
Hiden, CA FIX	Beatty, NV VORTAC.	
NW BND		*11,000
SE BND		*12,000
*8,400–MOCA		
§ 95.6155 VOR Federal Airway 155 is Amended to Read in Part		
Colliers, SC VORTAC	*Wider, SC FIX	2,500
*4,000–MRA		
Wider, SC FIX	*Blots, SC FIX	2,500
§ 95.6172 VOR Federal Airway 172 is Amended to Read in Part		
Omaha, NE VORTAC	Wunot, IA FIX	3,800
Wunot, IA FIX	*Linde, IA FIX	**5,500
*5,500–MRA		
**3,800–MOCA		
§ 95.6181 VOR Federal Airway 181 is Amended to Read in Part		
Sioux Falls, SD VORTAC	Obitt, SD FIX	*4,000
*3,400–MOCA		
§ 95.6194 VOR Federal Airway 194 is Amended to Read in Part		
Sealy, TX FIX	Hobby, TX VOR/DME	2,000
§ 95.6222 VOR Federal Airway 222 is Amended to Read in Part		
Marcs, TX FIX	Crays, TX FIX	*2,900
*2,000–MOCA		
Crays, TX FIX	Industry, TX VORTAC	2,500
Industry, TX VORTAC	Sealy, TX FIX	2,100
Sealy, TX FIX	Humble, TX VORTAC	2,000
Foothills, GA VORTAC	*Sunet, SC FIX	6,100

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 428; Effective Date, May 17, 2001]

From	To	MEA
*8,000–MRA		
§ 95.6306 VOR Federal Airway 306 is Amended to Read in Part		
Cleep, TX FIX	Daisetta, TX VORTAC	3,000
§ 95.6444 VOR Federal Airway 444 is Amended to Read in Part		
Solde, ID FIX *12,500–MCA Derso FIX W BND **9,200–MOCA	*Derso, ID FIX	**17,000
Derso, ID FIX *9,700–MOCA	Arows, ID FIX	*12,500
§ 95.6500 VOR Federal Airway 500 is Amended to Read in Part		
Arows, ID FIX *9,700–MOCA	Derso, ID FIX	*12,500
Derso, ID FIX *12,500–MCA SOLDE FIX E BND **9,200–MOCA	Solde, ID FIX	**17,000
Reaps, ID FIX *7,000–MOCA	Betre, ID FIX	*9,500
§ 95.6548 VOR Federal Airway 548 is Amended to Read in Part		
Hobby, TX VOR/DME	Sealy, TX FIX	2,000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7146 Jet Route No. 146 is Amended to Read in Part			
Las Vegas, NV VORTAC	Nootn, AZ FIX	18000	45000
Nootn, AZ FIX #MEA is established with a gap in navigation signal coverage.	Dove Creek, CO VORTAC	#25000	45000

From	To	Changeover points	
		Distance	From
§ 95.8005 Jet Routes Changeover Points is Amended to Modify Changeover Point			
Martinsburg, WV VORTAC	Lancaster, PA VORTAC	24	Martinsburg

[FR Doc. 01–8716 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30240; Amdt. No. 2044]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 3, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective May 17, 2001*

City	Airport	Subject
Alexander City, AL	Thomas C. Russell Fld	RNAV (GPS) RWY 36, Orig
Birmingham, AL	Birmingham Intl	RNAV (GPS) RWY 6, Orig
Birmingham, AL	Birmingham Intl	RNAV (GPS) RWY 18, Orig
Birmingham, AL	Birmingham Intl	RNAV (GPS) RWY 24, Orig
Birmingham, AL	Birmingham Intl	RNAV (GPS) RWY 36, Orig
Birmingham, AL	Birmingham Intl	GPS RWY 24, Original-B (CANCELLED)
Birmingham, AL	Birmingham Intl	GPS RWY 36, Original-A (CANCELLED)
Fort Smith, AR	Fort Smith Regional	ILS RWY 7, Orig
Fort Smith, AR	Fort Smith Regional	LOC BC RWY 7, Amdt 9, (CANCELLED)
Manilla, AR	Manilla, Muni	NDB RWY 18, Orig
San Luis Obispo, CA	San Luis Obispo County-McChesney Field.	RNAV (GPS) RWY 11, Orig
San Luis Obispo, CA	San Luis Obispo County-McChesney Field.	RNAV (GPS) RWY 29, Orig
Miami, FL	Opa Locka	ILS RWY 9L, Amdt 4
Miami, FL	Opa Locka	ILS RWY 12, Amdt 1

City	Airport	Subject
Duluth, MN	Duluth Intl	COPTER ILS RWY 27, Orig
Youngstown/Warren	Youngstown-Warren Regional	VOR OR GPS RWY 19, Amdt 18A (CANCELLED)
Youngstown/Warren	Youngstown-Warren Regional	VOR–A, Orig
Harlingen, TX	Valley Intl	RNAV (GPS) RWY 13, Orig
Harlingen, TX	Valley Intl	RNAV (GPS) RWY 17L, Orig
Harlingen, TX	Valley Intl	RNAV (GPS) RWY 17R, Orig
Harlingen, TX	Valley Intl	RNAV (GPS) RWY 31, Orig
Harlingen, TX	Valley Intl	RNAV (GPS) RWY 35L, Orig
Harlingen, TX	Valley Intl	VOR OR GPS RWY 13, Amdt 11, (CANCELLED)
Mosinee, WI	Central Wisconsin	VOR/DME RWY 35, Amdt 7B
Mosinee, WI	Central Wisconsin	NDB RWY 17, Orig-B

[FR Doc. 01–8714 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30241; Amdt. No. 2045]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporated only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Date Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable,

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on April 3, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME/ MLS/RNAV/ § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
03/07/01	KS	INDEPENDENCE	INDEPENDENCE MUNI	1/2397	VOR OR GPS–A, AMDT 1B
03/09/01	TX	CLEBURNE	CLEBURNE MUNI	1/2436	VOR/DME–A, ORIG LOC/DME RWY 15
03/09/01	TX	CLEBURNE	CLEBURNE MUNI	1/2437	ORIG–A ILS/DME RWY 27R, ORIG
03/14/01	FL	MIAMI	OPA LOCKA	1/2557	A
03/15/01	IL	CHICAGO	CHICAGO O'HARE INTL	1/2605	ILS RWY R4, AMDT 6E
3/16/01	NE	MINDEN	BIONEER VILLAGE FIELD	1/2653	VOR RWY 34, AMDT 1B
03/16/01	NE	MINDEN	PIONEER VILLAGE FIELD	1/2655	GPS RWY 34, ORIG
03/16/01	OR	MEDFORD	ROGUE VALLEY INTL—MEDFORD.	1/2657	LOC/DME BC–B, AMDT 6
03/16/01	NM	ALBUQUERQUE	ALBUQUERQUE INTL SUNPORT.	1/2663	ILS RWY 3, ORIG–A
03/16/01	LA	MARKSVILLE	MARKSVILLE MUNI	1/2664	VOR/DME–A, AMDT 3A
06/16/01	SC	BEAUFORT	BEAUFORT COUNTY	1/2675	GPS RWY 24, ORIG
03/16/01	SC	BEAUFORT	BEAUFORT COUNTY	1/2678	RADAR–1, AMDT 2
03/16/01	TN	CHATTANOOGA	LOVELL FIELD	1/2679	ILS RWY 2, AMDT 6A
03/20/01	NH	WHITEFIELD	MOUNT WASHINGTON REGIONAL.	1/2735	NDB RWY 10 AMDT 7
03/20/01	NH	WHITEFIELD	MOUNT WASHINGTON REGIONAL.	1/2736	LOC RWY 10 AMDT 4A VOR OR GPS RWY 32
03/20/01	NE	HASTINGS	HASTINGS MUNI	1/2741	AMDT 13B
03/20/01	NE	HASTINGS	HASTINGS MUNI	1/2743	NDB RWY 14, AMD 12C
03/20/01	NE	HASTINGS	HASTINGS MUNI	1/2744	VOR RWY 14, AMDT 16C NDB OR GPS RWY 23L
03/20/01	OH	COLUMBUS	RICKENBACKER INTL	1/2750	ORIG–A NDB OR GPS RWY 5R
03/20/01	OH	COLUMBUS	RICKENBACKER INTL	1/2751	ORIG–A
03/20/01	OH	COLUMBUS	RICKENBACKER INTL	1/2752	ILS RWY 23L ORIG–C
03/21/01	NC	FAYETTEVILLE	FAYETTEVILLE REGIONAL/GRANNI S FIELD.	1/2791	NDB OR GPS RWY 4, AMDT 14B
03/22/01	TX	HOUSTON	WILLIAM P. HOBBY	1/2821	VOR RWY 12R, AMDT 18A
03/22/01	TX	HOUSTON	WILLIAM P. HOBBY	1/2823	VOR RWY 12R, AMDT 18A
03/22/01	TX	HOUSTON	WILLIAM P. HOBBY	1/2824	VOR/DME RWY 30L, AMDT 16B
03/22/01	TX	HOUSTON	WILLIAM P. HOBBY	1/2825	ILS RWY 30L, AMDT 5
03/22/01	TX	HOUSTON	WILLIAM P. HOBBY	1/2826	ILS RWY 12R, AMDT 11B
03/22/01	WA	SPOKANE	SPOKANE INTL	1/2829	RNAV (GPS RWY 21, ORIG
03/22/01	AK	ANIAK	ANIAK	1/2837	3
03/22/01	AK	ANIAK	ANIAK	1/2838	ILS/DME RWY 10, AMDT 7
03/22/01	UT	SALT LAKE CITY	SALT LAKE CITY INTL	1/2842	RNAV (GPS) RWY 34L, ORIG
03/22/01	FL	MIAMI	KENDALL—TAMIAMI EXECUTIVE.	1/2853	ILS RWY 9R, AMDT 8A
03/22/01	SC	GREENVILLE	DONALDSON CENTER	1/2854	ILS RWY 5, AMDT 4A
03/22/01	SC	GREENVILLE	DONALDSON CENTER	1/2855	NDB OR GPS RWY 5, AMDT 5B
03/22/01	FL	MIAMI	KENDALL—TAMIAMI EXECUTIVE.	1/2856	NDB OR GPS RWY 9R, AMDT 1
03/22/01	TN	MEMPHIS	MEMPHIS INTL	1/2858	ILS RWY 18C, ORIG

FDC date	State	City	Airport	FDC No.	Subject
03/22/01	TX	ROBSTOWN	NUECES COUNTY	1/2866	VOR/DME–A, AMDT 3
03/22/01	TX	ROBSTOWN	NUECES COUNTY	1/2867	GPS RWY 12, ORIG–B
03/22/01	UT	SALT LAKE CITY	SALT LAKE CITY INTL	1/2870	RNAV (GPS) RWY 35, ORIG
03/22/01	PA	PITTSBURGH	PITTSBURGH INTL	1/2877	2
03/22/01	NE	HASTINGS	HASTINGS MUNI	1/2882	GPS RWY 14, ORIG–B
03/22/01	OK	EL RENO	EL RENO MUNI AIR PARK	1/2894	VOR/DME RWY 35, AMDT 1A
03/23/01	FL	KEY WEST	KEY WEST INTL	1/2898	RADAR–1, AMDT 4A
03/23/01	FL	KEY WEST	KEY WEST INTL	1/2899	GPS RWY 9, ORIG–A
03/23/01	FL	KEY WEST	KEYWEST INTL	1/2900	GPS RWY 27, ORIG–A NDB OR GPS–A, AMDT
03/23/01	FL	KEYWEST	KEYWEST INTL	1/2902	15A
03/23/01	OK	NORMAN	UNIVERSITY OF OKLAHOMA WESTHEIMER.	1/2918	LOC RWY 3, AMDT 3C
03/23/01	OK	NORMAN	UNIVERSITY OF OKLAHOMA WESTHEIMER.	1/2919	VOR/DME RNAV RWY 3, ORIG–D
03/26/01	FL	ORMOND BEACH	ORMOND BEACH MUNI	1/2974	VOR OR GPS RWY 17, AMDT 1B
03/26/01	FL	ORMOND BEACH	ORMOND BEACH MUNI	1/2976	GPS RWY 8, ORIG
03/26/01	FL	ORMOND BEACH	ORMOND BEACH MUNI	1/2977	RADAR–1, AMDT 2B
03/26/01	WA	SPOKANE	SPOKANE INTL	1/2992	RNAV (GPS) RWY 3, ORIG GPS RWY 28, ORIG–B
03/26/01	NM	SANTA FE	SANTA FE MUNI	1/2993	(Replaces FDC 1/2274)
		NEW SMYRNA	NEW SMYRNA		
03/27/01	FL	BEACH	BEACH MUNI	1/3020	AMDT 1
		NEW SMYRNA	NEW SMYRNA		
03/27/01	FL	BEACH	BEACH MUNI	1/3023	RADAR–1, AMDT 3
03/27/01	AK	NOME	NOME	1/3025	GPS RWY 27, ORIG–B
03/27/01	AK	NOME	NOME	1/3026	GPS RWY 9, ORIG–B
03/27/01	AK	NOME	NOME	1/3027	GPS RWY 2, ORIG–B
			ASPEN–PITKIN COUNTY/ SARDY.		
03/27/01	CO	ASPEN	FIELD	1/3034	VOR/DME OR GPS–C AMDT 4B
03/27/01	GA	SAVANNAH	SAVANNAH INTL	1/3037	VOR OR TACAN OR GPS RWY 27, AMDT 15C
03/27/01	GA	SAVANNAH	SAVANNAH INTL	1/3038	ILS RWY 9, AMDT 25D
03/27/01	GA	SAVANNAH	SAVANNAH INTL	1/3039	HI–ILS RWY 9, AMDT 5
03/27/01	GA	SAVANNAH	SAVANNAH INTL	1/3040	HI–TACAN RWY 27, AMDT 3

[FR Doc. 01–8715 Filed 4–9–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 94F–0008]

Irradiation in the Production, Processing and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a machine source of high energy x-rays to inspect cargo containers that may contain food. This action is in response to a petition filed by Analytical Systems Engineering Corp. (ASEC).

DATES: This rule is effective April 10, 2001. Submit written objections and request for a hearing by May 10, 2001.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of February 24, 1994 (59 FR 8995), FDA announced that a food additive petition (FAP 4M4407) had been filed by Analytical Systems Engineering Corp., 5400 Shawnee Rd., suite 100, Alexandria, VA 22312. The petition proposed that the food additive regulations in § 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* (21 CFR 179.21) be amended to provide for the safe use of a machine source of high energy x-rays to inspect cargo containers that may contain food. In a letter dated October 12, 2000, ASEC (now ACS Defense, Inc., 2001 North Beauregard St., Alexandria, VA 22311) informed FDA of the transfer of their rights to FAP 4M4407 to R. F. Reiter and Associates, 850 Oak Chase Circle, Fairfax Station, VA 22039.

II. Evaluation of Safety

A source of radiation used for the purpose of inspection of foods meets the definition of a food additive under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations in § 170.3(i) (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

III. Evaluation of the Safety of the Petitioned Use of a Source of Radiation

Machine sources that produce high energy x-rays may be used to screen large cargo containers for illegal drugs and other contraband. To be able to penetrate large cargo containers, these x-ray systems need to operate with x-ray energies higher than those used for screening smaller articles (Ref. 1). The present petition proposes the use of x-rays produced by an electron linear accelerator operating at energy levels of up to 10 million electron volts (MeV) to inspect large cargo containers that may contain food, provided that the maximum dose absorbed by the food does not exceed 0.5 gray (0.5 Gy). Because the probability of inducing a change in the nucleus of an atom absorbing x-rays increases with the energy of the x-ray, the potential for induced radioactivity in the finished foodstuff needs to be assessed. Current regulations authorize the use of x-rays at energies up to 0.5 MeV to inspect cargo, including food, provided the absorbed dose does not exceed 10 Gy (§ 179.21). This petition seeks to raise the energy limit for x-rays from 0.5 MeV to 10 MeV, however, the petition also proposes to limit the maximum absorbed dose to 0.5 Gy, well below the 10 Gy level previously established as safe for food inspection. Accordingly, FDA has concluded that there is no need to evaluate changes in the food subjected to x-rays other than the potential for induced radioactivity.

The petitioner submitted a number of published articles and other study reports containing data and information on the induction of radioactivity in food. One of the reports that the petitioner relied on to demonstrate that the petitioned use of the source of radiation is safe is from the World Health Organization (WHO). This WHO report concluded that no detectable radioactivity will be induced in foodstuffs by x-rays with a maximum energy level of 10 MeV when a dose of 0.5 Gy is not exceeded (Ref. 1).

As part of FDA's safety review of the petition, the agency evaluated two studies in which various foods were irradiated with either x-rays or electron beams at energies sufficient to induce radioactivity. Radioactivity is the result of changes in the nucleus of an atom induced, for example, by interaction with x-rays. Because the elemental composition of the foods that were studied is representative of foods in general, the results of the two studies may reasonably be applied to other foods subjected to these test conditions. In one study, three types of food were irradiated with high energy bremsstrahlung[1] produced by an electron linear accelerator that generated predominately 8 MeV electrons (approximately 7 percent of the electrons were in the range of 8 to 10 MeV and less than 2 percent were in the range of 10 to 12 MeV) (Ref. 2). The types of food that were irradiated were codfish, rice, and a macerated meat product. These foods received doses ranging from 8.8 to 14 kiloGy (kGy) (17,600 to 28,000 times higher than the maximum petitioned dose level of 0.5 Gy). The authors concluded that the induced activities in the foods that were observed immediately after irradiation are approximately the same as natural background levels, and that any induced activities drop quickly. According to the data presented in the paper, by 1 day after irradiation, induced levels of radioactivity were typically about 10 percent of those initially observed. Because of the extremely small level of radioactivity that was induced in foods after receiving doses thousands of times higher than the maximum petitioned dose, FDA would not expect any detectable radioactivity above background in food resulting from the petitioned use of the source of radiation at doses up to 0.5 Gy.

In the second study, samples of chicken, prawns, cheeses, and spices were irradiated with electron beams at energies of 10 MeV and 20 MeV and induced radioactivity was measured (Ref. 3). In this study, the mechanisms responsible for the induced radioactivity in the samples were photonuclear reactions induced by bremsstrahlung and electronuclear reactions induced by the electron beams. The authors noted that when food is irradiated with electron beams with an energy at or below 10 MeV, the induced radioactivity in food is essentially zero. Therefore, to produce measurable radioactivity in food, irradiations were also carried out at 20 MeV. The authors stated that the study with 20 MeV irradiations was intended to simulate a gross malfunction of an electron beam irradiation plant. The authors concluded that, as expected, no measurable radioactivity induced at 10 MeV was detected, and that even at energies as high as 20 MeV and doses up to 10 kGy (i.e., 20,000 times the maximum petitioned dose level of 0.5 Gy), the specific activity after 1 day was approximately 0.01 Becquerel/gram (Bq/g), which is negligible (Ref. 3).

[1] Bremsstrahlung refers to the type of radiation which is emitted when high-speed electrons are suddenly decelerated due to interactions with atomic nuclei.

IV. Conclusion of Safety

FDA has evaluated the data submitted in the petition and other relevant material and concludes that no detectable radioactivity will be induced in food when an x-ray energy of 10 MeV and a dose of 0.5 Gy are not exceeded. Therefore, the agency concludes that the proposed use of x-radiation, produced by a machine source at energies of 10 MeV or lower, to inspect food, is safe and that the conditions listed in §179.21 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice. The agency has carefully considered the potential environmental effects of this action. FDA has concluded that this action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paper Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by May 10, 2001. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so

state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. WHO, ''Food safety aspects relating to the application of X-ray surveillance equipment: Memorandum from a WHO meeting,'' Bulletin of the World Health Organization, vol. 31, pp. 297–301, 1990.

2. Wakeford, C. A. and R. Blackburn, ''Induction and Detection of Radioactivity in Foodstuffs Irradiated with 10 MeV Electrons and X-rays,'' *Radiation Physics and Chemistry*, vol. 38, No. 1, pp. 29–38, 1991.

3. Findley, D. J. S., T.V. Parson, and M. R. Sene, ''Experimental Electron Beam Irradiation of Food and the Induction of Radioactivity,'' *Applied Radiation and Isotopes*, vol. 43, pp. 567–575, 1992.

List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

2. Section 179.21 is amended by adding paragraphs (a)(4), (b)(1)(iii), and (b)(2)(iv) to read as follows:

§ 179.21 Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing.

* * * * *

(a) * * *

(4) Machine sources producing X-radiation at energies no greater than 10 million electron volts (MeV).

(b) * * *

(1) * * *

(iii) The maximum energy of X-radiation emitted by machine source.

(2) * * *

(iv) A statement that no food shall be exposed to a radiation source listed in paragraph (a)(4) of this section so as to receive a dose in excess of 0.5 gray (Gy).

Dated: April 3, 2001.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–8755 Filed 4–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 579

[Docket No. 99F–2799]

Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Irradiation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to reflect approval of a food additive petition (FAP) filed by Sterigenics International, Inc. (now IBA Food Safety Division) that provides for irradiation of various animal feeds and feed ingredients for microbial control.

DATES: This rule is effective April 10, 2001. Submit written objections and request for a hearing by May 10, 2001.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John D. McCurdy, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0171.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 3, 1999 (64 FR 48409), FDA announced that a food additive petition (FAP 2243) had been filed by SteriGenics International, Inc., 4020 Clipper Ct., Fremont, CA 94538–6540. The petition proposed to amend the food additive regulations in part 21 CFR part 579 Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food to provide for the irradiation of various animal feeds and feed ingredients to control microbial contaminants. The notice of filing provided for a 60-day comment period. The agency received no comments.

FDA has evaluated data submitted by the sponsor of the petition and concludes that the data establish the safety and functionality of irradiation for use as proposed.

This final rule extends the ability to irradiate all animal feeds for the purpose of microbial disinfection, therefore, references to laboratory animals have been deleted from the regulation. Also, paragraph (b)(2) has been added to § 579.22 to make clear that as long as an irradiated feed ingredient is less than 5 percent of the final product, the final product may be irradiated without conflicting with the statement in § 579.22(b)(1) that the ionizing radiation is used or intended for use in single treatment.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

FDA has determined under 21 CFR 25.32(j) that this action is of 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.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by May 10, 2001. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for

which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 579

Animal feeds, Animal foods, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 579 is amended as follows:

PART 579—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF ANIMAL FEED AND PET FOOD

1. The authority citation for 21 CFR part 579 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371.

2. Section 579.22 is amended by revising the section heading, the introductory paragraph, and paragraph (b) to read as follows:

§ 579.22 Ionizing radiation for treatment of animal diets.

Ionizing radiation for treatment of complete diets for animals may be safely used under the following conditions:

* * * * *

(b) *Uses.* (1) The ionizing radiation is used or intended for use in single treatment as follows:

Food for irradiation	Limitations	Use
Bagged complete diets, packaged feeds, feed ingredients, bulk feeds, animal treats and chews.	Absorbed dose: Not to exceed 50 kiloGrays. Feeds and feed ingredients treated by irradiation should be formulated to account for nutritional loss.	Microbial disinfection, control or elimination

(2) If an irradiated feed ingredient is less than 5 percent of the final product, the final product can be irradiated without being considered to be re-irradiated.

Dated: March 31, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–8719 Filed 4–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 870 and 886

[Docket No. 99N–0035]

Medical Devices; Reclassification of Six Cardiovascular Preamendments Class III Devices into Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying six cardiovascular preamendments devices from class III (premarket approval) into class II (special controls). FDA is also identifying the special controls that the agency believes will reasonably ensure the safety and effectiveness of the devices. This reclassification is being undertaken on the agency's own initiative based on new information under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 and the Food and Drug Administration Modernization Act of 1997. The agency is also revising the identification of one of the devices subject to this rule to simplify the classification regulation and is correcting a typographical error that was incorporated into the regulations.

DATES: This rule is effective May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Bette L. Lemperle, Center for Devices and Radiological Health (HFZ–453), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8262.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 15, 1999 (64 FR 12774), FDA published a proposed rule to reclassify 38 preamendments class III devices into class II and to establish special controls for these devices (the March 1999 proposal). FDA invited interested persons to comment on the proposed rule by June 14, 1999. FDA received one request to reopen the comment period for six cardiovascular devices. The request noted that FDA had not made the guidance documents that were proposed as special controls for these six devices available for comment through FDA's good guidance practices (GGP's). The requestor asked that FDA extend the comment period until at least 90 days after the guidance documents were publicly available. In the **Federal Register** of April 19, 2000 (65 FR 20995), FDA announced the availability of six guidance documents for these devices and reopened the comment period on the reclassification of the six devices (65 FR 20933) until July 18, 2000.

FDA received two comments on the vascular graft prosthesis of less than 6 millimeters diameter (§ 870.3450 (21 CFR 870.3450)). These comments are summarized and addressed in section II of this document. FDA received no comments on the other five devices. In this final rule, FDA is reclassifying the six devices into class II with guidance documents as special controls.

The devices that are being reclassified in this final rule are:

- Vascular graft prosthesis of less than 6 millimeters diameter (§ 870.3450) (combined with vascular graft prosthesis of 6 millimeters and greater diameter (§ 870.3460 (21 CFR 870.3460)) and renamed vascular graft prosthesis)
- Pacemaker lead adaptor (21 CFR 870.3620)
- Annuloplasty ring (21 CFR 870.3800)
- Cardiopulmonary bypass defoamer (21 CFR 870.4230)
- Cardiopulmonary bypass arterial blood line filter (21 CFR 870.4260)
- Cardiopulmonary bypass oxygenator (21 CFR 870.4350)

In the **Federal Register** of March 31, 2000 (65 FR 17138), FDA published a final rule to reclassify 28 other preamendments class III devices that were included in the March 1999 proposal. That final rule included an error in the classification of aqueous shunts (21 CFR 886.3920). The word ''neurovascular'' was incorrectly used

for the word ''neovascular.'' FDA is correcting that error in this final rule.

II. Comments

FDA received two comments addressing the vascular graft prosthesis of less than 6 millimeters diameter (§ 870.3450). Both comments supported the reclassification of the device.

(Comment 1) One comment recommended that vascular graft prostheses constructed of materials of animal origin, and instruments, tools, and devices used to create vascular graft prostheses should be included in the identification of the vascular graft prosthesis of less than 6 millimeters diameter. The comment stated that the change would reflect technological advances made in the medical device industry since the device was classified in 1980.

FDA disagrees with this comment. The identification for the vascular graft prosthesis of less than 6 millimeters in diameter excludes grafts made of materials of animal origin, including human umbilical cords. FDA notes that the biological vascular graft was designated as a transitional device and that it was regulated as a drug before the vascular graft prosthesis of less than 6 millimeters in diameter, a device made of synthetic material, was classified in 1980. FDA also notes that the identification of the vascular graft of less than 6 millimeters in diameter does not include instruments, tools, and other devices used to create vascular prostheses.

(Comment 2) This comment raised the following five issues:

1. The comment recommended combining the classification regulations of the class III vascular graft prosthesis of less than 6 millimeters diameter (§ 870.3450) and the class II vascular graft prosthesis of 6 millimeters and greater diameter (§ 870.3460) because separate regulations would no longer be necessary if the vascular graft prosthesis of less than 6 millimeters is reclassified into class II.

FDA agrees that it is appropriate to combine the classification regulations of the vascular graft prosthesis of less than 6 millimeters diameter and the vascular graft prosthesis of 6 millimeters and greater diameter into a single device classification. FDA notes that the special control guidance document for the vascular graft prosthesis of less than 6 millimeters diameter also applies to the vascular graft prosthesis of 6 millimeters and greater diameter.

2. The comment proposed that the reclassification apply to indications for use other than those explicitly excluded in the device identification.

FDA disagrees. The revised device identification accurately identifies the indications for use of the vascular graft prosthesis addressed by the special control guidance document.

3. The comment included minor editorial changes to the guidance document that clarify its meaning.

FDA agrees with the editorial changes.

4. The comment proposed to revise the guidance document to reflect the revised identification for the vascular graft.

FDA agrees that the scope of the guidance document should be consistent with the revised identification for the device and has revised the guidance document accordingly.

5. The comment recommended that vascular grafts of animal origin, and instruments, tools, and devices used to create vascular graft prostheses, should not be reclassified into class II.

As noted above, FDA is not reclassifying vascular grafts of animal origin in this final rule. The device identification does not include instruments, tools, and other devices used to create vascular graft prostheses; FDA is not reclassifying the devices used by physicians to create vascular grafts.

III. FDA's Conclusion

FDA has concluded, based on a review of the available information, that the special controls identified below provide reasonable assurance of the safety and effectiveness of these six devices. The numbers in parentheses are the Facts-on-Demand (FOD) numbers to access copies of the guidances identified as the special controls. FOD instructions follow the list of guidances.

- Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions (11/1/00) (FOD #372)
- Guidance Document for Vascular Prostheses 510(k) Submissions (11/1/00) (FOD #1357)
- Guidance for Annuloplasty Rings 510(k) Submissions (1/31/00) (FOD #1358)
- Guidance for Extracorporeal Blood Circuit Defoamer 510(k) Submissions (11/29/00) (FOD #1632)
- Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions (11/29/00) (FOD #1622)
- Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions (11/13/00) (FOD #1361)

To receive these guidance documents via your fax machine, call the Center for Devices and Radiological Health (CDRH) FOD system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system and enter the FOD number listed above followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of these guidance documents also may do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes these guidance documents, device safety alerts, **Federal Register** notices, and information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented issues. The CDRH home page may be accessed at http://www.fda.gov/cdrh. These guidance documents are also available at http://www.fda.gov/cdrh/ODE.

The proposed rule identified FDA's biocompatibility and sterility guidances as special controls for these six devices. Upon review, we have decided not to codify these guidances as special controls for these devices. Instead, we are now referencing the sterility and biocompatibility guidances within each of the device specific guidances. FDA had incorrectly listed the titles of these guidances and is correcting the references within the device specific guidances to read, ''Use of International Standard ISO–10993 'Biological Evaluation of Medical Devices Part I: Evaluation and Testing' '' (FOD #164) and ''510(k) Sterility Review Guidance (2/12/1990) (#K90–1)'' (FOD #361).

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this final rule 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.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies

to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Moreover, compliance with special controls proposed for these devices will not impose significant new costs on affected manufacturers because most of these devices already comply with the special controls. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

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

VII. Paperwork Reduction Act of 1995

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

List of Subjects

21 CFR Part 870

Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.3450 is revised to read as follows:

§ 870.3450 Vascular graft prosthesis.

(a) *Identification*. A vascular graft prosthesis is an implanted device intended to repair, replace, or bypass sections of native or artificial vessels, excluding coronary or cerebral vasculature, and to provide vascular access. It is commonly constructed of materials such as polyethylene terephthalate and polytetrafluoroethylene, and it may be coated with a biological coating, such as albumin or collagen, or a synthetic coating, such as silicone. The graft structure itself is not made of materials of animal origin, including human umbilical cords.

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Guidance Document for Vascular Prostheses 510(k) Submissions.''

§ 870.3460 [Removed]

3. Section 870.3460 *Vascular graft prosthesis of 6 millimeters and greater diameter* is removed.

4. Section 870.3620 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.3620 Pacemaker lead adaptor.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions.''

5. Section 870.3800 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.3800 Annuloplasty ring.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Guidance for Annuloplasty Rings 510(k) Submissions.''

6. Section 870.4230 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.4230 Cardiopulmonary bypass defoamer.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Guidance for Extracorporeal Blood Circuit Defoamer 510(k) Submissions.''

7. Section 870.4260 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.4260 Cardiopulmonary bypass arterial line blood filter.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions.''

8. Section 870.4350 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.4350 Cardiopulmonary bypass oxygenator.

* * * * *

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions.''

PART 886—OPHTHALMIC DEVICES

9. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

§ 886.3920 [Amended]

10. Section 886.3920 *Aqueous shunt* is amended in paragraph (a) by removing the word ''neurovascular'' and adding in its place the word ''neovascular''.

Dated: March 29, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–8829 Filed 4–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–448; Re: Notice No. 897]

RIN: 1512–AAO7

Red Mountain Viticultural Area (99R–367P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will establish a viticultural area within the State of Washington to be called ''Red Mountain.'' The new viticultural area is within Benton County and entirely within the existing Yakima Valley viticultural area as described in 27 CFR 9.69. This viticultural area is a result of a petition submitted by Mr. Lorne Jacobson of Hedges Cellars.

EFFECTIVE DATE: Effective June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, New York 14202–2301, (716) 551–4048.

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What is Required to Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Rulemaking Proceeding

Red Mountain Petition

Mr. Lorne Jacobson of Hedges Cellars petitioned ATF for the establishment of a viticultural area within the State of Washington to be known as ''Red Mountain.'' The viticultural area is entirely within the existing Yakima Valley viticultural area described in 27 CFR 9.69 and encompasses approximately 4,040 acres, of which approximately 600 acres are planted to vineyards.

Comments to Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking, Notice No. 897, was published in the **Federal Register** on May 19, 2000, requesting comments from all interested persons concerning the proposed viticultural area. ATF received nine letters of comment in response to this notice. A majority of these supported the adoption of the viticultural area as proposed.

Two dissenting letters of comment were received. One was from Evelyn Skelton, owner of Oakwood Cellars, a winery just outside the viticultural area boundaries. The other commenter, an area resident and self-described wine enthusiast, submitted comments nearly identical to those of Ms. Skelton.

In her comments, Ms. Skelton supported the creation of the Red Mountain viticultural area, but proposed amending the western boundary to include her vineyard and winery. Oakwood Cellars is immediately west of the proposed viticultural area, within 1,000 feet of the Yakima River, at an approximate elevation of 450–480 feet. Ms. Skelton argued that the use of the 560-foot elevation line as part of the boundary was arbitrary, and that soil and climate conditions at lower elevations are similar to those in the proposed area. She further argued that the evidence presented by the petitioner for this boundary was vague, and that scientific criteria should be used to determine the boundary. Ms. Skelton did not, however, submit any evidence to support her contention that the conditions on her property are similar to those in the viticultural area.

Response of the Petitioner

The petitioner, in counter comments, argued that the criteria used to determine the western boundary were not arbitrary, but based on scientific data. He maintained that Oakwood Cellars and other sites adjacent to the Yakima River have different soils and growing conditions than those on Red Mountain and should not be included in the viticultural area. Along with his comments, the petitioner submitted the following maps:

- Soil survey maps issued by the Soil Conservation Service, U.S. Department of Agriculture, in cooperation with the Washington Agricultural Experiment Station;
- Maps depicting flood hazard areas issued by the Federal Emergency Management Agency (FEMA); and
- A land use map issued by the Benton County Planning Department.

The petitioner noted that all these maps show a delineation between the land immediately adjacent to the Yakima River and the land within the viticultural area. The FEMA map, for example, designates the land adjacent to the river as a floodplain—the viticultural area, at a higher elevation, is not part of the floodplain. The land use map designates the area within the viticultural area as an agricultural district zone, while land adjacent to the river is part of a different zone.

The Soil Conservation Service maps, however, are the most detailed and best depict differences between the Oakwood Cellars site and Red Mountain. These maps clearly show that the soils in the Oakwood Cellars property belong to a different soil association than those in the Red Mountain viticultural area. Oakwood Cellar's property lies on soils within the Hezel-Quincy-Burbank association, with the predominant soil being Pasco silt loam. The Soil Conservation Service

describes Pasco silt loam as an alluvial, poorly draining, and very fertile soil. In contrast, Red Mountain's soils belong to the Warden-Shano association. Soils within this association are light and well draining. According to the petitioner, these soil qualities cause vine stress, which in turn results in a higher caliber of fruit.

The petitioner later filed additional comments proposing to enlarge the viticultural area by amending the southern boundary. Instead of using State Highway 224 as the southern boundary, the boundary would be moved south to a creekbed running along the southern edge of Red Mountain. This boundary change adds approximately 640 acres to the viticultural area. The petitioner gave three reasons for adding this parcel:

• First, the soils in the additional area are the same as those on the rest of Red Mountain. The Soil Conservation Service maps verify that the soils in the new area are also in the Warden-Shano soil association.

• Second, the new boundary—a creek bed—is a geographical feature, while the old boundary—a state highway—was not. Ideally, the petitioner noted, a viticultural area should be delineated by geographic, not man-made, features.

• Last, the new area encompasses land recently purchased by Evelyn Skelton of Oakwood Cellars, which, according to the petitioner, shares the distinctive characteristics of the rest of Red Mountain.

Conclusion

After careful analysis of the comments, ATF has concluded that the evidence supports retaining the original western boundary, and amending the southern boundary as proposed by the petitioner.

The evidence submitted by the petitioner, particularly the soil maps, strongly supports the petitioner's position that the land along the Yakima River does not share the same geographical characteristics as those that distinguish Red Mountain from the surrounding areas. While Ms. Skelton has stated that the soil on her Yakima River vineyard is the same as that on Red Mountain, she has offered no evidence to support this assertion. The evidence given by the petitioner, on the other hand, contradicts her position. The proposal to amend the southern boundary is, in contrast, well supported by the evidence. The Soil Conservation Service maps depict the additional land as having the same soils as the rest of Red Mountain, soils that are not found in the surrounding area.

The effect that these soils have on grape growing is acknowledged in the many wine articles submitted in the original petition. The article Touring the Washington Wine Country, by the Washington Wine Commission states, ''This site offers * * * light soils that encourage grapevines to seek nutrients via deep roots.'' The petitioner, through his accumulated evidence, has established that the soil in the Red Mountain area is a significant part of what distinguishes Red Mountain from the surrounding areas.

3. Evidence Submitted With Petition

What Name Evidence Was Provided?

The petitioner submitted as evidence of name recognition several newspaper and magazine articles referencing Red Mountain as a wine producing area. These publications include: The Seattle Post-Intelligencer; the Globe and Mail, (Toronto); Wine Access (Canada); Decanter (UK); and Wine (UK). Other sources cited by the petitioner as referring to the wines of Red Mountain include: Decanter Magazine Guide to Oregon, Washington State and Idaho (Third Edition, 1996); Touring the Washington Wine Country, published by the Washington Wine Commission (1997 edition); and Connoisseur's Guide to California (July 1997 edition).

Several of these references describe Red Mountain as having distinctive qualities that are conducive to grape growing. Examples include:

• Decanter Magazine Guide to Oregon, Washington State and Idaho (Third Edition, 1996): ''The Red Mountain region, at the confluence of the Columbia, Snake and Yakima rivers, is a relatively warm area, and vineyards on upper slopes, again with south facing aspects, are yielding superior wine. . . . Evidence is mounting to indicate that Red Mountain may be one of the genuine special vineyard sites.''

• Wine Access, November 1998: ''Although most of Eastern Washington's vineyards bask in a hot, dry climate, Klipsun [an area vineyard] sits between a gap in the Rattlesnake and Red Mountains in the lower Yakima Valley that is regularly blessed with slightly cooler air that filters through the gap from Canada. This, along with its stingy soils best described as sandy, silty loam, and silty loam over gravel, helps to explain the elegant, concentrated nature of the Klipsun fruit.''

• Touring the Washington Wine Country, by the Washington Wine Commission (1997 edition): ''Many of the award-winning Cabernet Sauvignons that emerged from Washington's first quarter-century of fine winemaking used a percentage of their fruit from the vineyards sloping down from Red Mountain toward the Yakima River just above Benton City near Richland. This site offers good air drainage and light soils that encourage grapevines to seek nutrients via deep roots. Irrigated vineyards allow the grape growers to control vine vigor and to ease the vines into dormancy before winter.''

What Boundary Evidence Was Provided?

The petitioner submitted as boundary evidence one U.S.G.S. map titled ''Benton City, Washington'' (1974) on which Red Mountain is prominently labeled. The proposed viticultural area starts on the ridgeline of Red Mountain and then sweeps down in a triangle toward the southwest, encompassing the southern slope of the mountain down to an elevation of 560 feet. There are currently 13 vineyards on Red Mountain, all on the southwestern slope and within the boundaries. The oldest of these vineyards was planted in 1975. According to the petitioner, these boundaries contain a grape growing area with a distinctive character based on soil, topography and climate.

What Evidence Relating to Geographical Features Has Been Provided?

The geographical and climatic features of Red Mountain distinguish it from the surrounding Yakima Valley viticultural area.

• *Soil:* The petitioner stated that Red Mountain's soil associations (landscapes with distinctive proportional patterns of soils) are unique in the Yakima Valley viticultural area. In support of this statement, the petitioner submitted soil survey maps issued by the U.S. Department of Agriculture's Soil Conservation Service for the Yakima County and Benton County areas. Using these maps, the petitioner compared the soil associations for Red Mountain and other grape growing areas in the Yakima Valley viticultural area.

According to the Benton County area soil survey maps, the dominant soil association of Red Mountain is Warden-Shano. A more specific analysis reveals that the following soils are present within the Warden-Shano association: Warden silt loam, Hezel loamy fine sand, Scooteney silt loam, and Kiona very stony silt loam. The petitioner compared this data with soil data for Gleed, Buena, and Sunnyside, other grape growing areas in Washington State within the Yakima Valley viticultural area. The soil associations of these areas are composed of Weirman-Ashue, Harwood-Gorst-Selah, Ritzville-

Starbuck, Cowiche-Roza, Warden Esquatzel, and Quincy-Hezel. Thus, argued the petitioner, Red Mountain has a soil association that sets it apart from the rest of the Yakima Valley viticultural area.

• *Climate:* According to the petitioner, temperatures on Red Mountain tend to be hotter during the growing season than those in other areas of the Yakima Valley viticultural area.

To support this contention, the petitioner submitted temperature data gathered from weather stations in the Washington Public Agriculture Weather System administered by Washington State University. He compared data from the weather stations of Benton City, Sunnyside, Buena, and Gleed, all located in the Yakima Valley viticultural area. The Benton City station is located on Red Mountain within the proposed viticultural area. A comparison of average annual air temperatures for the years 1995 through 1999 shows that the Benton City station consistently had the warmest temperatures. The average temperature difference between Benton City and Gleed, the coolest site, ranged from 3.92 to 5.61 degrees.

The petitioner stated that the difference of only a few degrees over the course of a growing season can produce dramatic results on the enological characteristics of wine. He further stated that Red Mountain is typically the first grape growing area in Washington State to harvest grapes because of its warmer temperatures. According to the petitioner, the warmer temperatures also help to produce fully mature, ripe grapes with exceptional balance that differ substantially in quality from those of other growing areas in the state.

• *Topography:* Existing vineyards in the viticultural area lie on the southwest-facing slope of Red Mountain. Elevation ranges of these vineyards are from approximately 600 to 1,000 feet. The petitioner noted that there is an immense gap separating the northwest end of Red Mountain from the southeast extremity of nearby Rattlesnake Ridge. He stated that cooler, continental air masses flow south from Canada through this gap. In addition, the Yakima River flows north around Red Mountain before joining the Columbia River, creating an air drainage system. The petitioner further stated that these characteristics, along with the predominantly southwest facing slope of Red Mountain, serve to flush the warm daytime air off the face of Red Mountain and replace it with a cooler air mass. According to the petitioner, the resulting growing environment yields grapes that are both high in sugar (due to warmer daytime temperatures) and high in acid (due to lower evening temperatures).

4. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because no requirement to collect information is imposed.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

These regulations will not have a significant economic impact on a substantial number of small entities. ATF does not wish to give the impression that by approving the Red Mountain viticultural area it is endorsing wine produced in the area. ATF is approving the area as being viticulturally distinct from surrounding areas, not better than other areas. The establishment of the Red Mountain viticultural area merely allows its wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

Accordingly, a regulatory flexibility analysis is not required. The final rule is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

5. Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.167 to read as follows:

§ 9.167 Red Mountain

(a) *Name.* The name of the viticultural area described in this section is ''Red Mountain.''

(b) *Approved Maps.* The appropriate map for determining the boundaries of the Red Mountain viticultural area is one U.S.G.S. map titled ''Benton City, Washington'' 7.5 minute series (topographic), (1974).

(c) *Boundaries.* The Red Mountain viticultural area is located within Benton County, Washington, entirely within the existing Yakima Valley viticultural area. The boundaries are as follows:

(1) The northwest boundary beginning on this map at the intersection of the 560-foot elevation level and the aqueduct found northwest of the center of section 32.

(2) Then following the aqueduct east to its endpoint at an elevation of approximately 650-feet, again in section 32.

(3) From this point in a straight line southeast to the 1173-foot peak, located southeast of the center of section 32.

(4) From this peak southeast in a straight line across the lower southwest corner of section 33 to the 1253-foot peak located due north of the center of section 4.

(5) Then in a straight line southeast to the 1410-foot peak located in the southwest corner of section 3.

(6) From this peak in a straight line southeast to the border of sections 10 and 11 where the power line crosses these two sections. This intersection is northeast of the center of section 10 and northwest of the center of section 11.

(7) From this point in a straight line south following the border of sections 10 and 11 to the corner of sections 10,11,15, and 14. This point has an elevation of 684 feet.

(8) From this point southwest in a diagonal to the 700-foot elevation line and then following this 700-foot elevation through Section 15 and into section 16.

(9) Then following the 700-foot elevation line southwest ¼ mile in a southwest diagonal until it meets the creek bed.

(10) Following the creek bed southwest through section 16, across the extreme southeast corner of section 17 and into the northeast corner of section 20 to a point

where the creek bed meets the 560-foot elevation point.

(11) From this 560-foot elevation point, running north along this elevation line through section 17, through section 8, through section 5 and through section 32 until meeting the beginning point at the aqueduct in section 32.

Signed: March 6, 2001.

Bradley A. Buckles,

Director.

Approved: March 15, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–8795 Filed 4–9–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–01–034]

RIN 2115–AE46

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

DATES: The regulations in 33 CFR 100.101 are effective on June 3, 2001, and June 4, 2001, from 2:30 p.m. to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Chief William M. Anderson, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION: These regulations will be effective from 2:30 p.m. until 8 p.m. on June 3, 2001. If the event is cancelled due to inclement weather, then these regulations will be effective from 2:30 p.m. until 8 p.m. on June 4, 2001.

This notice implements the permanent special local regulation governing the 2001 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central drawbridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: March 21, 2001.

G.N. Naccara,

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

[FR Doc. 01–8762 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–037]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Brightman Street Bridge, at mile 1.8, across the Taunton River between Somerset and Fall River, Massachusetts. This deviation allows the bridge owner to keep the bridge in the closed position from 9 p.m. on May 4, 2001 through 4 p.m. on May 11, 2001. This action is necessary to facilitate necessary maintenance at the bridge.

DATES: This deviation is effective from May 4, 2001 through May 11, 2001.

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

SUPPLEMENTARY INFORMATION: The Brightman Street Bridge, at mile 1.8, across the Taunton River, has a vertical clearance of 27 feet at mean high water, and 31 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.619.

The bridge owner, the Massachusetts Highway Department (MHD), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural maintenance and repairs at the bridge.

This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 9 p.m. on May 4, 2001 through 4 p.m. on May 11, 2001. The upstream waterway facilities were contacted by the Coast Guard regarding this closure and no objections were received. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 2, 2001.

Gerald M. Davis,

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

[FR Doc. 01–8763 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–6965–4]

RIN 2060–AE56

Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action to amend the emissions monitoring and compliance provisions contained in Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, and Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. This action adds monitoring exemptions and alternative compliance requirements for duct burners, as well as amendments to correct errors in subparts Da and Db. We are adopting these amendments to ensure that all owners or operators of duct burners have similar compliance requirements and exemptions for their monitoring requirements.

DATES: This direct final rule will be effective on June 11, 2001 without further notice, unless significant adverse comments are received by May 10, 2001. If adverse comment is received EPA will publish a timely withdrawal informing the public the rule will not take effect.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–71, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, SW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–71, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5426, facsimile: (919) 541–5450, electronic mail address: eddinger.jim@epa.gov. For information regarding the applicability of this action to a particular entity, contact the appropriate EPA Regional Office representative.

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this direct final rule without prior proposal because we view this as noncontroversial amendments and do not anticipate adverse comments. The amendments to the compliance and monitoring requirements for duct burners provide reasonable methods to owners or operators of duct burners to comply with the revised new source performance standards (NSPS) for nitrogen oxides (NO_X) emissions. We consider the revised requirements consistent with the intent of the previously promulgated revised NO_X NSPS. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of information compiled by EPA in development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A–92–71, which supported the proposal and promulgation of the revised NO_X NSPS for boilers. *World Wide Web (WWW).* In addition to being available in the docket, electronic copies of today's actions will be posted on the Technology Transfer Network's (TTN) policy and guidance information page http://www/epa/gov/ttn/caaa. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities that potentially will be affected by these amendments are combined cycle systems employing duct burners. The regulated categories and entities include the following:

Category	Regulated entities
Industry	Electric utility steam generating units, industrial steam generating units, commercial steam generating units, and institutional steam generating units.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 60.40a and 60.40b of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit June 11, 2001. Under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised during judicial review.

Organization of This Document.

The following outline is provided to aid in locating information presented in this preamble.

I. Background
- A. Why is EPA amending the NSPS for utility boilers and industrial boilers?
- B. What is the purpose of this direct final rule?
- C. Does this direct final rule apply to me?

II. New Requirements for Duct Burners
- A. How do I know if my unit is a duct burner?
- B. What changes impact my duct burner?

III. Other Changes
- A. What wording change is EPA making that applies to my utility boiler?
- B. What changes are being made in definitions?

IV. What Are the Impacts Associated With the Corrections?

V. Administrative Requirements
- A. Executive Order 12866: Regulatory Planning and Review
- B. Executive Order 13132: Federalism
- C. Executive Order 13185: Consultation and Coordination with Indian Tribal Governments
- D. Executive Order 13045: Protection of Children From Environmental Health Risk and Safety Risks
- E. Unfunded Mandates Reform Act of 1995
- F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
- G. Paperwork Reduction Act
- H. National Technology Transfer and Advancement Act
- I. Congressional Review Act

I. Background

A. Why is EPA Amending the NSPS for Utility Boilers and Industrial Boilers?

On September 16, 1998 (63 FR 49442), we promulgated the revised NO_X NSPS for boilers, which reduce the numerical NO_X emissions limits for both new utility boilers and new industrial boilers to reflect the performance of best demonstrated technology (see 40 CFR part 60, subparts Da and Db). The revisions also change the format of the NO_X emission limit for new electric utility steam generating units to an output-based format.

The revised NO_X NSPS for boilers include an exemption for combined cycle gas turbine systems that would apply when the applicability of 40 CFR part 60, Subpart GG—Standards of Performance for Stationary Gas Turbines, is extended to include duct

burners of combined cycle systems. We added that exemption at promulgation based on comments we received at proposal that the NO_X emissions from the upstream device (i.e., combustion turbine) cannot be separated from the duct burner's NO_X emissions when add-on control (i.e., selective catalytic reduction) is used.

At the time of promulgation, we considered an ongoing rulemaking extending the applicability of subpart GG to duct burners, which are currently covered by 40 CFR part 60, subpart Da. However, since that time, we have decided not to revise subpart GG. Therefore, to address concerns that have been raised during and since promulgation of the revised NO_X NSPS for boilers and due to some inadvertent errors relating to duct burners, today's action consists of amendments and editorial and clarifying corrections to subparts Da and Db.

When subpart Db was originally promulgated on November 25, 1986 (51 FR 42768), we were aware of the concerns and difficulties relating to the monitoring and compliance testing of NO_X emissions from duct burners used in combined cycle systems. Duct burners contribute only a portion of the NO_X emissions emitted from the heat recovery steam generator (HRSG) unit. The remaining portion is attributed to the combustion turbine which is regulated under subpart GG. Under subpart Db, we exempt duct burners from the requirement for continuous emissions monitoring (§ 60.48b(h)), and we add procedures for conducting performance tests to determine compliance (§ 60.46b(f)).

However, we did not include a monitoring exemption for duct burners in subpart Da when it was originally promulgated on June 11, 1979 (44 FR 33613). At that time, we were not aware of duct burners that met the applicability criteria (i.e., heat input greater than 250 million British Thermal Units (Btu) per hour), and no one raised that issue during the comment period. Since promulgation of the revised NO_X NSPS for boilers, we have become aware of the construction of utility-size duct burners and the difficulties relating to implementing the monitoring requirements in subpart Da.

B. What Is the Purpose of This Direct Final Rule?

This direct final rule will: (1) Extend the already existing monitoring exemption in subpart Db for duct burners to include those duct burners that become subject to the revised NO_X NSPS for boilers, (2) amend subpart Da to include the same monitoring exemption specified in subpart Db, (3) promulgate an alternative compliance determination procedure for both subparts Da and Db that owners and operators can elect for affected duct burners used in combined cycle systems, and (4) clarify the intent and correct inadvertent omissions and minor drafting errors in the revised NO_X NSPS for boilers.

C. Does This Direct Final Rule Apply to me?

The changes contained in today's direct final rule apply to you if you are the owner or operator of a duct burner used in a combined cycle system which meets the applicability criteria of either subpart Da or Db. A combined cycle system consists of a gas turbine, or internal combustion engine, kiln, etc., to which a HRSG unit is added to produce steam that is then used to produce electricity or used in an industrial process.

II. New Requirements for Duct Burners

A. How Do I Know if My Unit is a Duct Burner?

A duct burner is a device that combusts fuel and is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a HRSG unit.

B. What Changes Impact My Duct Burner?

As owners and operators of affected industrial duct burners subject to the revised NO_X NSPS for boilers, you will not be required to install and operate a continuous emissions monitoring system (CEMS) for NO_X emissions. The amendments include an exemption from continuous monitoring of NO_X emissions, exhaust flow rates and gross energy outputs, and an alternative procedure for determining compliance. The monitoring exemption and alternative procedure for determining compliance using a CEMS are the same as those specified for industrial duct burners. The changes will enable you to comply with all of the requirements of the revised NO_X NSPS for utility boilers. The amendments account for the inherent differences between duct burners used in combined cycle systems and conventional utility boilers.

The following are the amendments to the rules that apply only to duct burners.

1. Exemption on Monitoring for NO_X Emissions

When subpart Db was promulgated on November 25, 1986 (51 FR 42768), we included an exemption (§ 60.48b(h)) from the requirement for owners and operators of affected duct burners to install and operate a CEMS to measure NO_X emissions. When we revised the NO_X NSPS on September 16, 1998, we inadvertently did not revise the wording of the exemption. The actual wording of the exemption is:

> The owner or operator of an affected facility which is subject to the NO_X standards of § 60.44b(a)(4) is not required to install or operate a continuous monitoring system to measure nitrogen oxides emissions.

Section 60.44b(a)(4) provides the original NO_X limit for duct burners which is now applicable only to duct burners constructed ''prior'' to July 9, 1997. The revised § 60.44b(l) is applicable to duct burners constructed ''after'' July 9, 1997.

Today's amendments clarify that all duct burners subject to subpart Db are exempted from the requirement to monitor continuously for NO_X emissions.

2. Alternatives to the Performance Test Method and Compliance Procedure

Since you are exempt from the monitoring requirements under subpart Db, you are required to demonstrate compliance by determining the incremental increase of NO_X emissions from the HRSG unit that is attributable to your duct burner. You are required to conduct a performance test to measure NO_X emissions simultaneously at the gas turbine exhaust prior to the duct burner and at the HRSG unit outlet. You then calculate the NO_X emissions rate from the duct burner by subtracting the NO_X emissions rate measured at the gas turbine exhaust location from the NO_X emission rate measured at the HRSG unit outlet. Using that procedure, you determine compliance with the NO_X emissions limits on a three-run average (nominal 1–hour run) basis. The current standards cite Method 20. In these amendments, we are providing an alternative procedure citing Methods 7E, 3A, and 3B as the reference methods.

These amendments will also allow you to use a less complex option for determining compliance with subpart Db. Under this alternative, you may elect to determine compliance continuously by installing, operating, and reporting the measurements from a CEMS located at the outlet from the HRSG unit, with the NO_X emissions rate measured at the outlet from the HRSG

unit constituting the NO_X emissions rate from the duct burner. If you select this alternative, compliance with the NO_X emissions limit is determined on a 30-day rolling average basis, which is the same requirement that is in effect for conventional industrial boilers.

We are aware that this alternative procedure for determining compliance (for both industrial and utility duct burners) may have the potential to produce erroneous compliance determinations. If the emission rate from the combustion turbine is low, this alternative will grossly underestimate the emission rate for the duct burners when the combined emissions are near the NSPS limit. That is, the actual NO_X emissions attributable to the duct burner could be higher than the allowable, if we measured the duct burner's emissions alone.

There are several reasons for allowing this less complex alternative. As stated in the preamble for the revised NO_X NSPS (62 FR 36954), we have established pollution prevention as one of our highest priorities. One of the opportunities for pollution prevention lies in using energy efficient technologies to minimize the generation of emissions. We want to encourage cogeneration since we recognize that cogeneration increases the efficiency of power generation. We also want to encourage the use of combined cycle systems since the principal fuel used is natural gas. The clean fuel approach also fits well with pollution prevention. Because natural gas is essentially free of sulfur and nitrogen and without the inorganic matter typically present in coal and oil, emissions of sulfur dioxide (SO2), NO_X, particulate matter, and air toxic compounds can be dramatically reduced. Another advantage of allowing this alternative is that compliance would be determined on a continuous basis.

3. Monitoring Requirements and Compliance Provisions

In the NSPS for utility boilers, we are adding, for affected duct burners, an exemption from the NO_X monitoring requirements. We are also adding a compliance determination provision that explains how utility duct burners are to demonstrate compliance with the output-based NO_X standard on a three 1-hour run average basis, and an optional compliance procedure using a CEMS on a 30-day rolling average basis. As indicated in the proposal preamble for the revised NO_X NSPS for boilers, these revisions will not increase the overall burden on sources to demonstrate compliance with the standards and will not require any new monitoring that is not already required by some other program (e.g., the Acid Rain program). In addition, we stated that we would continue to explore additional ways to provide monitoring relief that will not compromise the ability of EPA to enforce Federal standards adequately.

Since promulgation of the revised NO_X NSPS for boilers, we have become aware of concerns regarding how gross energy output from a duct burner would actually be measured and monitored, and how the NO_X emissions attributable to duct burners can be continuously monitored. Today's amendments clarify that monitoring of gross energy output and the exhaust volumetric flow rate is exempt for duct burners used in utility-size combined cycle systems. The amendments also add a provision, available for utility boilers (as well as duct burners under the optional CEMS provision described above), for using fuel flowmeters specified in appendix D of 40 CFR part 75 in lieu of exhaust gas volumetric flow monitors for determining the mass rate of NO_X emissions. We are also adding a clarification that data collected from appendix D of 40 CFR part 75 certified NO_X CEMS may be used in lieu of data from a NO_X CEMS specified under subpart Da.

Besides the two compliance determination procedures being added to subpart Da, the general provisions (subpart A of 40 CFR part 60) allow a source owner or operator to petition the Administrator for approval of alternative monitoring or performance testing procedures or requirements.

III. Other Changes

We identified minor drafting errors and inadvertent omissions after promulgation of the revised NO_X NSPS for boilers. In § 60.47a(l), we are deleting the comma after ''shall.'' Today's action also makes the following corrections.

A. What wording change is EPA making that applies to my utility boiler?

One of the corrections we are making is in the wording. We made an error in § 60.47a(k) that could be confusing in the compliance determination procedures. At promulgation, § 60.47a(k) erroneously stated that the procedures specified were for determining gross heat rate. We should have stated that they were the procedures for determining gross energy output. We have corrected that error by replacing the words ''heat rate'' with ''energy output.''

B. What changes are being made in the definitions?

We are adding to subpart Da the definition of ''duct burner.'' Subpart Da applies to steam generating units which are defined as ''* * * any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam * * *.'' Thus, duct burners which supply supplemental heat input to the steam generating unit (i.e., heat recovery steam generator) are covered by the NSPS if the heat input due to the duct burner is greater than 250 million Btu per hour and supply more than 25 megawatt electrical output to any utility power distribution system for sale. The definition of ''duct burner'' is needed since we are adding a monitoring exemption and compliance procedures which are specific to duct burners.

We are also revising the definition in subpart Da for ''boiler operating day'' to be consistent with the definition in subpart Db for ''steam generating unit operating day.'' Subpart Da applies to both based-loaded and peaking units. The current definition in subpart Da requires that fuel be combusted for the entire 24 hours to be considered an ''operating day.'' Peaking units, such as some combined cycle units, may only operate for a short period of time each day and, thus, have difficulty in determining a 30-day rolling average since it is based on the preceding 30 boiler operating days. That concern was addressed in the definition of ''steam generating unit operating day'' currently in subpart Db, which states that it is not necessary for fuel to be combusted continuously for the entire 24-hour period. The revised definition of ''boiler operating day'' is needed since some of the combined cycle units using duct burners may be peaking units.

IV. What are the impacts associated with the corrections?

The changes contained in this direct final rule are corrections, clarifications, and equivalent compliance alternatives that do not change the intended coverage of the revised NO_X NSPS for NSPS boilers. The changes will not affect the estimated emissions reductions or the control costs for these rules. The clarifications and corrections should make it easier for owners and operators of duct burners and for local and State authorities to understand and implement the requirements in subparts Da and Db. The alternative compliance procedures will make it possible for some owners and operators of boilers (including duct burners) to comply with performance test and monitoring

requirements using CEMS installed, certified, and maintained to meet other regulatory requirements and, thus, save costs.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this direct final rule does not qualify as a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. The EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, the EPA addressed tribal considerations under Executive Order 13084. Under Executive Order 13084, the 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 cost 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 direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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 EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not

apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's direct final rule amendments is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This direct final rule is not subject to notice and comment requirements under the APA or any other statute.

Today's direct final rule amendments will have no significant impact on a substantial number of small entities because they clarify and make corrections to the promulgated 40 CFR part 60, subparts Da and Db, and do not impose any additional regulatory requirements on owners or operators of affected sources regulated by standards promulgated on September 16, 1998 (63 FR 49442).

G. Paperwork Reduction Act

The Office of Management and Budget had previously approved the information collection requirements contained in subparts Da and Db under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were originally promulgated and had assigned OMB control numbers 2060–0023, for 40 CFR 60.40a, and 2060–0072, for 40 CFR 60.40b.

The amendments contained in this direct final rule result in no changes to the information collection requirements of the current NSPS and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the original development of the NSPS. Therefore, the information collection requests have not been revised.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 40 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

These direct final rule amendments do not involve technical standards. The EPA's compliance with the NTTAA has been addressed in the preamble of the underlying rule (63 FR 49442, September 16, 1998).

I. Congressional Review Act

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 direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Electric utility steam generating units, Industrial-commercial-institutional steam generating units, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 3, 2001.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart Da—[Amended]

2. Section 60.41a is amended by placing the existing definitions in alphabetical order, adding a definition for ''Duct burner'' in alphabetical order, and revising the definition for ''Boiler operating day'' to read as follows:

§ 60.41a Definitions.

* * * * *

Boiler operating day means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

* * * * *

Duct burner means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

* * * * *

3. Section 60.44a is amended by revising paragraphs (a) introductory text and (d)(1) to read as follows:

§ 60.44a Standard for nitrogen oxides.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility, except as provided under paragraphs (b) and (d) of this section, any gases which contain nitrogen oxides (expressed as NO_2) in excess of the following emission limits, based on a 30-day rolling average, except as provided under § 60.46a(j)(1):

* * * * *

(d)(1) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no new source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction commenced after July 9, 1997 any gases which contain nitrogen oxides (expressed as NO_2) in excess of 200 nanograms per joule (1.6 pounds per megawatt-hour) gross energy output, based on a 30-day rolling average, except as provided under § 60.46a(k)(1).

* * * * *

4. Section 60.46a is amended by revising paragraph (i) and adding paragraphs (j) and (k) to read as follows:

§ 60.46a Compliance provisions.

* * * * *

(i) *Compliance provisions for sources subject to § 60.44a(d)(1).* The owner or operator of an affected facility subject to § 60.44a(d)(1) (new source constructed after July 7, 1997) shall calculate NO_X emissions by multiplying the average hourly NO_X output concentration, measured according to the provisions of § 60.47a(c), by the average hourly flow rate, measured according to the provisions of § 60.47a(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.47a(k).

(j) *Compliance provisions for duct burners subject to § 60.44a(a)(1).* To determine compliance with the emissions limits for NO_X required by § 60.44a(a) for duct burners used in combined cycle systems, either of the procedures described in paragraph (j)(1) or (2) of this section may be used:

(1) The owner or operator of an affected duct burner shall conduct the performance test required under § 60.8 using the appropriate methods in appendix A of this part. Compliance with the emissions limits under § 60.44a(a)(1) is determined on the average of three (nominal 1-hour) runs for the initial and subsequent performance tests. During the performance test, one sampling site shall be located in the exhaust of the turbine prior to the duct burner. A second sampling site shall be located at the outlet from the heat recovery steam generating unit. Measurements shall be taken at both sampling sites during the performance test; or

(2) The owner or operator of an affected duct burner may elect to determine compliance by using the continuous emission monitoring system specified under § 60.47a for measuring NO_X and oxygen and meet the requirements of § 60.47a. Data from a CEMS certified (or recertified) according to the provisions of 40 CFR 75.20, meeting the QA and QC requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23 may be used. This includes data substituted according to 40 CFR 75.21(i) for invalid data and 40 CFR 75.30 for missing data or data adjusted for negative bias as required by 40 CFR 75.23(d). The sampling site shall be located at the outlet from the steam generating unit. The NO_X emission rate at the outlet from the steam generating unit shall constitute the NO_X emission rate from the duct burner of the combined cycle system.

(k) *Compliance provisions for duct burners subject to § 60.44a(d)(1).* To determine compliance with the emissions limits for NO_X required by § 60.44a(d)(1) for duct burners used in combined cycle systems, either of the procedures described in paragraphs (k)(1) and (2) of this section may be used:

(1) The owner or operator of an affected duct burner used in combined cycle systems shall determine compliance with the NO_X standard in § 60.44a(d)(1) as follows:

(i) The emission rate (E) of NO_X shall be computed using Equation 1 of this section:

$$E = [(Csg \times Qsg) - (Cte \times Qte)]/(Osg \times h) \quad \text{(Eq. 1)}$$

Where:

E = emission rate of NO_X from the duct burner, ng/J (lb/Mwh) gross output

Csg = average hourly concentration of NO_X exiting the steam generating unit, ng/dscm (lb/dscf)

Cte = average hourly concentration of NO_X in the turbine exhaust upstream from duct burner, ng/dscm (lb/dscf)

Qsg = average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr)

Qte = average hourly volumetric flow rate of exhaust gas from combustion turbine, dscm/hr (dscf/hr)

Osg = average hourly gross energy output from steam generating unit, J (Mwh)

h = average hourly fraction of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner

(ii) Method 7E of appendix A of this part shall be used to determine the NO_X concentrations (Csg and Cte). Method 2, 2F or 2G of appendix A of this part, as appropriate, shall be used to determine the volumetric flow rates (Qsg and Qte) of the exhaust gases. The volumetric flow rate measurements shall be taken at the same time as the concentration measurements.

(iii) The owner or operator shall develop, demonstrate, and provide information satisfactory to the Administrator to determine the average hourly gross energy output from the steam generating unit, and the average hourly percentage of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner.

(iv) Compliance with the emissions limits under § 60.44a (d)(1) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests.

(2) The owner or operator of an affected duct burner used in a combined cycle system may elect to determine compliance with the NO_X standard in § 60.44a(d)(1) on a 30-day rolling average basis as indicated in paragraphs (k)(2)(i) through (iv) of this section.

(i) The emission rate (E) of NO_X shall be computed using Equation 2 of this section:

$$E = (Csg \times Qsd) / Occ \quad \text{(Eq. 2)}$$

Where:

E = emission rate of NO_X from the duct burner, ng/J (lb/Mwh) gross output

Csg = average hourly concentration of NO_X exiting the steam generating unit, ng/dscm (lb/dscf)

Qsg = average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr)

Occ = average hourly gross energy output from entire combined cycle unit, J (Mwh)

(ii) The continuous emissions monitoring system specified under § 60.47a for measuring NO_X and oxygen shall be used to determine the average hourly NO_X concentrations (Csg). The continuous flow monitoring system specified in § 60.47a(l) shall be used to determine the volumetric flow rate (Qsg) of the exhaust gas. The sampling site shall be located at the outlet from the steam generating unit. Data from a continuous flow monitoring system certified (or recertified) following procedures specified in 40 CFR 75.20, meeting the quality assurance and quality control requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23 may be used.

(iii) The continuous monitoring system specified under § 60.47a(k) for

measuring and determining gross energy output shall be used to determine the average hourly gross energy output from the entire combined cycle unit (Occ), which is the combined output from the combustion turbine and the steam generating unit.

(iv) The owner or operator may, in lieu of installing, operating, and recording data from the continuous flow monitoring system specified in § 60.47a(l), determine the mass rate (lb/hr) of NO_X emissions by installing, operating, and maintaining continuous fuel flowmeters following the appropriate measurements procedures specified in appendix D of 40 CFR part 75. If this compliance option is selected, the emission rate (E) of NO_X shall be computed using Equation 3 of this section:

$$E = (ERsg \times Hcc) / Occ \quad \text{(Eq. 3)}$$

Where:

E = emission rate of NO_X from the duct burner, ng/J (lb/Mwh) gross output

ERsg = average hourly emission rate of NO_X exiting the steam generating unit heat input calculated using appropriate F-factor as described in Method 19, ng/J (lb/million Btu)

Hcc = average hourly heat input rate of entire combined cycle unit, J/hr (million Btu/hr)

Occ = average hourly gross energy output from entire combined cycle unit, J (Mwh)

(3) When an affected duct burner steam generating unit utilizes a common steam turbine with one or more affected duct burner steam generating units, the owner or operator shall either:

(i) Determine compliance with the applicable NO_X emissions limits by measuring the emissions combined with the emissions from the other unit(s) utilizing the common steam turbine; or

(ii) Develop, demonstrate, and provide information satisfactory to the Administrator on methods for apportioning the combined gross energy output from the steam turbine for each of the affected duct burners. The Administrator may approve such demonstrated substitute methods for apportioning the combined gross energy output measured at the steam turbine whenever the demonstration ensures accurate estimation of emissions regulated under this part.

5. Section 60.47a is amended by:

a. Revising paragraph (k) introdutory text;

b. Revising paragraph (l);

c. Adding paragraphs (m), (n) and (o).

The revisions and additions read as follows:

§ 60.47a Emission monitoring.

* * * * *

(k) The procedures specified in paragraphs (k)(1) through (3) of this section shall be used to determine gross output for sources demonstrating compliance with the output-based standard under § 60.44a(d)(1). * * *

(l) The owner or operator of an affected facility demonstrating compliance with the output-based standard under § 60.44a(d)(1) shall install, certify, operate, and maintain a continuous flow monitoring system meeting the requirements of Performance Specification 6 of appendix B and procedure 1 of appendix F of this subpart, and record the output of the system, for measuring the flow of exhaust gases discharged to the atmosphere; or

(m) Alternatively, data from a continuous flow monitoring system certified according to the requirements of 40 CFR 75.20, meeting the applicable quality control and quality assurance requirements of 40 CFR 75.21, and validated according to 40 CFR 75.23, may be used.

(n) Gas-fired and oil-fired units. The owner or operator of an affected unit that qualifies as a gas-fired or oil-fired unit, as defined in 40 CFR 72.2, may use, as an alternative to the requirements specified in either paragraph (l) or (m) of this section, a fuel flow monitoring system certified and operated according to the requirements of appendix D of 40 CFR part 75.

(o) The owner or operator of a duct burner, as described in § 60.41a, which is subject to the NO_X standards of § 60.44a(a)(1) or (d)(1) is not required to install or operate a continuous emissions monitoring system to measure NO_X emissions; a wattmeter to measure gross electrical output; meters to measure steam flow, temperature, and pressure; and a continuous flow monitoring system to measure the flow of exhaust gases discharged to the atmosphere.

Subpart Db—[Amended]

6. Section 60.46b is amended by revising paragraph (f) to read as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(f) To determine compliance with the emissions limits for NO_X required by § 60.44b(a)(4) or § 60.44b(l) for duct burners used in combined cycle systems, either of the procedures described in paragraph (f)(1) or (2) of this section may be used:

(1) The owner or operator of an affected facility shall conduct the performance test required under § 60.8 as follows:

(i) The emissions rate (E) of NO_X shall be computed using Equation of 1 this section:

$$E = Esg + (Hg / Hb)(Esg - Eg) \quad \text{(Eq. 1)}$$

Where:

E = emissions rate of NO_X from the duct burner, ng/J (lb/million Btu) heat input

Esg = combined effluent emissions rate, in ng/J (lb/million Btu) heat input using appropriate F-Factor as described in Method 19

Hg = heat input rate to the combustion turbine, in Joules/hour (million Btu/hour)

Hb = heat input rate to the duct burner, in Joules/hour (million Btu/hour)

Eg = emissions rate from the combustion turbine, in ng/J (lb/million Btu) heat input calculated using appropriate F-Factor as described in Method 19

(ii) Method 7E of appendix A of this part shall be used to determine the NO_X concentrations. Method 3A or 3B of appendix A of this part shall be used to determine oxygen concentration.

(iii) The owner or operator shall identify and demonstrate to the Administrator's satisfaction suitable methods to determine the average hourly heat input rate to the combustion turbine and the average hourly heat input rate to the affected duct burner.

(iv) Compliance with the emissions limits under § 60.44b (a)(4) or § 60.44b(l) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests; or

(2) The owner or operator of an affected facility may elect to determine compliance on a 30-day rolling average basis by using the continuous emission monitoring system specified under § 60.48b for measuring NO_X and oxygen and meet the requirements of § 60.48b. The sampling site shall be located at the outlet from the steam generating unit. The NO_X emissions rate at the outlet from the steam generating unit shall constitute the NO_X emissions rate from the duct burner of the combined cycle system.

* * * * *

7. Section 60.48b is amended by revising paragraph (h) to read as follows:

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

* * * * *

(h) The owner or operator of a duct burner, as described in § 60.41b, which is subject to the NO_X standards of § 60.44b(a)(4) or § 60.44b(l) is not required to install or operate a continuous emissions monitoring system to measure NO_X emissions.

* * * * *

[FR Doc. 01–8798 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301114; FRL–6777–6]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of imidacloprid in or on edible podded beans, succulent shelled beans, turnip greens, cilantro, sweet corn, field corn, leaf petiole vegetable subgroup, and the citrus fruits group. The Interregional Research Project Number 4 (IR-4) and the Bayer Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 10, 2001. Objections and requests for hearings, identified by docket control number OPP–301114, must be received by EPA on or before June 11, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301114 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301114. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 5, 2000 (65 FR 41455) (FRL–6590–6), and February 11, 2000 (65 FR 7008) (FRL–6487–9) EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP) for tolerances by IR-4, Technology Centre of New Jersey, 681 US Highway #1 South, North Brunswick, NJ 08902–3390, and Bayer Corporation, 8400 Hawthorn Road, POB 4913, Kansas City, MO 64120–0013. These notices included summaries of these petitions prepared by Bayer Corporation, the registrant. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.472 be amended by establishing tolerances for combined residues of the insecticide imidacloprid, [(1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, in or on the following commodities:

1. PP 0E6101 proposes the establishment of a tolerance for edible podded beans at 1.0 part per million (ppm).

2. PP 0E6104 proposes the establishment of a tolerance for succulent shelled beans at 1.0 ppm.

3. PP 0E6156 proposes the establishment of a tolerance for turnip greens at 3.5 ppm.

4. PP 9E6041 proposes the establishment of a tolerance for cilantro at 3.5 ppm.

5.PP 0E6106 proposes the establishment of tolerances for sweet corn grain at 0.05 ppm, sweet corn forage at 0.10 ppm, and sweet corn stover at 0.20 ppm.

6. PP 6F4682 proposes the establishment of tolerances for field corn grain at 0.05 ppm, field corn forage at 0.10 ppm, and field corn fodder at 0.20 ppm.

7. PP 8F4940 proposes the establishment of tolerances for leaf petiole vegetable subgroup at 6.0 ppm, citrus fruits group at 0.7 ppm, and citrus dried pulp at 5.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to

mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of imidacloprid on edible podded beans at 1.0 ppm, succulent shelled beans at 1.0 ppm, turnip greens at 3.5 ppm, cilantro at 3.5 ppm, sweet corn grain at 0.05 ppm, sweet corn forage at 0.10 ppm, sweet corn fodder at 0.20 ppm, field corn grain at 0.05 ppm, field corn forage at 0.10 ppm, field corn fodder at 0.20 ppm, leaf petiole vegetable subgroup at 6.0 ppm, citrus fruits group at 0.7 ppm, and citrus dried pulp at 5.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid are discussed in Unit II. A. in the **Federal Register** of March 25, 1998 (FRL–5776–5).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10x to account for interspecies differences and 10x for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10x to account for interspecies differences and 10x for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for imidacloprid used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary general population including infants and children	(NOAEL was not established) LOAEL = 42 mg/kg/day UF = 100 Acute RfD = 0.42 mg/kg/day	FQPA SF = 3X aPAD = acute RfD FQPA SF = 0.14 mg/kg/day	Acute RfD = 0.42 mg/kg bwt/day LOAEL = 42 mg/kg bwt/day based on decreased motor activity in female rats; additional 3x FQPA factor for all population subgroups to account for neurotoxicity, structure-activity concerns and lack of a NOAEL. aPAD = RfD /3 = 0.14 mg/kg bwt/day.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR IMIDACLOPRID FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary all populations	NOAEL= 5.7 mg/kg/day UF = 100 Chronic RfD = 0.057 mg/kg/day	FQPA SF = 3X cPAD = chronic RfD FQPA SF = 0.019 mg/kg/day	Chronic RfD = 0.057 mg/kg bwt/day; NOAEL = 5.7 mg/kg bwt/day based on increased number of thyroid lesions at the LOAEL of 16.9/24.9 mg/kg bwt/day (males and females, respectively); additional 3x FQPA factor for all population subgroups.
Short-Intermediate-Long Term Dermal (Residential)	N/A	N/A	Dermal endpoints were notidentified due to demonstratedabsence of toxicity.
Short-Intermediate-Long Term Inhalation (Residential)	N/A	N/A	Inhalation endpoints were notidentified due to demonstratedabsence of toxicity.
Cancer (oral, dermal, inhalation)	N/A	N/A	No evidence of carcinogenicity.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.472) for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on a variety of raw agricultural commodities. Tolerances, which also include time-limited tolerances, have also been established in or on a variety of raw agricultural and animal commodities at levels ranging from 0.02 ppm in eggs to 15 ppm in raisins, waste. Risk assessments were conducted by EPA to assess dietary exposures from imidacloprid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumption was made for the acute exposure assessment: Tolerance level residues for imidacloprid were used, and a Tier 1 analysis for 100% crop-treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992–nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessment: Tolerance level residues for imidacloprid were used, and percent crop-treated information for some crops.

iii. *Cancer.* Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans. Therefore, a cancer risk assessment was not conducted.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition (1), that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition (2), that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition (3), if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows:

The Agency used PCT information to conduct a routine chronic dietary exposure analysis for imidacloprid based on likely maximum percent crop treated as follows: 19% apples, 21% brassica leafy vegetables, 15% christophine, 15% crenshaws, 15% melons, 15% watermelon, 15% wintermelon, 13% citrus citron, 6% cotton, 30% eggplant, 6% grapefruit, 11% grapes, 13% kumquats, 13% lemons, 32% lettuce-head varieties, 13% limes, 3% oranges, 30% paprika, 2% pears, 3% peppers, 13% tangelos, 13% tangerines, and 10% tomatoes. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute

dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *Dietary exposure from drinking water*. Imidacloprid is persistent, water soluble, and fairly mobile. Thus, residues of imidacloprid may be transported to both surface and ground waters. As a condition of registration, the Agency is requiring the submission of the results of two prospective ground water monitoring studies. Results from these studies are not yet available. However, estimates of imidacloprid's residue concentration in surface and ground waters has been provided by EPA water models.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for imidacloprid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of imidacloprid.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/ EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a water shed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to imidacloprid they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of imidacloprid for acute exposures are estimated to be 17.4 parts per billion (ppb) for surface water and 1.4 ppb for ground water. The EECs for chronic exposures are estimated to be 15.8 ppb for surface water and 1.4 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Imidacloprid is currently registered for use on the following residential non-dietary sites: Turf, home garden and pet uses. Dermal and inhalation short- and intermediate-term risk assessments were not conducted for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate term oral exposures are not expected for adult population subgroups. A short-term aggregate risk assessment is required for hand-to-mouth (oral) exposure for children. The risk assessment was conducted using the following residential exposure assumptions: (oral exposure) hand to mouth exposure for children from home garden, turf, and pet uses.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat (**Federal Register** September 18, 1998, Unit II. A.). The developmental toxicity data demonstrated no increased

sensitivity of rats or rabbits to in utero exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or postnatal exposure.

3. *Conclusion*. Based on the clinical signs of neurological toxicity in the acute toxicity studies and the requirement for a developmental neurotoxicity study, EPA concluded that a FQPA safety factor of 3x is appropriate for this risk assessment. The safety factor of 10x was reduced to 3x because there was no qualitative or quantitative evidence of increased susceptibility of fetuses or offspring exposed to imidacloprid in the prenatal developmental toxicity studies in rats and rabbits, or in the 2-generation reproduction toxicity study in rats.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to imidacloprid will occupy 23% of the aPAD for the U.S. population, 18% of the aPAD for females 13 years and older, 35% of the aPAD for all infants < 1 year old and 46% of the aPAD for children 1-6 years old. In addition, there is potential for acute dietary exposure to imidacloprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO IMIDACLOPRID

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population (48 states)	0.14	23	17.4	1.4	3900
All infants (<1 yr)	0.14	35	17.4	1.4	900
Children (1-6 yrs old)	0.14	46	17.4	1.4	760
Females (13-50 yrs old)	0.14	18	17.4	1.4	3600

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imidacloprid from food will utilize 24% of the cPAD for the U.S. population, 38% of the cPAD for all infants <1 years old and 51% of the cPAD for children 1-6 years old]. Based the use pattern, chronic residential exposure to residues of imidacloprid is not expected. In addition, there is potential for chronic dietary exposure to imidacloprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IMIDACLOPRID

Population Subgroup	cPAD (mg/kg/day)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (48 states)	0.019	24	15.8	1.4	490
All infants (<1 yr)	0.019	38	15.8	1.4	120
Children (1-6 yrs old)	0.019	51	15.8	1.4	92
Females (13-50 yrs old)	0.019	18	15.8	1.4	450

3. *Short-term risk*. Dermal and inhalation exposure endpoints were not identified due to the absence of toxicity. As a result, dermal and inhalation short term risk assessments are not required for imidacloprid. Subsequently, short term oral exposures are not expected for adult population subgroups. However, EPA has identified potential short-term oral exposures to children for these uses.

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Imidacloprid is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term oral exposures for children.

Using the exposure assumption described in this unit for short-term exposure, EPA has concluded that food and residential exposures aggregated result an aggregate MOE of 350 for children 1-6 years old (hand to mouth). This aggregate MOE does not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of imidacloprid in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO IMIDACLOPRID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
Children 1-6 yrs old	350	300	17.4	1.4	200

4. *Aggregate cancer risk for U.S. population*. Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans. Accordingly, EPA does not consider imidacloprid to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imidacloprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated imidacloprid residues in plant commodities (Bayer GC/MS Method 00200 and Bayer HPLC-UV Confirmatory Method 00357). EPA concludes that these methods are suitable for enforcement purposes on the subject commodities.

B. International Residue Limits

There are no established Codex, Canadian, or Mexican maximum residue limits for imidacloprid in/on succulent shelled beans, turnip greens, celery, citrus, and cilantro; thus, international harmonization is not an issue.

C. Conditions

Edible podded beans and succulent shelled beans have been made conditional for a period of three years to allow time to submit data on shelled dried beans to complete the crop group for bean tolerances.

V. Conclusion

Therefore, these tolerances are established for the combined residues of imidacloprid, (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, in or on edible podded beans at 1.0 ppm, succulent shelled beans at 1.0 ppm, turnip greens at 3.5 ppm, cilantro at 3.5 ppm, sweet corn grain at 0.05 ppm, sweet corn forage at 0.10 ppm, sweet corn fodder at 0.20 ppm, field corn grain at 0.05 ppm, field corn forage at 0.10 ppm, field corn fodder at 0.20 ppm, leaf petiole vegetable subgroup at 6.0 ppm, citrus fruits group at 0.7 ppm, and citrus dried pulp at 5.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301114 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 11, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of

the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301114, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: March 28, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.472 is amended by revising ''corn, field, fodder,'' ''corn, field, forage,'' and ''corn, field, grain'' and alphabetically adding the remaining commodities to the table in paragraph (a) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * * * *	*	*
Beans, edible, podded	1.0	None
Beans, succulent, shelled	1.0	None
* * * * *	*	*
Cilantro	3.5	None
Citrus, dried pulp	5.0	None
Citrus, fruits, group	0.7	None
Corn, field, fodder	0.20	None
Corn, field, forage	0.10	None
Corn, field, grain	0.05	None
Corn, sweet, forage	0.10	None
Corn, sweet, (K+CWHR)	0.05	None
Corn, sweet, stover	0.20	None
* * * * *	*	*
Greens, turnip	3.5	None
* * * * *	*	*
Vegetable, leaf petiole, subgroup	6.0	None
* * * * *	*	*

* * * * *

[FR Doc. 01–8805 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301109; FRL–6773–2]

RIN 2070–AB78

Fenpyroximate; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues of fenpyroximate benzoic acid, 4-[[[(*E*)-(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methylene]amino] oxy]methyl]-, 1,1-dimethylethyl ester] and its z-isomer benzoic acid, 4-[[[[(*Z*)-(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methylene]aminio]oxy]methyl]-,1,1-dimethylethyl ester)] in or on wine grapes and hops. Nihon Nohyaku requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act (FQPA) of 1996. The tolerance will expire April 12, 2004.

DATES: This regulation is effective April 10, 2001. Objections and requests for hearings, identified by docket control number OPP–301109, must be received by EPA on or before June 11, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301109 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Melody Banks, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5413; and e-mail address: banks.melody@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301109. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 18, 1999 (64 FR 8090) (FRL–6059–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Nihon Nohyaku, Nihon Noyaku Co., 2-5 Nihonsbashi 1-Chome, Chuoku, Tokyo 103, Japan. This notice included a summary of the petition prepared by Nihon Nohyaku, the registrant.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the insecticide, fenpyroximate and its z-isomer, in or on wine grapes at 1.0 parts per million (ppm) and hops at 10 ppm. The tolerance will expire April 12, 2004.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of fenpyroximate and its z-isomer on wine grapes at 1 ppm and hops at 10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenpyroximate are discussed below following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

Fenpyroximate is toxicity category II for oral toxicity (the only acute study conducted). Acute studies are not required for import tolerances.

Subchronic and chronic studies in the rat resulted in decreased body weight and weight gain (also observed in the mouse carcinogenicity study). There were hematological effects and decreased plasma butyryl cholinesterase and plasma acetylcholinesterase at higher doses. In the subchronic and chronic dog studies there was a bradycardia which did not appear to increase in severity with time. Also at this dose diarrhea, decreased body weight, body weight gains and food consumption were reported. At higher doses, there was also emesis. The high dose in the subchronic study resulted in first and second degree heart block, increased urea concentration, decreased glucose, and altered plasma electrolyte levels among other signs of toxicity.

Male and female rats were given dietary levels of compound in feed for a period of either 13 weeks or 104 weeks. Thirteen week doses ranged from 20 ppm to 500 ppm (1.47 mg/kg/day to 36.91 mg/kg/day), while 104 week doses ranged from 10 ppm to 150 ppm (0.4 mg/kg/day to 7.57 mg/kg/day). In the subchronic study, both sexes in the 100 and 500 ppm groups had impaired growth performance, reduced food intake, and decreased body weights and body weight gains. Body weight gains for the 100 ppm groups were 85% of the control weight gains, and for the 500 ppm groups were 33-37% of the control gains. At 500 ppm in both sexes, hematocrit, hemoglobin, and red blood cell counts were higher, and white blood cell counts were lower than the control values. Total plasma proteins were also lower. The 500 ppm females had alkaline phosphatase activities that were 123% higher and plasma butyryl cholinesterase and plasma acetylcholinesterase activities that were 72-73% lower compared to the controls. Treatment-related effects noted in the gross pathology of the 500 ppm groups were facial staining in both sexes; encrustations of the muzzle and persistent hyaloid arteries in males; and dorsal/ventral hair loss, skin encrustations, skin masses, perineal staining, and skin exfoliation in females. The LOAEL was 6.57 mg/kg/day (100 ppm) for rats, based on decreased body weight gains in both sexes. The NOAEL

was 1.3 mg/kg/day (20 ppm). In the chronic study, similar toxicity was observed in males and females in the 75 or 150 ppm groups. Toxicity included depressed growth rates that were 86% and 78% of controls in males and females, respectively, at 150 ppm in the carcinogenicity phase after 104 weeks. Low growth rates were accompanied by less than a 10% decrease in mean food consumption and a 12-14% reduction in food efficiency at the 150 ppm level when compared with controls. The LOAEL for systemic toxicity was 75 ppm (3.08 and 3.79 mg/kg/day in males and females, respectively), and the NOAEL was 25 ppm (0.97 mg/kg/day for males and 1.16 mg/kg/day for females) based on decreased body weight gain. Under the conditions of this study, there was no evidence of carcinogenic potential. Dosing was considered adequate based on dose-related decreases in body weight gain and feed consumption in both sexes relative to the controls.

In the mouse carcinogenicity study, doses ranged from 25 to 800 ppm (approximately 2.4 - 73.0 mg/kg/day) for up to 18 months. Toxicity was similar to that observed in the rat studies and included dose-related decreases at 100 ppm and above in mean body weight, weight gain (9, 37, and 52% (male); 18, 44, and 60% (female) for increasing doses) and in mean feed consumption. Based on decreased body weights and food consumption observed at 100 ppm and higher dose levels, the chronic LOAEL was established at 100 ppm (9.5 mg/kg/day for male mice and 10 mg/kg/day for females). The NOAEL was 25 ppm (2.4 mg/kg/day for male mice and 2.5 mg/kg/day for females). Under the conditions of this study, there was no evidence of carcinogenic potential. Dosing was considered adequate based on dose-related decreases in body weight gain and feed consumption in both sexes relative to the controls.

Dogs were given fenpyroximate in capsules for either 13 weeks with doses ranging from 2 to 50 mg/kg/day or for 52 weeks with doses ranging from 0.5 to 15 mg/kg/day. In the subchronic study, two high dose females were sacrificed *in extremis* during weeks 4 or 5 after a period of treatment-related inappetence and body weight loss. Both sexes at all treatment levels exhibited slight bradycardia (slow heart rate) and a dose-related increase in diarrhea. Emaciation and torpor were observed in the 2 mg/kg/day females and in both sexes from the 50 mg/kg/day groups. Emesis was observed in both sexes at 10 mg/kg/day and above. The 50 mg/kg/day male and in all treated female groups had reduced body weights and body weight gains (7% (male); 6, 14 and 24% (female)). Food consumption was also decreased in all female groups. In males, glucose levels and total white blood cell counts were lower at 10 mg/kg/day and above. Prothombin time values were prolonged and urea concentrations were higher in the 50 mg/kg/day females. Absolute and relative adrenal gland weights and relative liver weights were increased in the 50 mg/kg/day males and females. In the 50 mg/kg/day females, there was depleted hepatocytic glycogen and fine vacuolation of the cell cytoplasm in the renal medullary rays. One or both of the 50 mg/kg/day females sacrificed *in extremis* exhibited first and second degree heart block, increased urea concentration, low glucose concentration, disturbances in plasma electrolyte levels, depleted hepatocytic glycogen, and fine vacuolation of the cell cytoplasm in the renal medullary rays. The LOAEL was 2 mg/kg/day based on slight bradycardia and an increased incidence of diarrhea in both sexes. In females only, there were reduced food consumption, body weight, body weight gain, emaciation, and torpor. No NOAEL was established.

In the chronic dog study, similar signs of toxicity were observed. Male beagles in the 5.0 or 15.0 mg/kg/day treatment groups had diarrhea more frequently (especially during the first 3-4 months of the study). Males in the 15.0 mg/kg/day treatment group were an average 12% lighter, consumed 10% less food than the controls, and had heartbeat rates 30% slower ≤24 hours after dosing compared to the controls at study termination. Female beagles in the 5.0 or 15.0 mg/kg/day treatment groups had diarrhea more frequently than control animals. The LOAEL was 15.0 mg/kg/day for both male and female beagles, based on diarrhea, bradycardia, decreased cholesterol, body weight gain and food consumption in males and vomiting, diarrhea, excessive salivation and decreased cholesterol in females. The NOAEL was 5.0 mg/kg/day.

In a 2-generation reproduction study, fenpyroximate was administered continuously in the diet at approximate doses ranging from 0.83 to 8.60 mg/kg/day for females and from 0.67 to 9.92 mg/kg/day for males (with some variation depending on generation) (dietary concentrations ranging 10 to 100 ppm) for 2 successive generations (1-litter/generation). No treatment-related effects were observed in the 10 or 30 ppm treatment groups. The systemic NOAEL was 1.99 and 2.44 mg/kg/day (30 ppm) for males and females, respectively. The systemic LOAEL was 6.59 and 8.60 mg/kg/day (100 ppm) for males and females, respectively, based on decreased body weights of both sexes during the premating period. The mean premating body weights were slightly depressed at 30 ppm, in the P_1 males and females (5-6%) and significantly depressed in F_1 males (14% compared to controls; $p < 0.01$); body weight gains for the F_1 males were also significantly lower ($p < 0.01$). Food consumption at 30 ppm for P_1 and F_1 males was also slightly depressed. The mean weights of the 100 ppm P_1 females were significantly reduced during gestation, and weight gain was 12% lower than in controls at gestation day 20 ($p < 0.05$); by the end of lactation the weights were similar to control. The mean body weights of the F_1 females were also lower than controls during gestation (6-9%), but recovered to control levels by the end of lactation. For reproductive effects, the NOAEL was 2.44 mg/kg/day (30 ppm). The reproductive LOAEL was 8.60 mg/kg/day (100 ppm) based on decreased lactational weight gain in both generations of pups. Mean pup weights were similar in all groups at day 0 of lactation, but the weight gains in both generations were decreased at 100 ppm; mean weights at day 25 were 24% and 15% lower than control ($p < 0.01$) in F_1 and F_2 pups, respectively.

In a developmental toxicity study, rats were dosed by gavage at dose levels of 0, 1.0, 5.0, or 25 mg/kg/day from days 6 through 15 of gestation. The maternal NOAEL was 5 mg/kg/day and the LOAEL was 25 mg/kg/day based on marginal maternal toxicity (decreased body weight gain and decreased food consumption). This included a marginal depression in maternal body weight and food at 25 mg/kg/day. It is apparent that animals could have tolerated higher dose levels of the test material. However, since developmental toxicity was observed as noted below, the lack of overt maternal toxicity does not affect acceptability of the study. The high dose as a LOAEL was also supported by the range-finding study. The developmental NOAEL was 5.0 mg/kg/day. The developmental LOAEL was 25 mg/kg/day based on increase in the fetal incidence of additional thoracic ribs. Additional historical control data (and an additional evaluation of the study data on this effect - combined bilateral and unilateral incidence by fetus/litter) is requested for increased number of thoracic ribs in order to determine whether this is in fact a treatment-related effect.

In a developmental toxicity study, rabbits were dosed by gavage at dose levels of 0, 1.0, 2.5, or 5.0 mg/kg/day from days 6 through 19 of gestation. Both the maternal LOAEL and the NOAEL were greater than 5.0 mg/kg/

day, the highest dose level tested. The developmental LOAEL and the NOAEL were also greater than 5.0 mg/kg/day. The Hazard Identification Assessment Review Committee (HIARC) considered the occurrence of folded retina in the high dose fetuses to be questionable. There was, however, a borderline maternal body weight effect at the 5.0 mg/kg/day dose in the range-finding study.

Fenpyroximate is not considered to be a mutagen with the currently available data base. The overall quality of the toxicology data base is good with the exception of the two developmental toxicity studies. EPA is requiring that the developmental toxicity studies in rats and rabbits with fenpyroximate be repeated at doses which are adequate to characterize developmental susceptibility. Confidence in the hazard and dose response is also good with the exception noted above. Although there are no data gaps, the two developmental toxicity studies must be repeated, and the additional historical control data must be submitted as requested for the existing rat developmental study.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10x to account for interspecies differences and 10x for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10x to account for interspecies differences and 10x for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC, as shown in the following Table 1:

TABLE 1.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENPYROXIMATE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose (mg/kg/day)	Endpoint	Study
Acute dietary females - 13 to 50	NOAEL = 5 UF = 100 FQPA SF = 10	LOAEL = 25 mg/kg/day is based on increase in the fetal incidence of additional thoracic ribs. Acute RfD = 0.05 mg/kg/day Acute PAD = 0.005 mg/kg/day	Developmental rat
Chronic (non-cancer) dietary	NOAEL= 0.97 mg/kg/day UF = 100 FQPA SF = 1	LOAEL = 75 ppm (3.08 and 3.79 mg/kg/day in males and females), based on decreased body weights, accompanied by reduced food efficiency and a slight decrease in mean food consumption. Chronic RfD = 0.01 mg/kg/day Chronic PAD = 0.01 mg/kg/day	Two year rat feeding study
Chronic (cancer) Dietary	''Not likely'' to be carcinogenic to humans via relevant routes of exposure		
Short-, Intermediate, and Long-Term (Dermal)	NOAEL = NA	NA	NA
Short-, intermediate, and long-term (Inhalation)	NOAEL = NA	NA	NA

NA = Not applicable. This request is for an import tolerance; therefore, applicator exposure risk assessments are not required.

EPA has conducted a risk assessment for the acaricide fenpyroximate benzoic acid, 4-[[[[(*E*)-(1,3-dimethyl1-5-phenoxy-1*H*-pyrazol-4-yl) methylene]amino]oxy]methyl]-, 1,1-dimethylethylethyl ester] and its z-isomer in support of the establishment of time-limited tolerances on imported wine grapes and hops. EPA has evaluated toxicology and residue data for fenpyroximate submitted by Nihon Nohyaku.

Fenpyroximate is registered for use on grapes in Germany, France, Portugal, and Italy and on hops in Germany. The

maximum application rate for fenpyroximate is 130 grams active ingredient hectare (g/a.i./ha) (0.12 lb. a.i./acre) for grapes and 263 g a.i./ha (0.23 lb. a.i./acre) for hops. The preharvest interval (PHI) is 21 days for hops and 14 days for grapes.

The proposed use is limited to imported wine grapes and hops only. Therefore, no water or occupational or residential exposure assessments are required.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances are being established (40 CFR 180.566) for the residues of fenpyroximate, in or on Wine grapes and hops. Risk assessments were conducted by EPA to assess dietary exposures from fenpyroximate in food as follows.

i. *Dietary exposure and risk analysis.* A dietary exposure analysis using the Dietary Exposure Evaluation Model (DEEM) was completed (Memo, J. Rowell, D271394, January 11, 2001) for acute and chronic (non-cancer). The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989-91 Continuing Surveys for Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made: tolerance level residues were used and 100% Crop Treated (CT) was assumed for all commodities. Default DEEM concentration factors were used for all processed food forms.

The acute dietary exposure analysis estimates the distribution of single-day exposures for the U.S. population and certain subgroups. Each analysis assumes uniform distribution of fenpyroximate for the commodities on which fenpyroximate is used.

The Tier 1 acute analysis was performed for females 13-50 years old using tolerance levels and assuming 100% CT information for all commodities. EPA retained the 10x safety factor for the females 13-50 years old in acute dietary risk assessments only, therefore the acute RfDs for these subgroups have been adjusted to reflect the aPAD. The aPAD for females 13-50 years old is 0.005 (0.05 mg/kg/day ÷ 10 = 0.005 mg/kg/day). For acute dietary risk, EPA's level of concern is >100% aPAD. Dietary exposures and associated acute risk for females 13-50 are shown in the following Table 2:

TABLE 2.—SUMMARY OF RESULTS OF ACUTE DEEM ANALYSIS FOR FENPYROXIMATE AT THE 95TH PERCENTILE

Subgroups	Exposure (mg/kg/day)	% aPAD
Females (13+ years old/pregnant/not nursing)	0.000000	0
Females (13+ years old/nursing)	0.000098	2
Females (13-19 years old/not pregnant/not nursing)	0.000000	0
Females (20+ years old/not pregnant/not nursing)	0.000208	4
Females (13-50 years old)	0.000160	3

The results of the acute analysis indicate that at the 95th percentile the acute dietary risk associated with the proposed uses of fenpyroximate is below EPA's level of concern.

ii. *Chronic Exposure.* In conducting this chronic dietary risk assessment the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1991 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues were used and 100% CT was assumed for all commodities. Default DEEM concentration factors were used for all processed food forms.

The chronic dietary exposure analysis used mean consumption (3-day average) data. The Tier 1 chronic analysis was performed using tolerance levels and assuming 100% CT information for all commodities. For chronic risk assessments, the 10x safety factor was removed (reduced to 1x), therefore the chronic RfD and cPAD are equivalent. The cPAD for the U.S. population and all subgroups is 0.01. For chronic dietary risk, EPA's level of concern is >100% cPAD. Dietary exposures for the U.S. population and other subgroups are presented in Table 3. The other subgroups included in Table 3 represent the highest dietary exposures for their respective subgroups (i.e., children, infants, and male subgroups).

TABLE 3.—SUMMARY OF RESULTS FROM CHRONIC DEEM ANALYSIS OF FENPYROXIMATE

Subgroups	Exposure (mg/kg/day)	% cPAD
U.S. population (48 states)	0.000099	1
All infants (>1 yr old)	no exposure	–
Children 1-6 yrs. old	0.000002	0
Females 13+ years old (nursing)	0.000166	2
Males 20+ yrs old	0.000138	1

The results of the chronic analysis indicate that the chronic dietary risk associated with the proposed uses of fenpyroximate is below EPA's level of concern for the U.S. population and all subgroups.

iii. *Cancer dietary risk.* Fenpyroximate was classified as ''not likely'' to be carcinogenic to humans via relevant routes of exposure using the proposed new guidelines (RfD document dated February 19, 1997).

Therefore, no cancer dietary exposure analysis was performed.

2. *Dietary exposure from drinking water*. The use on wine grapes and hops is an import use only. At present there is one registered use for fenpyroximate in the U.S. for ornamental greenhouse use. No run-off to surface water or drainage to ground water is expected.

Therefore, a drinking water exposure assessment is not necessary. If domestic uses are added in the future, OPP will reassess the potential impacts of fenpyroximate on drinking water as a part of the aggregate risk assessment process.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenpyroximate is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fenpyroximate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenpyroximate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenpyroximate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *Safety factor for infants and children*—i. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Prenatal and postnatal sensitivity*. Although there are no toxicity data gaps according to EPA's Subdivision F Guideline requirements for an import tolerance, EPA is requiring that the developmental toxicity studies in rats and rabbits be repeated at doses which are adequate to characterize developmental susceptibility. EPA is retaining the 10x FQPA safety factor due to uncertainties in evaluating potential susceptablilty following *in utero* exposure as a result of inadequate developmental toxicity studies in both species (rat and rabbit). This should be applied only to females 13 to 50 for the determination of acute dietary risk because the potential effects occur only during *in utero* exposure and are not postnatal effects.

The FQPA safety factor is reduced to 1x for chronic dietary risk assessment because the developmental toxicity studies (for which we have uncertainty) are not relevant to chronic risk assessments (*in utero* exposure is not chronic) for the following reasons: (1) The NOAEL used in deriving the RfD was based on decreased body weight gain in rats in the rat chronic toxicity/carcinogenicity study; (2) the developmental effects on which the FQPA factor is based were seen in pregnant animals; and (3) the developmental effects are considered to be ''acute'' effects. There was no evidence of increased susceptibility in the multigeneration reproduction study, a longer study.

EPA concluded that the doses selected in the developmental toxicity studies with rats and rabbits should have been higher since the highest doses produced only marginal maternal toxicity, or were supported by marginal toxicity in range finding studies. Additionally, there is some question as to the significance (due to maternal toxicity or to direct fetal effects) of fetal variations in both species (rats-increased thoracic ribs, rabbits-questionable increase in retinal folding). Therefore, EPA could not dismiss the possibility of increased susceptibility in both species.

EPA further concluded that the data from the 2-generation reproduction study in rats provided no indication of quantitative or qualitative increased susceptibility since maternal toxicity and reproductive toxicity occurred at the same dose.

A developmental neurotoxicity study was not recommended because neurotoxic compounds of similar structure were not identified and there was no evidence of neurotoxicity in the current toxicity data base.

iii. *Conclusion*. The toxicological data base for fenpyroximate is adequate to support a time-limited import tolerance. Fenpyroximate exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA is retaining the 10x FQPA safety factor due to uncertainties in evaluating potential susceptablilty following *in utero* exposure as a result of inadequate developmental toxicity studies in both species (rat and rabbit). This should be applied only to females 13 to 50 for the determination of acute dietary risk because the potential effects occur only during *in utero* exposure and are not postnatal effects.

2. *Acute risk*. The Aggregate acute risk is the same as the acute risk set forth in Unit III.C.1.i. The other registered use does not contribute to aggregate acute risk.

3. *Chronic risk*. The chronic acute risk is the same as the chronic risk set forth in Unit III.C.1.i. The other registered use does not contribute to chronic acute risk.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fenpyroximate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example: gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of fenpyroximate in wine grapes and hops. Therefore, a compatibility issue is not relevant to the proposed tolerances.

C. Conditions

The petitioner is required to perform storage stability studies in grape juice and grapes. As Chile is a major source of wine, additional grape residue data from this country and a translation of the Chilean label are required. Additional information on uses of fenpyroximate in Mexico and a translation of the Mexician label are required. The specificity of Method DFG S 19 should be demonstrated by performing an interference study with all pesticides for which tolerances are established on grapes and hops. Alternatively, a very specific confirmatory method (e.g., uses of MS detection) should be submitted. The two developmental toxicity studies must be repeated and historical control data submitted for the existing rat developmental study.

V. Conclusion

Therefore, a tolerance with an expiration of 3 years after date of publication in the **Federal Register** is established for residues of fenpyroximate, benzoic acid, 4-[[[(*E*)-)1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methylene]amino]oxy]methyl-, 1,1-dimethylethyl ester], and its z-isomer in or on wine grapes at 1.0 ppm and hops at 10 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301109 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 11, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301109, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any

enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2001.

Joseph J. Merenda,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.566 is added to read as follows:

§ 180.566 Fenpyroximate; tolerances for residues.

(a) *General*. This regulation establishes a time-limited tolerance for the combined residues of fenpyroximate benzoic acid, 4-[[[(*E*)-(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methylene] amino] oxy]methyl]-, 1,1-dimethylethyl ester] and its z-isomer benzoic acid, 4-[[[[(*Z*)-(1,3-dimethyl-5-phenoxy-1*H*-pyrazol-4-yl) methylene]aminio] oxy]methyl]-, 1,1-dimethylethyl ester)] in or on wine grapes and hops. These tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Hops[1]	10	April 12, 2004.
Wine grapes[1]	1.0	April 12, 2004.

[1]There are no U.S. registrations on Hops and Wine grapes.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 01–8806 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–310–1310–01–24 1A–PB]

RIN 1004–AC54

Oil and Gas Leasing: Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; partial further delay of effective date and request for comments.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' 66 FR 7701 (January 24, 2001), the Bureau of Land Management (BLM) temporarily delayed for 60 days until April 10, 2001, the effective date of the rule entitled ''Oil and Gas Leasing: Onshore Oil and Gas Operations,'' published in the **Federal Register** on January 10, 2001 (66 FR 1883). This action partially delays the April 10, 2001, effective date published in the **Federal Register** on February 8, 2001 (66 FR 9527), by delaying the effective date for 120 days of 43 CFR 3162.2–7 of the final rule. It also delays for 120 days removal of current 43 CFR 3162.2(a). We do so in order to seek further public comments.

DATES: The effective date for removal of 43 CFR 3162.2(a) and the addition of 43 CFR 3162.2–7, originally published in the **Federal Register** on January 10, 2001 (66 FR 1892–1893), delayed until April 10, 2001, in the **Federal Register** on February 8, 2001 (66 FR 9527), is further delayed for 120 days until August 8, 2001, for the purpose of seeking further public comments. You may submit comments on or before June 11, 2001.

ADDRESSES: If you wish to comment, you may submit comments by any one of these methods:

(1) You may mail comments to the Bureau of Land Management, Administrative Record, 1849 ''C'' Street, NW, Room 401LS, Washington, D.C. 20240.

(2) You may deliver comments to Room 401, 1620 L Street, NW, Washington, D.C. 20036.

(3) You may also comment via the Internet to WOComment@blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''ATTN: AC54'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW, Washington, D.C. 20240; telephone (202) 452–0382 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, except holidays, for assistance in reaching Mr. Shaw.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. 553 applies to this action, the action is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the Department's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and 553(d)(3), in that seeking public comment is impractical, unnecessary and contrary to the public interest inasmuch as it cannot be accomplished before April 10, 2001. However, the Department is seeking public comment on whether further rulemaking to modify the promulgated rule is needed. The effective date was delayed for 60 days with a new effective date of April 10, 2001, to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. The Department is further delaying the effective date of two discrete provisions to permit further review, consideration, and public comments on the addition of § 3162.2–7 published on January 10, 2001. The provisions of § 3162.2–7, concerning the joint and several liability of multiple lessees or operating rights owners for drainage protection, including compensatory royalties, were the subject of intense debate during the notice and comment period on this rule. The BLM is delaying the effectiveness of this provision, and retaining in effect for another 120 days the current provision of § 3162.2(a) concerning the duty of operating rights owners to protect the lessor against drainage, in order to consider further comments on these issues from the regulated industry, Indian mineral owners, State, local and Tribal governments, and members of the general public.

Commenters raised a serious legal issue as to the compatibility of the joint and several provisions of § 3162.2–7 with provisions of the Royalty Simplification and Fairness Act. The Secretary wants to permit the public an opportunity to present more extensive legal argument as to whether it is correct to interpret the Royalty Simplification and Fairness Act to not apply to compensatory royalty payments because they are not royalties or payment obligations, but damages for nonperformance of an obligation to drill a protective well. See the legal analysis at 63 FR 1937 and 66 FR 1886.

We particularly encourage the public to respond to the following questions:

1. Should the obligation to drill a protective well be considered a joint and several liability of the holders of operating rights? If the duty to drill a protective well is not joint and several, what proportion of the interest holders in the lease must be unable or unwilling to contribute to the cost of the well to justify a refusal of the operator or operating rights owner to drill a protective well?

2. If the obligation to drill a protective well is joint and several among operating rights owners, does BLM's acceptance of compensatory royalties in satisfaction of that obligation convert the obligation into a ''payment obligation'' owed pro rata under the Royalty Simplification and Fairness Act? Was the Royalty Simplification and Fairness Act intended to cover compensatory royalty payments?

3. If one or more parties who hold undivided interest in the record title or operating rights for the same lease do not exercise due diligence in fulfilling its share of drainage obligations for that lease, who should be responsible for compensating the Government for those unfulfilled obligations?

4. Does the treatment of the drainage protection obligation as a joint and several obligation affect the willingness of investors to acquire operating rights interests in a lease? Does it affect the willingness of lessees to retain an interest in record title when transferring operating rights to another party?

5. Does the classification of the drainage obligation as joint and several, or proportionate to interest, depend on

whether it involves an Indian lease rather than a Federal lease? Can BLM adopt a rule, consistent with the Secretary's trust responsibilities, under which an Indian mineral lessor receives less than full compensation for the royalty value of oil and gas drained without a protective well being drilled pursuant to the terms of the lease, because some interests in the lease are held by persons who are insolvent or otherwise do not contribute toward the compensation?

6. What provisions would you suggest concerning record title owner and operating rights owner lease liability to protect the public interest?

Dated: April 5, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 01–8852 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–272]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of February 16, 2001, *See* 66 FR 10631, a document amending § 73.202(b), the FM Table of Allotments. Therein the FCC amended the Table of FM Allotments to remove Channel 279C1 and add Channel 278C1 at Anadarko, Oklahoma. Action taken in MM Docket No. 98–198 substituted Channel 278C for Channel 279C1 at Anadarko, Oklahoma. See 65 FR 19335, April 11, 2000. This document corrects § 73.202 (b), the FM Table of Allotments to show the removal of Channel 278C in lieu of Channel 279C1 at Anadarko, Oklahoma.

DATES: Effective on April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of April 11, 2000, (65 FR 19335) removing Channel 279C1 and adding Channel 278C at Anadarko, Oklahoma. In FR Doc. 01–3960, inadvertently published in the **Federal Register** of February 16, 2001, (66 FR 10631), an amendment of § 73.202(b), the FM Table of Allotments under Oklahoma, removing Channel 279C1 and adding Channel 278C1 at Anadarko. This correction amends § 73.202(b), the FM Table of Allotments under Oklahoma to remove Channel 278C instead of Channel 279C1 at Anadarko.

In rule FR Doc. 01–3960 published on February 16, 2001, (66 FR 10631) make the following correction.

§ 73.202 [Corrected]

On page 10632, in the first column, instruction no. 3 is corrected to read as follows:

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 278C and adding Channel 278C1 at Anadarko.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–8751 Filed 4–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 00–105; FCC 01–99]

RIN 4566

Experimental Broadcast Station Multiple Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the Commission rule that prohibited a broadcast licensee from having more than one experimental radio station license without first making a showing that its program of research requires a licensing of two or more separate stations. The rule was eliminated because other Commission rules prohibit the harms this rule was meant to address. Additionally, elimination of the rule would allow licensees to devote their resources to research more efficiently during the operation of experimental broadcast stations.

DATES: Effective May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* (''*R&O*'') in MM Docket No. 00–105, FCC 01–99, adopted March 22, 2001, and released March 28, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 445 12th Street, SW., Room CY-B402, Washington, DC. This *R&O* is also available on the Internet at the Commission's website: *http://www.fcc.gov*.

Synopsis of Report and Order

1. By this *R&O* we eliminate the experimental broadcast multiple ownership rule, 47 CFR 74.134. That rule provides that no entity may control more than one experimental license absent a showing of need. We are convinced that this rule is no longer necessary to achieve the goals of competition and diversity in the broadcast market, and that elimination of the rule would serve the public interest.

2. Experimental stations are ''licensed for experimental or developmental transmissions of radio telephony, television, facsimile, or other types of telecommunication services intended for reception and use by the general public.'' (47 CFR 74.101) Under this licensing scheme, stations can carry on research and experimentation for the development of new broadcast technology, equipment, systems, or services that could not be accomplished using other licensed broadcast stations. Title 47 CFR 74.134 generally limits a licensee's ability to hold experimental station licenses to a single license, except in cases where a showing was ''made that the program of research requires a licensing of two or more separate stations.''

3. The Commission initiated consideration of its rule concerning the ability of a broadcaster to hold more than one license for an experimental broadcast station when it issued a *Notice of Inquiry* (''*NOI*'') (MM Docket No. 98–35, 63 FR 15353, March 31, 1998) as the first step in its Biennial Ownership Review of the broadcast ownership and other rules as required by Section 202(h) of the Telecommunications Act of 1996 (Public Law No. 104–104, 110 Stat. 56 (1996) (''1996 Act''). In the *NOI*, the Commission sought comment on whether the experimental broadcast station multiple ownership rule remained in the public interest.

4. In response to the *NOI*, the Commission received one comment. The National Association of Broadcasters (''NAB'') recommended the

repeal of the experimental station multiple ownership rule.

5. In its May 26, 2000 *Biennial Review Report,* the Commission addressed the continued need for the rule, focusing on the purposes for licensing experimental broadcast stations and the restrictions placed on them by our rules. After reviewing the experimental station multiple ownership rule, the Commission tentatively concluded that the rule, adopted in 1946 and re-designated in 1963 as 47 CFR 74.134, may no longer serve the public interest.

6. As a consequence of the tentative conclusions reached in the *Biennial Review Report,* we issued the *Notice of Proposed Rule Making* (''*NPRM*''), 65 FR 41401 (July 5, 2000), in this proceeding proposing to eliminate the multiple ownership rule for experimental stations. There, we stated that the experimental broadcast station multiple ownership rule no longer appeared necessary because of safeguards established by other existing rules pertaining to experimental stations. These rules, we noted, prevent experimental licensees from charging for the production or transmission of any programming, from transmitting program material unless it is necessary to the experiments being conducted or, indeed, from providing any regular broadcast service. Additionally, we pointed out that other experimental broadcast station rules prohibit a licensee from making exclusive use of a single frequency. We stated that these stations, by their nature, do not exert influence on the competitive marketplace and that allowing a party to have more than one experimental broadcast station license might permit efficiencies to be realized in the operation of such stations. This would further our statutory charge pursuant to 47 U.S.C. 303(g) to ''[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest.'' Accordingly, we issued the *NPRM* in this proceeding seeking comment on whether this rule remains in the public interest. Also, we encouraged commenters to offer alternative proposals involving less than the outright repeal of the rule.

7. Title 47 CFR 74.134 was intended to limit experimental licensees to the minimum spectrum use necessary to enable them to carry out research and experimentation that might not otherwise be possible under regular broadcasting licensing schemes. The rule also prevented such licensees from aggregating enough stations to enable them to operate a commercial service under the guise of experimentation. The Commission believes the experimental station multiple ownership limitation is no longer necessary given that other rules and requirements will adequately assure the goals of 47 CFR 74.134 are met.

8. NAB, the sole commenter responding to the *NPRM,* supports the Commission's proposal, urging it to eliminate what NAB characterizes as an ''unnecessary and outdated restriction on the multiple ownership of experimental broadcast stations.''

9. Repeal of the experimental station multiple ownership rule will not affect the Commission's ability to ensure that experimental stations are used specifically for *bona fide* experimental purposes and not for commercial purposes, as the Commission can continue to do so under 47 CFR 74.182. Nor will experimental stations be able to tie up excessive spectrum even absent the rule because, under other Commission rules, experimental licensees are limited to the minimum frequencies necessary to conduct their experimental operations and an experimental license does not grant the licensee exclusive use of a frequency. (47 CFR 74.103(b) and 74.131(b).) If interference would be caused by simultaneous operation of stations licensed experimentally, our rules require that the parties arrange a satisfactory time division of the frequency or frequencies involved. (47 CFR 74.131(b).) Accordingly, we have determined that these ownership limits for experimental broadcast stations are no longer necessary.

10. We believe that granting more than one experimental broadcast station license to qualified applicants may, in fact, allow resources to be devoted to research more efficiently during the operation of such stations. As noted, such an expanded licensing scheme would also promote the Commission's statutory responsibilities under 47 U.S.C. 303(g).

11. In view of the foregoing, we conclude that the experimental station multiple ownership rule is unnecessary to achieving the purposes for which it was adopted. Other rules prevent the use of experimental licenses for commercial purposes or for controlling more spectrum than is needed for experimental purposes. It is hereby repealed.

12. *Paperwork Reduction Act of 1995 Analysis.* This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new reporting requirements on the public.

13. *Regulatory Flexibility Analysis.* Pursuant to the Regulative Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, the Commission's Final Regulatory Flexibility Analysis in *R&O* follows.

14. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in this Notice, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

15. *Need For, and Objectives of, Report and Order.* In February 1996, the Telecommunications Act of 1996 (''1996 Act'') was signed into law. Section 202 of the 1996 Act directed the Commission to make a number of significant revisions to its broadcast media ownership rules. Section 202(h) also requires us to review our broadcast ownership rules every two years commencing in 1998. One of the rules reviewed in our first such biennial reviews was 47 CFR 74.134, the experimental broadcast station multiple ownership rule. In our *Biennial Review Report* we tentatively concluded that this rule was no longer necessary in the public interest. Accordingly, we issued an *NPRM* proposing the elimination of this rule consistent with the goals of the 1996 Act. This *R&O* eliminates this rule on the basis that it is no longer necessary in the public interest and that other existing Commission rules are sufficient to preclude the abuse of experimental broadcast station authorizations in the absence of the rule.

16. *Significant Issues Raised by the Public in Response to the Initial Analysis.* No comments were received concerning the Initial Regulatory Flexibility Analysis. Indeed, only the National Association of Broadcasters (''NAB'') submitted comments in this proceeding, and it did not specifically address the IRFA or the impact of the proposed rule change on small businesses more generally. It did, however, favor elimination of the subject rule.

17. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term ''small entity as having the same meaning as the terms ''small business,'' ''small organization,'' and

''small governmental jurisdiction. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

18. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

19. The Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of September 30, 2000, Commission records indicate that 12,717 radio stations (both commercial and noncommercial) were operating of which 2,140 were noncommercial educational FM radio stations. Applying the 1992 percentage of station establishments producing less than $5 million in revenue (*i.e.,* 96 percent) to the number of radio stations in operation, (*i.e.*, 12,717) indicates that 12,208 of these radio stations would be considered ''small businesses'' or ''small organizations.''

20. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. As of September 30, 2000, there were 1,288 commercial television stations and 375 non-commercial educational television stations on the air. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. Accordingly, it appears that the proposed revisions would affect no more than 800 television stations that might be considered ''small businesses'' or ''small organizations.''

21. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. The R&O imposes no reporting, recordkeeping, or compliance requirements.

22. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* We believe that the elimination of the experimental station multiple ownership rule strikes the appropriate balance between allowing broadcast stations to realize the efficiencies of conducting research via multiple ownership of experimental stations on the one hand, and preventing experimental facilities from being used for commercial purposes or to prevent other legitimate use of broadcast spectrum on the other. Repeal of the experimental station multiple ownership rule will not affect the Commission's ability to ensure that experimental stations are used specifically for *bona fide* experimental purposes and not for commercial purposes, as the Commission can continue to do so under 47 CFR 74.182. Nor will experimental stations be able to tie up excessive spectrum even absent 47 CRF 74.134 because, under other Commission rules, experimental licensees are limited to the minimum frequencies necessary to conduct their experimental operations and an experimental license does not grant the licensee exclusive use of a frequency. We believe that the elimination of the experimental multiple ownership rule aids all licensees, and it especially benefits small entities who will no longer incur the expensive of filing a special request should they need more than one experimental license, as would have been the case under the previous regulation. Since the elimination of the subject rule in this *R&O* will in all probability confer such a benefit on smaller entities within the group of small businesses affected, the alternative of retaining the rule was not selected.

23. *Report to Congress.* The Commission will send a copy of this *R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *R&O,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

24. Accordingly, pursuant to the authority contained in 47 U.S.C. 154(i), 303(g) and 303(r), part 74 of the Commission's rules, 47 CFR part 74 is amended as set forth in this *R&O*.

25. The amendment set forth in ''Rule Changes'' shall be effective 30 days after publication in the **Federal Register**.

26. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

27. This proceeding is terminated.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Change

For the reasons discussed in the preamble the Federal Communications Commission amends 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f) and 554.

§ 74.134 [Removed]

2. Remove § 74.134.

[FR Doc. 01–8720 Filed 4–9–01; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 66, No. 69
Tuesday, April 10, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket Nos. 99AMS–FV–923–A1; FV00–923–1]

Sweet Cherries Grown in Designated Counties in Washington; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement No. 134 and Marketing Order No. 923; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on March 6, 2001, a Secretary's Decision and Referendum Order on proposed amendments to the Washington sweet cherry marketing order. This docket corrects the referendum dates in the Question and Answer Overview and changes the representative period for voting in the referendum from April 1, 1999, through March 31, 2000, to April 1, 2000, through March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs; AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Background

The Secretary's decision and referendum order that are the subject of this correction propose amendments to the marketing agreement and order (order) and provide growers with the opportunity to vote in a referendum to determine if they favor the proposed amendments.

Need for Correction

As published, the referendum dates in the Question and Answer Overview are incorrect and the representative period for the purpose of the referendum is being changed from April 1, 1999, through March 31, 2000, to April 1, 2000, through March 31, 2001, to reflect the most recent crop year.

Correction of Publication

Accordingly, the publication of the proposed rule and referendum order (Docket Nos. 99AMS–FV–923–A1; FV00–923–1), which was the subject of FR Doc. 01–5418 published March 6, 2001 (66 FR 13447) is corrected as follows:

1. On page 13448, column one, under *When Will the Referendum Be Held?,* the dates ''February 14, 2001, through February 28, 2001'' are corrected to read ''April 10, 2001, through April 27, 2001.''

2. On page 13447, column two, under **DATES;** page 13448, column one, under *Who Is Eligible To Vote in The Referendum?*; and page 13453, column two, lines 12 and 13, the dates ''April 1, 1999, through March 31, 2000,'' are corrected to read ''April 1, 2000, through March 31, 2001.''

Authority: 7 U.S.C. 601–674.

Dated: April 4, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–8869 Filed 4–6–01; 9:31 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–273–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require installation of fuselage skin reinforcements in the right and left zones of the fuselage between stations 11232 and 11740 and stringers P7 and P9. This action is necessary to prevent premature fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 10, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–273–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the

proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–273–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on certain CASA Model CN–235 series airplanes. The DGAC advises that fuselage skin reinforcements between stations 11232 and 11740 and stringers P7 and P9 in the right and left zones of the fuselage, which are required in the current design, were not included in earlier serial numbers of Model CN–235 series airplanes. Because of the number of drill holes electrical connectors that go through this area, fatigue cracks could develop earlier than might be expected. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–53–40, dated June 16, 1994, which describes procedures for installation of fuselage skin reinforcements in the right and left zones of the fuselage between stations 11232 and 11740 and stringers P7 and P9. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued Spanish airworthiness directive 01/2000, Revision 1, dated March 22, 2000, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that one airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 45 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $130 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,830.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A. (CASA): Docket 2000–NM–273–AD.

Applicability: Model CN–235 series airplanes, serial numbers C–041 and C–042, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

Reinforcement of Fuselage Skin

(a) Prior to the accumulation of 15,000 total flight cycles, install fuselage skin reinforcements between stations 11232 and 11740 and stringers P7 and P9, on both the right and left zones of the fuselage, in accordance with CASA Service Bulletin SB–235–53–40, dated June 16, 1994.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 01/2000, Revision 1, dated March 22, 2000.

Issued in Renton, Washington, on April 3, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8726 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–07–AD]

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes. That action would have required replacement of the hydraulic line tube assemblies with improved tube assemblies and flexible hose assemblies. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received information from Fairchild Dornier indicating that the replacement has already been carried out on all of the affected airplanes. Accordingly, the proposed rule is withdrawn.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, was published in the **Federal Register** on June 15, 2000 (65 FR 37500). The proposed rule would have required replacement of the hydraulic line tube assemblies with improved tube assemblies and flexible hose assemblies. That action was prompted by information from the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, indicating that pressure spikes and vibration during manual activation of the hydraulic changeover valve may cause cracking of the hydraulic lines that pressurize the braking systems of these airplanes. The pressure spikes create a high bending stress near the sleeve at the changeover valve. The proposed actions were intended to prevent cracking of the hydraulic lines, which could result in loss of hydraulic pressure for certain braking systems on the airplane.

Actions Since Issuance of Notice of Proposed Rulemaking (NPRM)

Since the issuance of that NPRM, the FAA has received a comment from Fairchild Dornier indicating that the replacement of the hydraulic line tube assemblies had been accomplished in all airplanes world-wide, which are affected by the rule. Therefore, Fairchild Dornier requested the FAA to withdraw the NPRM.

FAA's Conclusions

The FAA concurs that, if all of the requirements of the NPRM have already been accomplished on all affected airplanes world-wide, the NPRM may be withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 13132, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2000–NM–07–AD, published in the **Federal Register** on June 15, 2000 (65 FR 37500), is withdrawn.

Issued in Renton, Washington, on April 3, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–8727 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–18]

Proposed Modification of Class E Airspace, Vernal, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace at Vernal, UT. Newly developed Area Navigation (RNAV) Standard Instrument Approach

Procedure (SIAP) to Runway (RWY) 34 at the Vernal Airport has made this proposal necessary. Additional Class E 700 feet and 1200 feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV SIAP at Vernal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Vernal Airport, Vernal, UT.

DATES: Comments must be received on or before May 25, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–18, 1601 Lind Avenue SW, Renton, Washington 89055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–18, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamp postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ANM–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Vernal, UT. A newly developed RNAV SIAP RWY 34-approach procedure at the Vernal Airport has made this proposal necessary. Additional Class E 700 feet and 1,200 feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV SIAP RWY 34 at Vernal Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Vernal Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM UT E5 Vernal, UT [Revised]

Vernal Airport, UT
(Lat. 40°26′28″N., long. 109°30′35″W.)
Vernal VOR/DME
Lat. 40°22′44″N., long. 109°29′36″W.)

That airspace extending upward from 700 feet above the surface within a 12-mile radius north of the Vernal VOR/DME, from the 283° radial clockwise to the 077° radial, and 12-miles each side of the 167° radial south of the Vernal VOR/DME extending to 16.3-miles; and that airspace extending upward to 1,200 feet above the surface within 15-mile radius north of the Vernal VOR/DME, from 283° radial clockwise to the 077° radial, and 15 miles each side of the 167° radial south of the Vernal VOR/DME extending to 36.8 miles; excluding those portions within Federal Airways.

* * * * *

Issued in Seattle, Washington, on April 4, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–8823 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–26]

Proposed Modification of Class E Airspace, Fort Bridger, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace at Fort Bridger, WY. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 22 at the Fort Bridger Airport has made this proposal necessary. Addtional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV RWY 22 SIAP at Fort Bridger Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Fort Bridger Airport, Fort Bridger, WY.

DATES: Comments must be received on or before May 25, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–26, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–26, 1601 Lind Avenue SW., Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ANM–26.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Fort Bridger, WY. A newly developed RNAV SIAP RWY22-approach procedure at the Fort Bridger Airport made this proposal necessary. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV SIAP RWY 22 at Fort Bridger Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Fort Bridger Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and

effective September 16, 2000, is amended as follows:

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

* * * * *

ANM WY E5 Fort Bridger, WY [Revised]

Fort Bridger Airport, WY
(Lat. 41°23′31″ N., long. 110°24′25″ W.)
Fort Bridger VORTAC
(Lat. 41°22′42″ N., long. 110°25′27″ W.)

That airspace extending upward from 700 feet above the surface within the 10-mile radius of the Fort Bridger Airport, and within 8 miles each side of the Fort Bridger VORTAC 057° radial extending from the 10-mile radius to 24 miles northeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 41°32′29″ N., long. 110°30′42″ W.; to lat. 41°41′56″ N., long. 110°01′55″ W.; to lat. 41°31′46″ N., long. 109°46′46″ W.; to lat. 41°14′58″ N., long. 110°17′26″ W.; to lat. 41°10′49″ N., long. 110°27′33″ W.; to lat. 41°13′31″ N., long. 110°30′40″ W.; to lat. 41°07′43″ N., long. 110°38′45″ W.; to lat. 41°19′28″ N., long. 110°51′49″ W.; to point of origin, excluding that airspace within Federal Airways and the Evanston, WY, and Kemmerer, WY, Class E airspace.

* * * * *

Issued in Seattle, Washington, on March 28, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–8825 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–27]

Proposed Modification of Class E Airspace, Lewistown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace at Lewistown, MT. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 7 at the Lewistown Municipal Airport has made this proposal necessary. Additional Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV RWY 7 SIAP at Lewistown Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Lewistown Municipal Airport, Lewistown, MT.

DATES: Comments must be received on or before May 25, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–27, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–27, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ANM–27.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Lewistown, MT. A newly developed RNAV SIAP RWY 7 approach procedure at the Lewistown Municipal Airport, has made this proposal necessary. Additional Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV SIAP RWY 7 at Lewistown Municipal Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Lewistown Municipal Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will

only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM MT E5 Lewistown, MT [Revised]

Lewistown Municipal Airport, MT
(Lat. 47°02′57″N., long. 109°28′00″W.)
Lewistown VORTAC
(Lat. 47°03′11″N., long. 109°36′22″W)

That airspace extending upward from 700 feet above the surface within the 6.1-mile radius of the Lewistown Municipal Airport, and within 4.5 miles each side of the Lewistown VORTAC 289° radial extending from the 6.1-mile radius to 9.2 miles west of the VORTAC, and within 3.5 miles each side of the Lewistown VORTAC 089° radial from the 6.1-mile radius to 15.1 miles east of the VORTAC, and within 3.5 miles each side of the Lewistown VORTAC 255° radial extending from the 6.1-mile radius to 15.3 miles west of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°11′33″N, long. 100°06′30″W.; to lat. 47°11′33″N, long. 108°48′22″W.; to lat. 46°43′40″N., long. 108°48′22″W.; to lat. 46°43′40″N, long. 109°32′14″W.; to lat. 46°32′19″N, long. 109°32′14″W.; to lat. 46°32′19″N., long. 110° 06′30″W., to the point of origin; excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on April 4, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–8826 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 914 Re: Notice Nos. 903 and 909]

Availability of Comments; Proposed California Coast American Viticultural Area (AVA)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; availability of comments.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this document to announce that copies of the comments generated by California Coast viticultural area Notice of Proposed Rulemaking (NPRM) will be available for public viewing in San Francisco, CA. The California Coast NPRM comments will be available in San Francisco, CA, until this rulemaking process is complete. Copies of these same comments will also be available in Washington, DC. See the **ADDRESSES** section for specific locations.

ADDRESSES: Copies of the petition, the proposed regulations, the appropriate maps, and any written, e-mail or fax comments received will be available for public inspection, by appointment, at 221 Main Street, 11th Floor, San Francisco, CA 94105. For further information, or to make an appointment, call Specialist Nancy Sutton at (415) 744–9420. The comments are also available during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Specialist Nancy Sutton, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105, (415) 744–9420.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is making available copies of comments on the California Coast viticultural area petition for public viewing in San Francisco, CA. ATF is providing these copies to accommodate the high level of interest in California generated by the Notice of Proposed Rulemaking for the California Coast AVA. The San Francisco ATF office does not have comments related to any other ATF notices, and will close this public reading file at the completion of the California Coast AVA rulemaking process. Written comments to this Notice and all other notices are available for review in Washington, D.C.

Approved: April 2, 2001.

Bradley A. Buckles,

Director.

[FR Doc. 01–8797 Filed 4–9–01; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–6965–3]

RIN 2060–AE56

Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes amendments to the emissions monitoring and compliance provisions contained in Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, and Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. This action proposes monitoring exemptions and alternative compliance requirements for duct burners used in combined cycle systems. The proposed amendments ensure that all owners or operators of duct burners have appropriate compliance requirements and similar exemptions for their monitoring requirements.

In the Rules and Regulations section of this **Federal Register**, we are making these amendments in a direct final rule, without prior proposal, because we view these revisions as noncontroversial, and we anticipate no

significant adverse comments. We have explained our reasons for these amendments in the preamble to the direct final rule.

If we receive no significant adverse comments, we will take no further action on this proposed rule. If an adverse comment applies to an amendment, paragraph, or section of this proposed rule, and that provision may be addressed separately from the remainder of the proposed rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn.

DATES: Written comments on these proposed amendments must be received by May 10, 2001. Anyone requesting a public hearing must contact EPA no later than April 20, 2001. If a hearing is held, it will take place on April 24, 2001 beginning at 10 a.m. Persons interested in attending the hearing, should call Ms. Libby Bradley at (919) 541–5578 to verify that a hearing will be held.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–71, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, SW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–71, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5426, facsimile: (919) 541–5450, electronic mail address: eddinger.jim@epa.gov. For information regarding the applicability of this action to a particular entity, contact the appropriate EPA Regional Office representative.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–92–71. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit propriety information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such propriety information directly to the following address, and not to the public docket, to ensure that propriety information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740, Durham NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of information compiled by EPA in development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A–92–71, which supported the proposal and promulgation of the revised NO_X NSPS for boilers. An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/airprogm/oar/docket/faxlist.html.

World Wide Web. In addition to being available in the docket, an electronic copy of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page http://www/epa/gov/ttn/caaa. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Entities that potentially will be affected by these amendments are combined cycle systems employing duct burners. The regulated categories and entities include the following:

Category	Regulated entities
Industry	Electric utility steam generating units, industrial steam generating units, commercial steam generating units, and institutional steam generating units.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 60.40a and 60.40b of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's proposed rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This proposed rule is not subject to notice and comment requirements under the APA or any other statute.

Today's proposed rule will have no significant impact on a substantial number of small entities because they clarify and make corrections to the promulgated 40 CFR part 60, subparts Da and Db, and do not impose any additional regulatory requirements on owners or operators of affected sources regulated by standards promulgated on September 16, 1998 (634 FR 49442).

For additional information, see the direct final rule published in the Rules

and Regulations section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Electric utility steam generating units, Industrial-commercial-institutional steam generating units, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 3, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–8799 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket NHTSA–99–5119, Notice 1]

RIN 2127–AH57

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards Hydraulic and Electric Brake Systems, Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: Schmitty and Sons School Buses (Schmitty) submitted a petition for rulemaking requesting the agency amend the Federal Motor Vehicle Safety Standards on brake systems to require that school buses with automatic transmissions that do not have a ''park'' position be equipped with a parking brake warning system that activates when the school bus engine is turned off, the transmission is in neutral, and the parking brake has not been applied. Based on its concern that these school buses could begin to roll while unattended if the parking brake were not engaged, the petitioner argued that such a warning system could reduce or eliminate this hazard.

We are denying the petition. Information available to the agency indicates that unattended school bus rollaways are very rare. Further, the agency believes that a warning would not likely be effective and that any risks of such incidents can best be reduced or controlled through driver training.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590:

For non-legal issues: For non-legal issues: Mr. Jeff Woods, Office of Safety Performance Standards (NPS–22), NHTSA, 400 Seventh St., SW, Washington, DC, 20590. Mr. Woods' telephone number is (202) 366–6206; facsimile (202) 366–4329, e-mail: jwoods@nhtsa.dot.gov.

For legal issues: Mr. Otto G. Matheke, III, Office of the Chief Counsel (NCC–20), NHTSA, 400 Seventh St., SW, Washington, DC, 20590. Mr. Matheke's phone number is (202–366–5263), e-mail: omatheke@nhtsa.dot.gov

SUPPLEMENTARY INFORMATION:

I. Background of Petition

On June 23, 1998, Schmitty and Sons School Buses, a company that operates school buses, submitted a petition requesting that NHTSA initiate rulemaking to require that automatic transmission-equipped school buses whose transmissions do not have a park position be equipped with a warning device to alert the driver when the parking brake is not activated, the bus is stopped with its engine off, and the transmission is in neutral. Citing several crashes in Minnesota involving school buses, two of which occurred in that company's fleet, and one of which occurred in another bus company's fleet, Schmitty contended that the risk of unintended rollaways in buses without a park position warranted the mandatory installation of warning devices to alert an operator when the parking brake is not engaged.

Prior to filing its petition, the petitioner contacted Blue Bird Body Company, a school bus manufacturer, to determine if such a system could be made available. A copy of a response from Blue Bird was enclosed with the petition. Blue Bird indicated that the warning system concept appeared to have merit.

However, that manufacturer cited several concerns with the concept. Its primary concern was that incorporation of the warning system on (new) vehicles would result in inconsistencies in the fleet; i.e., newer vehicles would prompt the driver to apply the parking brake, while older ones would not. Blue Bird suggested that if a driver became accustomed to being prompted to apply the parking brake in a vehicle equipped with the warning system, the driver might forget to apply the parking brake when operating a vehicle not equipped with the warning system. Blue Bird's reply also mentioned other potential problems, including the increasing proliferation of warning devices, which could result in driver dependence and/or confusion; difficulties with integrating the proposed system with other warning devices; and the need to deactivate the system after some preset time to prevent battery drain. In addition, Blue Bird indicated that implementation of the warning system would also need to be accompanied by an extensive publicity and driver training program to familiarize drivers with the new system.

Blue Bird stated that, because of these concerns, it would not make such a warning system available as standard equipment or as optional equipment. Blue Bird suggested that the school bus operator petition NHTSA to require such a system on all medium and heavy vehicles, so that appropriate research and study could be conducted, and public comment could be obtained prior to such a system's being introduced.

II. Existing Federal Brake Requirements

A number of Federal motor vehicle safety standards establish requirements for brakes, parking brakes, and brake controls and warning systems. Standard No. 105, Hydraulic and Electric Brake Systems, requires each vehicle with a gross vehicle weight rating (GVWR) of 10,000 lbs. (4536 kg) or less, and each school bus with a GVWR greater than 10,000 lbs., to be equipped with a friction-type parking brake system, with a solely mechanical means to retain engagement (S5.2). The standard requires the parking brake for a passenger car or a school bus with a GVWR of 10,000 lbs. or less to hold the vehicle on a 30 percent grade (up to the limit of traction on the braked wheels). As an option, the standard permits a passenger car or school bus with a GVWR of 10,000 lbs. or less, equipped with a transmission that includes a parking mechanism, to rely on the parking mechanism in meeting the 30 percent grade holding requirement for the vehicle, if the parking mechanism must be engaged to enable the ignition key to be removed (S5.2.2.1). If this option is used, there is a separate requirement for such vehicles to meet a 20 percent grade holding requirement with the parking brakes engaged and the parking mechanism disengaged (S5.2.2.2). The transmission parking mechanism is then subjected to a 2½-mph barrier impact test on level ground, which requires that the parking mechanism not become disengaged or fractured. In the context of these tests and requirements, the parking mechanism is a supplemental parking aid and is not the primary source of grade holding ability.

The parking brake system on a school bus with a GVWR greater than 10,000 lbs. must be capable of holding the vehicle stationary for five minutes on a

20 percent grade (S5.2.3). This grade holding requirement also applies to trucks, multipurpose passenger vehicles, and buses, other than school buses, with a GVWR of 10,000 lbs. or less.

There is a supplemental requirement in Standard No. 114, Theft Protection, that requires passenger cars, trucks, and buses with a GVWR of 10,000 lbs. or less, equipped with an automatic transmission with a park position, to meet a 10 percent grade holding test (S4.2.1(b)) when the key has been removed and the transmission is locked in the park position. Standard No. 135, Light Vehicle Brake Systems, which is currently optional and will be mandatory for all multipurpose passenger vehicles, trucks, and buses with a GVWR of 7,716 lbs. (3500 kg) or less, manufactured on or after September 1, 2002, requires a 20 percent grade holding ability using the parking brake with the vehicle at GVWR, and does not address the use of transmission parking mechanisms.

Standard No. 121, Air Brake Systems, which applies to trucks, buses (including school buses), and trailers equipped with air brakes, requires a 20 percent grade holding ability with the vehicle both empty and at GVWR or, optionally, a static retardation force test may be used which incorporates requirements based on GVWR or gross axle weight rating (GAWR) depending on vehicle type. This standard also does not address the use of transmission parking mechanisms.

Additional requirements are included in Standard Nos. 105 and 135 for visual warning indicators (brake light) to indicate that the parking brake is engaged. Both standards include requirements for maximum force levels in applying the parking brake mechanism for the grade holding tests. Standard No. 121 includes requirements for parking brake application controls that are separate from the service brake control, and includes parking brake application and release timing requirements. It also specifies parking brake performance requirements with certain system failures.

Standard No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect, requires that, if a park position is included in the automatic transmission shift lever sequence, the park position shall be located at the end of the shift lever sequence adjacent to the reverse drive position (S3.1.1). This shift pattern is provided universally on light vehicles equipped with automatic transmissions, either using a steering column shifter or a shifter located on the floor console.

III. Request For Comments

To assist in evaluating the Schmitty petition, NHTSA published a Request for Comments in the **Federal Register** on March 1, 1999 (64 FR 9961) (DOT docket #99–5119) indicating that the agency wished to obtain further information on the magnitude of the safety problem and the potential effectiveness of a warning system. The Notice outlined the parking brake and related requirements in Standard No. 105, Standard No. 121, Standard No. 114, and Standard No. 135, and included an analysis of data available to NHTSA regarding the frequency and safety consequences of rollaways. Questions seeking responses on the frequency of rollaway incidents, the increased use of automatic transmissions, the availability of park gears or automatic parking brakes, driver training, and the efficacy and design of warning systems were incorporated in the notice.

IV. Comments

Eight comments were submitted in response to the March 1, 1999 notice. These comments were submitted by: two school bus operators, Katy Independent School District (Katy) and Rochester City School District (Rochester); three vehicle manufacturers, Thomas Built Buses (Thomas), Navistar International Corp. (Navistar) and General Motors (GM); two trade associations, the Truck Manufacturers Association (TMA) and the American Trucking Association (ATA); and one brake system manufacturer, AlliedSignal Truck Brake Systems Co. (AlliedSignal).

The majority of the commenters said that no real safety need for such a warning system presently exists. In addition, the commenters were concerned that the addition of an another warning system would not necessarily be beneficial or effective and could lead to driver confusion. The commenters indicated that the number of school buses equipped with automatic transmissions that do not have the ''park'' position found in automobiles, light trucks and MPVs, would continue to increase. Most commenters believed, however, that the risk of rollaway incidents would better be met through increased driver training.

Four of the commenters provided information on the frequency and consequences of roll aways. Katy indicated that one school bus roll away occurred in 1989. In that case, a parked and empty bus rolled down a grade and crashed into a guard shack. There were no injuries. Thomas reported that it was aware of two crashes involving school buses rolling due to their parking brakes not being set. In one case, it was reported that a passenger released the parking brake. In the other case, no additional information was provided. Navistar stated that it has no knowledge of vehicles, either school buses or medium trucks, rolling away due to the driver neglecting to set the parking brake after shutting off the engine. No other commenters reported any roll away incidents.

Other comments were related to the increasing use of automatic transmissions in school buses and the potential consequences of this trend. Rochester indicated that its school bus fleet is entirely equipped with automatic transmissions and it has not had any roll away incidents. Thomas indicates that over the last five years, 95 percent of their its school bus production has been equipped with automatic transmissions without a park feature. Thomas believes that the trend away from manual transmissions has not increased roll away incidents. Navistar stated that it appears the use of automatic transmissions has not spurred a trend toward roll away incidents. ATA stated that although they do not address school bus operations, many of the vehicles used in general trucking have engines, transmissions, and brakes similar to those used for school buses. The organization opined that the very fact that motor carriers have no statistics on this type of crash is an indication that there are very few such crashes, and that their members say that such problems are very rare. ATA also argued that the trend toward automatic transmissions will not significantly affect the likelihood of roll away incidents, as drivers that switch from manual to automatic transmissions would be required to learn the new system including how to properly park the vehicle.

All of the commenters indicated that the installation of automatic transmissions is likely to continue to the point at which manual transmission equipped buses will become a rarity. Rochester indicated that all of its buses are equipped with automatic transmissions. In addition to the comments noted above, GM reported that for its B7 bus chassis, which is produced with a GVWR range of 23,100 to 29,000 lbs., approximately 80 percent of the vehicles produced in the last three years have been equipped with automatic transmissions without parking pawls. GM expects this number to hold fairly steady in the foreseeable future. Navistar stated that

approximately 91 percent of its school bus chassis are equipped with automatic transmissions. The commenters indicated that while the number of school buses equipped with automatic transmissions was increasing, it was not likely that these transmissions would incorporate a park position. Rochester said it believed that the addition of a parking pawl in heavy-duty transmissions would be extremely difficult. The heavy vehicle weight would require a large pawl, and there is no room inside existing transmissions for such a pawl. Thomas indicated that one automatic transmission manufacturer, Allison, is developing heavy-duty transmissions with parking pawls. However, Thomas does not currently use any in production. Thomas further stated that it manufactured over 200 buses with a system that automatically shifted the transmission into neutral and applied the parking brake when the gear selector was placed in the ''park'' position; however, this system had many service problems and was removed from the marketplace.

GM stated that it will begin offering, as an option, an automatic transmission which incorporates a parking pawl on some chassis with a GVWR of up to 26,000 lbs. However, GM submitted that the majority of chassis used in completing buses are over 26,000 lbs. GVWR. Thus, a relatively small percentage of its buses will be equipped with parking pawls in the foreseeable future. GM does not have any plans to offer automatic parking brake application systems in school buses. Navistar indicated that it is not considering incorporating parking pawls in large automatic transmissions. It also stated that automatic parking brake systems are currently available with a dual neutral automatic transmission design; however, this option is rarely used. Other variations on these types of systems are being considered.

ATA indicated that a park feature will be incorporated in larger, torque converter equipped automatic transmissions, but not for automatic transmissions used in the heaviest trucks. According to ATA, parking pawls are not practical for heavy truck use since they would be required to resist ''tens of thousands of pounds'' of force when a truck is parked on a grade, which also would make them difficult to release. ATA provided other reasons why parking pawls cannot or should not be relied upon for parking trucks including combination vehicles (tractor-trailers).

A large number of the commenters also considered the effectiveness and potential consequences of a parking brake application warning signal. Katy stated that a visual or auditory signal would be just one more addition to a bus environment that has too many distractions.

Thomas also indicated a concern that an additional warning device could cause driver confusion due to the multiple warning devices already present in school buses. In addition, Thomas was concerned that this confusion would be magnified when drivers switch between vehicles having a warning system and vehicles lacking one. In its comments, GM voiced doubts that drivers would rely on the warning system. However, GM stated that proliferation of warning devices is not an issue and further indicated if an identified safety justification for the parking brake warning system exists, then a warning device would be suitable for school buses equipped with either automatic or manual transmissions. Unlike GM, Navistar stated that there is the possibility of confusion if a vehicle contains several warning systems. Also, Navistar warned that even if a vehicle equipped with the parking brake warning system were not shifted into neutral, the warning system would not activate, allowing rollaway to occur. The company stated that the potential to forget to apply the parking brake is probably equal for either a manual or automatic transmission. AlliedSignal indicated that warning systems can confuse drivers because of the variants in warning systems of different vehicles and noted that many vehicles with hydraulic brakes are already equipped with a visual indication that the parking brake has been applied. Therefore, an additional warning for the parking brake warning system would need to be both visual and audible. ATA argued that the proposed warning system would not always be effective, such as when the vehicle is parked with the engine running, and stated that if a driver becomes accustomed to the warning system, then there is the possibility that it will lose effectiveness.

The commenters were nearly unanimous in their view that driver training is an effective means for addressing unintended roll aways. Rochester stated that driver training is the area that needs attention. Thomas indicated that unless there is a large population of roll away cases that can be used to define the issue in detail, driver training would be an important countermeasure. Navistar submitted that greater emphasis on the driver training aspects of parking brake application could have some unmeasured benefit. AlliedSignal suggested that an informational campaign could help vehicle operators understand that the park position on an automatic transmission is not the parking brake. ATA stated that training is important regardless of whether there is a parking-brake-off warning system or not.

However, GM indicated that it did not believe that training would be a useful countermeasure. In GM's view, school bus drivers in the U.S. receive extensive training including annual training updates and capability assessments. Therefore, GM suspects that drivers who neglect to apply the parking brake do so through forgetfulness instead of lack of knowledge.

A number of commenters voiced their opposition to augmenting or replacing a warning system with a system that automatically applies the parking brake on school buses whenever the ignition is turned to ''lock'' or the key is removed. Thomas stated that such a system would not be a fail safe system, and a system that would be activated when the key is removed would be difficult to design and build. Thomas was concerned that an automatic parking brake system could malfunction at the worst time, for example, on a railroad crossing. Also, if such a vehicle were equipped with an override system, that feature could defeat the purpose of the automatic system. GM indicated that it would not support a requirement for an automatic parking brake system. GM believes that there are practicality, durability, performance and cost reasons for not adopting any requirement for automatic parking brakes on school buses. Navistar was concerned that an automatic parking brake system could accidentally activate while the vehicle is in motion, resulting in a loss of vehicle control. AlliedSignal stated that an automatic parking brake system would be acceptable, provided that the system could not activate while the vehicle was in motion. ATA indicated that an automatic parking brake system would not be acceptable. In the case of hydraulic-braked vehicles, a series of wires, switches, linkage, and a motor would be needed to activate the mechanical parking brake, which would add to vehicle complexity and reduce reliability. Also, an automatic parking brake system would not permit the driver to park intentionally without applying the parking brake, as is sometimes done in freezing weather when brake components are wet to prevent parking brake freeze-up. An override switch would be needed with an automatic parking brake system to prevent the freeze-up problem, to permit towing, and to perform brake system maintenance.

In response to an agency inquiry regarding expanding the application of a warning system requirement to include vehicles other than school buses, Thomas stated that the roll away problem is so small that it was difficult to determine if such an expansion could be justified. TMA believed that sufficient data do not exist to justify a warning system requirement for either school buses or medium and heavy-duty trucks. GM submitted that NHTSA's regulatory decision-making should be driven by objective data and any warning system requirement should be instituted only if data show a safety need and the warning system is demonstrated to be an effective countermeasure. ATA stated that parking-brake-off warning system should not be mandated for medium and heavy-duty commercial vehicles.

V. Analysis

Examination of agency data and the comments submitted in response to the March 1, 1999 notice indicate that school bus roll away incidents are very rare. The petitioner submitted evidence of two roll aways in its petition. Comments received in response to the March 1999 notice refer to two additional roll away incidents, with no specific details on whether the involved school buses were equipped with air or hydraulic brakes, or manual or automatic transmissions. The coding schemes for the General Estimates System (GES) and Fatality Analysis Reporting System (FARS) databases of property damage and injury-or fatality-producing crashes are not suitable for identifying roll away crashes due to failure to apply the parking brakes. However, a search of the NHTSA's defects investigation complaint database revealed one complaint involving a roll away that may have been related to a failure to engage the parking brake. Therefore, there are five reported roll away incidents dating back to 1989. One of these incidents resulted in unspecified injuries to students.

The small number of reported incidents over the past decade indicates that the safety risk posed by school bus roll aways stemming from failure to use the parking brake is very small. The agency believes that there is not a safety need sufficient to justify adopting a requirement that all school buses be equipped with a parking brake warning system. Moreover, the effectiveness of a parking brake warning system has not been demonstrated. As indicated by several commenters, there is a potential for the system not to be effective in certain situations, such as when parking when the engine is running. The petitioner did not provide any information regarding data or studies that show such a warning system would be effective, and the agency is not aware of any research on this issue.

The agency is also concerned that requiring either an audible or visual warning or both would not be the most effective countermeasure. As one of the commenters indicated, the effectiveness of any warning is affected by operator training. The commenters suggested that driver training would be a more effective countermeasure than warnings. In the absence of training, warnings may simply be disregarded or unconsciously ignored.

In 1999, NHTSA's Office of Traffic Safety Programs released an extensive school bus driver training program to assist school bus operators in training their drivers. The program was developed with the expertise and support of fifteen groups including federal agencies, pupil transportation providers, and school districts. There are seven training modules in the program, including Driver Attitude, Student Management, Highway-Rail Grade Crossing Safety, Vehicle Training, Knowing Your Route, Loading and Unloading, and Transporting Infants and Toddlers. In the Vehicle Training module, there is an entry entitled ''Manual versus Automatic,'' which, in a properly-administered training program, would include a thorough discussion of the lack of a parking position on large school bus automatic transmissions. Part 5 of the module, or *If no lookout is available,* includes the sequence of actions to be taken by the driver before backing up a bus: first, set the parking brake; second, turn off the motor and take the keys with you; and third, walk to the rear of the bus to determine whether the way is clear. The agency believes that administration of such a training program would provide adequate information to the driver to learn how to properly use the parking brake.

The agency notes that GM provides such a warning system for customers who rent trucks to the general public. This feature was provided in response to many of its customers desiring this feature. However, NHTSA notes that the rental vehicles in question are below the 26,001 lbs. GVWR limit above which a commercial drivers license (CDL) is required. Thus, the operators of these vehicles, the general public, have not received the extensive training that a CDL vehicle operator must undergo. In addition, drivers of school buses that have a seating capacity of more than 16 passengers are required to have not only a CDL, but also a passenger vehicle endorsement. Further, those drivers of school buses equipped with air brakes are also required to have an air brake endorsement on their license. Because of these substantial differences, the agency believes the benefits of a parking brake warning system would be higher for rental vehicles operated on an occasional basis by the general public than for school buses that are operated only by trained and specially-licensed school bus drivers.

VI. Conclusion

For the reasons given above, we conclude that Schmitty and Sons has not justified the need for rulemaking. The safety risk posed by the failure to use the parking brakes on school buses, which may result in unintended movement of the vehicle, is very small. The risk does not justify requiring that all school buses have a warning system to remind drivers to use the brake.

This completes the agency's review of the petition, in accordance with 49 CFR part 552. Based on the available information, we believe that there is no reasonable possibility that the actions requested by Schmitty would be taken at the conclusion of a rulemaking proceeding and that the problem alleged by Schmitty does not warrant the expenditure of agency resources to conduct a rulemaking proceeding. Accordingly, we deny Schmitty's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: April 4, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–8738 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 032001C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Monkfish Fishery Management Plan (Monkfish FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to 5 vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The vessels would collect biological data using sink gillnets, as well as collect environmental data, which will be used to characterize the blackfin monkfish (*Lophius gastrophysus*) component of the monkfish fishery off North Carolina and Virginia. A component of this experiment would also report and observe gear interactions in the monkfish gillnet fishery with threatened or endangered sea turtles, marine mammals, and sea birds. Before issuance of the EFPs, NMFS will take the necessary steps to ensure consistency with its obligations under the Endangered Species Act. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before April 25, 2001.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Environment and Natural Resources Division of Marine Fisheries submitted an application for EFPs on March 5, 2001. The EFPs will facilitate collection of spatial and temporal data that would be used to identify the blackfin monkfish component of the monkfish fishery and the distribution and migration of monkfish off North Carolina and Virginia during the spring and early summer of 2001. The study would occur in waters between Avon, North Carolina and Chincoteague, Virginia, 30 nautical miles seaward of the coast. The purpose of the study is to collect and properly identify the different species of monkfish in the study area to determine the occurrence and relative abundance of blackfin monkfish in the commercial gillnet catch.

The Monkfish FMP is specific for only one species, the American monkfish or goosefish (*Lophius americanus*), although the fisheries literature identifies two other species, blackfin monkfish (*L. gastrophysus*) and reticulated goosefish (*Lophiodes reticulatus*) that may be found in the western central Atlantic (Fischer, 1978). Over the past 2 years, the North Carolina Division of Marine Fisheries (NCDMF) and local fishermen have collected several specimens that have been identified as blackfin monkfish. The proportion of the harvest that is blackfin monkfish is unknown, but this species may comprise up to 10 percent of the catch from the waters off North Carolina and Virginia. Dockside identification of this species, which is difficult at best, is complicated by the common practice of processing at sea and the landing of monkfish tails only, which is allowed under the Monkfish FMP.

Based on the premise that blackfin monkfish may comprise up to 10 percent of the commercial monkfish catch using gillnets, the number of blackfin monkfish that would need to be identified to validate the percent composition of this species is estimated by the applicant to be 2,500 individuals. If blackfin monkfish comprise 10 percent of the catch, the total monkfish catch believed necessary for a statistically valid survey would be 25,000 monkfish. Assuming an average weight of 8 lb (3.6 kg) per fish, the amount of harvest is expected to be approximately 200,000 lb (90.72 mt) of whole monkfish.

The target species expected to be harvested under the EFP are blackfin monkfish and American monkfish. Incidental species expected to be caught in the fishery are skates, rays, and sharks. While the monkfish caught may be sold by participants to defray the costs of the experiment, the landed monkfish must meet the minimum fish size requirements.

Participating vessels will be selected by the applicant based on knowledge of the gillnet fishery for monkfish, familiarity with local fishing methodology, familiarity with the survey area, and possession of monkfish gillnet gear. Up to five vessels would participate in the experiment and would be required to comply with all conditions of the EFP. A weekly trip limit of 7000 lb (3.18 mt) in any given period not to exceed 7 days, will be allowed instead of daily trip limits, as well as an allowance for the limited use of 8-inch (20.32-cm) mesh gillnets in an attempt to select for the smaller blackfin monkfish.

The EFPs would allow up to five vessels to fish 40 monkfish Days-at-Sea (DAS) per vessel, while exempting vessels from the eligibility and permit requirements associated with DAS permits under the Monkfish FMP. In order to ensure that the data collected are not biased by fishing behavior in response to fish movements, exemptions would allow participating vessels to possess and land monkfish in excess of the daily trip limit specified under 50 CFR 648.94(b)(2)(v). In order to obtain data on blackfin monkfish distribution and abundance, a species that is reportedly smaller than the American monkfish (*Lophius americanus*), the participating vessels may be required to temporarily retain monkfish that are less than the minimum fish size (50 CFR 648.93(a)(1)), and to fish with gear that is less than the minimum gillnet mesh size requirement (50 CFR 648.91(c)(1)(iii)). The experiment will run from the date of issuance of the EFPs through June 30, 2001. However, should additional data collection be necessary beyond this date, the experiment may be extended, but without the monkfish DAS exemption provisions and allowance for exemptions to monkfish landing and possession limits specified under the Monkfish FMP.

Participating vessels would be required to fish in accordance with a sampling plan designed by the applicant, maintain logbooks documenting fishing activities, carry on-board observers trained in blackfin monkfish taxonomy, land all monkfish suspected of being blackfin monkfish in a whole condition to aid in identification, and allow biological information to be collected from the catches. The applicant anticipates up to 10 percent observer coverage. However, given the need for information on gear interactions in the monkfish gillnet fishery with threatened and endangered sea turtles off North Carolina and Virginia, the Regional Administrator is seeking public comment on the appropriate level of observer coverage for this experimental fishery. In

addition, the Regional Administrator is also seeking comments on whether all monkfish, regardless of whether they are suspected of being blackfin monkfish, be landed in whole condition for identification purposes.

The applicant recognizes that the monkfish gillnet fishery may be responsible for sea turtle mortality and has formulated a system of area closures triggered by dates, water temperatures, and/or observed sea turtle interactions, to minimize the impact of the experimental fishery on threatened or endangered sea turtles. Five time-specific areas have been established for the experiment to minimize the probability of interactions of threatened or endangered sea turtles with monkfish gillnet gear.

Time-specific Area Closures

EFP participants will be authorized to fish in:

(a) *Area 1*- North of a line running 090° (M) from Avon, NC, 35° 20′30″ N, to a line running 090° (M) from Chincoteague, VA, 37° 56′00″ N, from March 16 through March 31, 2001;

(b) *Area 2*- North of a line running 090° (M) from Oregon Inlet, NC, 35° 46′00″ N, to a line running 090° (M) from Chincoteague, VA 37° 56″00″ N from April 1 through April 30, 2001;

(c) *Area 3*- North of a line running 090° (M) from Currituck Beach Light, NC, 36° 22″30″ N, to a line running 090° (M) from Chincoteague, VA, 37° 56″00″ N, from May 1 through May 31, 2001;

(d) *Area 4*- North of a line running 090° (M) from Cape Henry, VA, 36° 55″54″ N, to a line running 090° (M) from Chincoteague, VA, 37° 56″00″ N, from June 1 through June 15, 2001; and

(e) *Area 5*- North of a line running 090° (M) from Wachapreague Inlet, VA, 37° 34′36″ N, to a line running 090° (M) from Chincoteague, VA, 37° 56″00″ N, from June 16 through June 30, 2001.

Should observers or fishermen report surface water temperatures in excess of 60 degrees Fahrenheit for 3 consecutive days within an area, all EFP participants shall move their fishing operations northward to the next time-specific fishing area.

EFPs would be issued to up to five vessels to exempt them from monkfish DAS requirements (as well as other associated permitting and gear marking requirements under the Limited Access Monkfish DAS gillnet fishery), monkfish possession and landing limits, minimum fish size requirement (for data collection only), and minimum gillnet mesh sizes of the Monkfish FMP, found at 50 CFR part 648, subpart F.

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

Dated: April 4, 2001

Bruce C. Morehead,

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

[FR Doc. 01–8814 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 033001B]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Intent to Prepare an Environmental Impact Statement (EIS) for Fishing Conducted Under the Pacific Coast Groundfish Fishery Management Plan (FMP).

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

ACTION: Notice of intent to prepare an EIS; request for written comments.

SUMMARY: NOAA announces its intention to prepare an EIS, in accordance with the National Environmental Policy Act (NEPA), to assess the impacts of Federal management of the Pacific Coast groundfish fishery on the human environment. The scope of the EIS analysis will include issues related to the conduct of the fishery, including the effects of the groundfish fishery on essential fish habitat (EFH).

DATES: Written comments will be accepted on or before June 30, 2001. Public scoping meetings are scheduled for May 22–23, May 29–30, June 5 and June 12, 2001 (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Donna Darm, Acting Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Comments also may be sent via facsimile (fax) to 206–526–6736. Comments will not be accepted if submitted via e-mail or Internet. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, 206–526–6140; fax: 206–526–6736 and e-mail: bill.robinson@noaa.gov or Svein Fougner, Southwest Region, NMFS, 562–980–4000; fax: 562–980–4047 and e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Dates and Times for the Meetings

The following locations and times have been set for scoping meetings:

1. Oregon - Hatfield Marine Science Center, meeting Room 9, 2040 SE Marine Science Drive, Newport, OR, May 22, 2001, beginning at 7 p.m.;
2. Oregon - Oregon State University, Seafood Laboratory, 2021 Marine Drive, Astoria, OR, May 23, 2001, beginning at 7 p.m.;
3. California - Humboldt Bay Harbor, Recreation and Conservation District, Woodley Marina, 601 Startare Drive, Eureka, CA, May 29, 2001, beginning at 5 p.m.;
4. California - California Department of Fish and Game, 4665 Lampson Avenue, Los Alamitos, CA, May 30, 2001, beginning at 3 p.m.;
5. Washington - NMFS, 7600 Sand Point Way NE, Building 9, Seattle, WA, June 5, 2001, beginning at 7 p.m.; and

California - Park Plaza International Hotel, 1177 Airport Blvd., Burlingame, CA, June 12, 2001, beginning at 7 p.m.

There are 82 species managed under the Pacific Coast Groundfish FMP, seven of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in non-groundfish fisheries, most notably the trawl fisheries for pink shrimp, spot/ridgeback prawns, California halibut, and sea cucumber. To rebuild overfished species, restrictive management measures for most commercial and recreational fishing sectors have recently been adopted.

To define management issues and provide a clear basis for public comments, a summary of the current Federal management system for the Pacific Coast groundfish fishery will be reviewed during the public scoping hearings. A principal objective of the scoping and public input process is to identify a reasonable set of management alternatives that, with adequate analysis, will sharply define critical issues and provide a clear basis for choice among the alternatives. Therefore, the EIS will include a range of reasonable management alternatives and an analysis of their impacts.

The intent of the EIS is to present an overall picture of the environmental effects of fishing as conducted under the Pacific Coast Groundfish FMP.

Alternatives will be analyzed for impacts on essential fish habitat, target and non-target species of fish, discarded fish, marine mammals, and other protected species present in the Pacific Coast ecosystem. In addition, the environmental consequences section of the EIS will contain an analysis of impacts from fishery management measures on the following groups of individuals: (1) those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market the fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

This EIS also responds to the U.S. District court's order in *American Oceans Campaign* v. *Daley*, No 99-982, (D.D.C. Order dated September 14, 2000), ordering NMFS to perform a new NEPA analysis on the EFH provisions originally developed as part of Amendment ll to the Groundfish FMP, which became effective on October 12, 1999 (64 FR 49092 September 10, 1999). Accordingly, the EIS will also evaluate alternatives to describe and identify EFH and to minimize to the extent practicable the adverse effects of fishing on EFH.

Scoping documents which identify the management issues, initial alternatives, and an outline of the proposed analysis will be made available at all scoping meetings.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to William L. Robinson 206-–526–6140 (voice) or 206–526–6736 (fax), at least 5 days prior to the scheduled meeting date.

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

Dated: April 4, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–8815 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 69
Tuesday, April 10, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Plum Creek Watershed, Pepin and Pierce Counties, WI.

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Plum Creek Watershed, Pepin and Pierce Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Patricia S. Leavenworth, State Conservationist, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, Wisconsin, 53719. Telephone (608) 276–8732.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Patricia S. Leavenworth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are grade stabilization, sediment damage reduction, and incidental flood prevention. The planned works of improvement include the repair of Structure Number 19, the removal of accumulated sediment, and the enactment of a county floodplain zoning ordinance which restricts future development within the hydraulic shadow of Structure Number 19.

A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Sheryl B. Paczwa.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Patricia S. Leavenworth,
State Conservationist.

[FR Doc. 01–8734 Filed 4–9–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oregon

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Oregon for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue revisions to Conservation Practice Standards 313, Waste Storage Facility, 590, Nutrient Management, and 633, Waste Utilization, in Section IV of the State Technical Guide in Oregon. These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before May 10, 2001. Once the review and comment period is over and the standards are finalized, they will be placed in the individual Field Office Technical Guide in each field office.

ADDRESSES: Address all requests and comments to Roy M. Carlson, Jr., Leader for Technology, Natural Resources Conservation Service (NRCS), 101 SW Main Street, Suite 1300, Portland, Oregon 97204. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *roy.carlson@or.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Roy M. Carlson, Jr., 503–414–3231

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of changes will be made. In Oregon, ''technical guides'' refers to the Field Office Technical Guide maintained at each NRCS Field Office in Oregon.

Dated: April 2, 2001.

Bob Graham,
State Conservationist, Portland, Oregon.

[FR Doc. 01–8735 Filed 4–9–01; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

Inviting Preapplications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $4.5 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 2001. Of this amount, $1.5 million will be reserved for preapplications which focus on assistance to small, minority producers whose governing board or membership is comprised of at least 75 percent minorities through their cooperative businesses. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit preapplications for FY 2001 and award grants before September 1, 2001.

DATES: The deadline for receipt of a preapplication is May 24, 2001. Preapplications received after that date will not be considered. Preapplications should be sent to the Rural Development State offices. State offices will forward the preapplications to the National office by June 7, 2001.

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State office to receive further information and copies of the preapplication package.

FOR FURTHER INFORMATION CONTACT: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 720–8460.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements continued in this regulation were previously approved by the Office of Management and Budget (OMB) and were assigned OMB control number 0570–0006.

General Information

Rural Cooperative Development Grants (RCDG) are authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C.1932). Regulations are contained in 7 CFR part 4284, subpart F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State offices acting on behalf of RBS.

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria. The priorities described in this paragraph will be used by RBS to rate preapplications. RBS review of preapplications will include the complete preapplication package submitted to the Rural Development State office. Points will be distributed according to ranking compared with other preapplications on hand. Points will be awarded to each factor on a 5, 4, 3, 2, 1 basis depending on the applicant's ranking compared to other applicants. Each factor will receive equal weight. Preference will be given to applications that:

1. Demonstrate a proven track record in administering a nationally coordinated, regionally or Statewide operated project;

2. Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

3. Demonstrate the ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

4. Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

5. Commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

6. Commit to providing greater than a 25 percent matching contribution, with private funds and in-kind contributions;

7. Demonstrate transferability or demonstration value to assist rural areas outside of project area; and

8. Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 2001 Preapplication Submission

Preapplications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each preapplication received in the Rural Development State office will be reviewed to determine if the preapplication is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Preapplications without supportive data to address selection criteria will not be considered.

Since the cooperative center concept is to provide technical assistance services, including feasibility analysis, preapplications that do not propose development or continuation of the cooperative center concept will not be considered. Also, preapplications that focus on assistance to only one cooperative within the project area will not be considered. To enhance the long-term viability of cooperative development centers, strengthening of technical assistance capacity within new and existing centers is strongly encouraged.

Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State office or RBS National office.

Preapplications must be completed and submitted to the Rural Development State office as soon as possible, but no later than May 24, 2001. Preapplications received after May 24 will not be considered.

For ease of locating information, each preapplication should contain the following:

1. A detailed Table of Contents containing page numbers for each component of the preapplication.

2. A project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

3. A separate one-page information sheet which lists each of the eight evaluation criteria followed by the page numbers of all relevant material and documentation contained in the preapplication which supports that criteria. This page should immediately follow the project summary.

4. An additional requirement for those applicants who have received funding under the Rural Cooperative Development Grant program in fiscal years 1997 through 2000 is a summation, not to exceed three pages, of progress and results for all projects funded fully or partially by the RCDG program in those years. This summary should include the status of cooperative businesses organized and all eligible grant purpose activities listed under 7 CFR, § 4284.515. The summary should immediately follow the page described above in (3) documenting the location of evaluation criteria supporting material.

Preapplications requesting Federal funds in excess of $300,000 will not be considered.

The National office will score preapplications based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the awardees's satisfactory submission of a formal application and related materials in accordance with subpart F. Entities submitting preapplications that are selected for awards will be invited by the Rural Development State office to submit a formal application prior to September 1. It is anticipated that grant awardees will be selected by September 1, 2001.

In the event that the applicant is awarded a grant that is less than the amount requested, the applicant will be

required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award, if acceptable modifications are not submitted by the awardees within 15 working days from the date the application is returned to the applicant. Any modifications must be within the scope of the original application.

All applicants and grants must be in compliance with the requirements of 7 CFR parts 3015 and 3019.

Dated: April 2, 2001.

William F. Hagy, III,

Acting Administrator, Rural Business-Cooperative Service.

BILLING CODE 3410–XY–P

Revised April 2, 2001

U. S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT STATE OFFICES

ALABAMA USDA Rural Development State Office Sterling Center, Suite 601 4121 Carmichael Road Montgomery, AL 36106-3683 T: (334) 279-3400 F: (334) 279-3484	**GEORGIA** USDA Rural Development State Office Stephens Federal Building 355 E. Hancock Avenue Athens, GA 30601-2768 T: (706) 546-2162 F: (706) 546-2152	**LOUISIANA** USDA Rural Development State Office 3727 Government Street Alexandria, LA 71302 T: (318) 473-7920 F: (318) 473-7829
ALASKA USDA Rural Development State Office 800 West Evergreen, Suite 201 Palmer, AK 99645-6539 T: (907) 761-7700 F: (907) 761-7783	**HAWAII** USDA Rural Development State Office Federal Building, Room 311 154 Waianuenue Avenue Hilo, HI 96720 T: (808) 933-8380 F: (808) 933-8327	**MAINE** USDA Rural Development State Office 967 Illinois Avenue, Suite 4 P.O. Box 405 Bangor, ME 04402-0405 T: (207) 990-9106 F: (207) 990-9165
ARIZONA USDA Rural Development State Office 3003 North Central Avenue, Suite 900 Phoenix, AZ 85012-2906 T: (602) 280-8700 F: (602) 280-8770	**IDAHO** USDA Rural Development State Office 9173 West Barnes Dr. Suite A1 Boise, ID 83709 T: (208) 378-5600 F: (208) 378-5643	**MASS/RI/CONN** USDA Rural Development State Office 451 West Street Amherst, MA 01002 T: (413) 253-4300 F: (413) 253-4347
ARKANSAS USDA Rural Development State Office 700 West Capitol Ave., Room 3416 Little Rock, AR 72201-3225 T: (501) 301-3200 F: (501) 301-3278	**ILLINOIS** USDA Rural Development State Office Illini Plaza, Suite 103 1817 South Neil Street Champaign, IL 61820 T: (217) 398-5235 F: (217) 398-5337	**MICHIGAN** USDA Rural Development State Office 3001 Coolidge Road, Suite 200 East Lansing, MI 48823 T: (517) 324-5100 F: (517) 324-5225
CALIFORNIA USDA Rural Development State Office 430 G Street, Agency 4169 Davis, CA 95616-4169 T: (530) 792-5800 F: (530) 792-5837	**INDIANA** USDA Rural Development State Office 5975 Lakeside Boulevard Indianapolis, IN 46278 T: (317) 290-3100 F: (317) 290-3095	**MINNESOTA** USDA Rural Development State Office 410 AgriBank Building 375 Jackson Street St. Paul, MN 55101-1853 T: (651) 602-7800 F: (651) 602-7824
COLORADO USDA Rural Development State Office 655 Parfet Street, Room E-100 Lakewood, CO 80215 T: (303) 236-2801 F: (303) 236-2854	**IOWA** USDA Rural Development State Office Federal Building, Room 873 210 Walnut Street Des Moines, IA 50309 T: (515) 284-4663 F: (515) 284-4859	**MISSISSIPPI** USDA Rural Development State Office Federal Building, Suite 831 100 West Capitol Street Jackson, MS 39269 T: (601) 965-4316 F: (601) 965-5384
DELAWARE-MARYLAND USDA Rural Development State Office 4607 South Dupont Hwy P.O. Box 400 Camden, DE 19934-9998 T: (302) 697-4300 F: (302) 697-4390	**KANSAS** USDA Rural Development State Office 1200 SW Executive Drive P.O. Box 4653 Topeka, KS 66615 T: (785) 271-2701 F: (785) 271-2708	**MISSOURI** USDA Rural Development State Office 601 Business Loop 70 West Parkade Center, Suite 235 Columbia, MO 65203 T: (573) 876-0976 F: (573) 876-0977
FLORIDA/VI USDA Rural Development State Office 4440 NW 25th Place P.O. Box 147010 Gainesville, FL 32614-7010 T: (352) 338-3400 F: (352) 338-3450	**KENTUCKY** USDA Rural Development State Office 771 Corporate Drive, Suite 200 Lexington, KY 40503 T: (606) 224-7300 F: (606) 224-7340	**MONTANA** USDA Rural Development State Office Unit 1, Suite B P.O. Box 850 900 Technology Boulevard Bozeman, MT 59715 T: (406) 585-2580 F: (406) 585-2565

Revised April 2, 2001

U. S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT STATE OFFICES

NEBRASKA USDA Rural Development State Office Federal Building, Room 152 100 Centennial Mall N Lincoln, NE 68508 T: (402) 437-5551 F: (402) 437-5408	**OKLAHOMA** USDA Rural Development State Office 100 USDA, Suite 108 Stillwater, OK 74074-2654 T: (405) 742-1000 F: (405) 742-1005	**UTAH** USDA Rural Development State Office Wallace F. Bennett Federal Building 125 South State Street, Room 4311 P.O. Box 11350 Salt Lake City, UT 84147-0350 T: (801) 524-4320 F: (801) 524-4406
NEVADA USDA Rural Development State Office 1390 South Curry Street Carson City, NV 89703-9910 T: (775) 887-1222 F: (775) 885-0841	**OREGON** USDA Rural Development State Office 101 SW Main Street, Suite 1410 Portland, OR 97204-3222 T: (503) 414-3300 F: (503) 414-3392	**VERMONT/NH** USDA Rural Development State Office City Center, 3rd Floor, 89 Main Street Montpelier, VT 05602 T: (802) 828-6000 F: (802) 828-6018
NEW JERSEY USDA Rural Development State Office Tarnsfield Plaza, Suite 22 790 Woodlane Road Mt. Holly, NJ 08060 T: (609) 265-3600 F: (609) 265-3651	**PENNSYLVANIA** USDA Rural Development State Office One Credit Union Place, Suite 330 Harrisburg, PA 17110-2996 T: (717) 237-2299 F: (717) 237-2191	**VIRGINIA** USDA Rural Development State Office Culpeper Building, Suite 238 1606 Santa Rosa Road Richmond, VA 23229 T: (804) 287-1550 F: (804) 287-1721
NEW MEXICO USDA Rural Development State Office 6200 Jefferson Street NE, Room 255 Albuquerque, NM 87109 T: (505) 761-4950 F: (505) 761-4976	**PUERTO RICO** USDA Rural Development State Office IBM Building - Suite 601 654 Munos rivera Avenue Hato rey, PR 00918-6106 T: (787) 766-5095 F: (787) 766-5844	**WASHINGTON** USDA Rural Development State Office 1835 Blacklake Boulevard, SW. Suite B Olympia, WA 98512-5715 T: (360) 704-7740 F: (360) 704-7742
NEW YORK USDA Rural Development State Office The Galleries of Syracuse 441 South Salina Street Suite 357 Syracuse, NY 13202-2541 T: (315) 477-6400 F: (315) 477-6438	**SOUTH CAROLINA** USDA Rural Development State Office Strom Thurmond Federal Building 1835 Assembly Street, Room 1007 Columbia, SC 29201 T: (803) 765-5163 F: (803) 765-5633	**WEST VIRGINIA** USDA Rural Development State Office 75 High Street, Room 320 Morgantown, WV 26505-7500 T: (304) 291-4791 F: (304) 291-4032
NORTH CAROLINA USDA Rural Development State Office 4405 Bland Road, Suite 260 Raleigh, NC 27609 T: (919) 873-2000 F: (919) 873-2075	**SOUTH DAKOTA** USDA Rural Development State Office Federal Building, Room 210 200 4th Street SW Huron, SD 57350 T: (605) 352-1100 F: (605) 352-1146	**WISCONSIN** USDA Rural Development State Office 4949 Kirschling Court Stevens Point, WI 54481 T: (715) 345-7600 F: (715) 345-7669
NORTH DAKOTA USDA Rural Development State Office Federal Building, Room 208 220 East Rosser, P.O. Box 1737 Bismarck, ND 58502-1737 T: (701) 530-2037 F: (701) 530-2108	**TENNESSEE** USDA Rural Development State Office 3322 West End Avenue, Suite 300 Nashville, TN 37203-1084 T: (615) 783-1300 F: (615) 783-1301	**WYOMING** USDA Rural Development State Office 100 East B, Federal Building, Rm 1005 P.O. Box 820 Casper, WY 82602 T: (307) 261-6300 F: (307) 261-6327
OHIO USDA Rural Development State Office Federal Building, Room 507 200 North High Street Columbus, OH 43215-2477 T: (614) 255-2500 F: (614) 255-2559	**TEXAS** USDA Rural Development State Office Federal Building, Suite 102 101 South Main Temple, TX 76501 T: (254) 742-9700 F: (254) 742-9709	

[FR Doc. 01–8768 Filed 4–9–01; 8:45 am]
BILLING CODE 3410–XY–C

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Native Americans To Develop Essential Community Facilities

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service announces the availability of $4 million in National competitive grant funds for the Community Facilities grant program for projects benefiting federally recognized Native American tribes, with an Agency emphasis on tribal colleges, to develop essential community facilities in rural communities.

DATES: Applicants and their governing boards should meet with Agency officials before a preapplication is filed to discuss eligibility requirements and processing procedures. Documentation submitted along with a preapplication will vary depending on the nature, scope, and complexity of the project and the various stages of application and project development. Applicants will compete for funds during two windows of opportunity.

Applications must be processed by the Rural Development State Office and forwarded to the Rural Housing Service, Washington, DC, by May 11, 2001 for the first window and by August 17, 2001, for the second.

ADDRESSES: Entities wishing to apply for assistance are encouraged to contact their local USDA Rural Development office for guidance on the intake and processing of preapplications. A listing of Rural Development State offices and contact persons is included in this notice.

FOR FURTHER INFORMATION CONTACT: Andrea Barnett, Community Programs, RHS, USDA, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1490, Facsimile (202) 690–0471, E-mail: abarnett@rdmail.rural.usda.gov. You may also obtain information from the Community Facilities program website: www.rurdev.usda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this announcement have received clearance by the Office of Management and Budget (OMB) under Control Number 0575–0173.

Authorizing Legislation and Regulations

The program is authorized under section 306(a) of the Consolidated Farm and Rural Development Act. Funding was made possible by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (106 Pub. L. 387). Program administration, eligibility, processing, and servicing requirements, which govern the Community Facilities grant program, may be found in 7 CFR part 3570, subpart B.

Background

Under the Rural Community Advancement Program (RCAP) for FY 2001, Congress authorized $24 million set aside for loans and grants to benefit federally recognized Native American tribes. The Rural Housing Service decided that $4 million of the set aside should be used for Community Facilities grants. Grants are targeted to communities with the smallest populations and lowest incomes. Eligible facilities include, but are not limited to, schools, classrooms, educational related equipment, libraries, cultural museums, and dormitories.

Eligibility Requirements

Eligibility requirements are found in 7 CFR part 3570, subpart B. The provisions of 7 CFR parts 3015, 3016, and 3019, as applicable, are included as requirements of these grants.

Allocation of Funds

All funds will remain in the National office reserve for funding consideration for FY 2001. Project selections will be on a national competitive basis and will be disbursed during two windows of opportunity. Applications must be processed by the Rural Development State office and forwarded to the Rural Housing Service, Washington, DC, by May 11, 2001, for the first window and by August 17, 2001, for the second. Each application will be limited to $135,000.

Intake and Processing of Grant Proposals

USDA Rural Development's designated field or State office processes the intake of all preapplications and applications.

Priority Points

The Rural Housing Service is aware of a recent survey of tribal colleges that documented more than $200 million of construction, renovation, and repair needs. The Rural Housing Service has decided to provide additional priority points to applications from tribal colleges that meet these needs. Each application received from a tribal college will be awarded an additional 20 points from Community Programs.

Selection Process

Once a determination has been made that an applicant is eligible, the preapplication is evaluated competitively and points awarded as specified in the project selection priorities contained in 7 CFR part 3570, subpart B. The State Director or designee will forward the request to the National office to compete for funding consideration. Projects will then be rated, ranked, and selections made in order of priority. Each proposal will be judged on its own merit. Projects not selected for funding consideration will remain eligible to compete for the next round of funding selections.

Final Approval and Funding Process

Final approval is subject to the availability of funds; the submission by the applicant of a formal, complete application and related materials that meet the program requirements and responsibilities of the grantee contained in Title 7 CFR 3570, subpart B; the letter of conditions; and the grant agreement.

Those preapplications that do not have sufficient priority necessary to receive funding consideration for FY 2001 will be notified, in writing, by the State or designated field office.

Local Contact Numbers

A listing of Rural Development State Offices, their addresses, telephone numbers, and a contact person follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office Suite 601, Sterling Centre 4121 Carmichael Road, Montgomery, AL 36106–3683, 334–279–3400, Chris Harmon

Alaska State Office, 800 W. Evergreen, Suite 201, Palmer, AK 99645–6539 907–761–7705, Merlaine Kruse

Arizona State Office, Phoenix Corporate Center 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, 602–280–8700, Leonard Gradillas

Arkansas State Office, 700 W. Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, 501–301–3200, Jesse G. Sharp

California State Office, 430 G Street, # 4169, Davis, CA 95616–4169, 530–792–5800, Robert Longman

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, 720–544–2903, Leroy Cruz

Delaware State Office, 4607 S. DuPont Highway, P.O. Box 400, Camden, DE 19934–9998, 302–697–4300, James E. Waters

Florida State Office,* 4440 N.W. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, 352–338–3400, Glenn E. Walden
Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, 706–546–2162, Jerry Thomas
Hawaii State Office, Room 311, Federal Building 154 Waianuenue Avenue, Hilo, HI 96720, 808–933–8380, Thao Khamoui
Idaho State Office, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709, 208–378–5600, Dan Fraser
Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, 217–398–5235, Gerald Townsend
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, 317–290–3100, Gregg Delp
Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, 515–284–4663, Dorman A. Otte
Kansas State Office, 1200 SW Executive Drive, P.O. Box 4653, Topeka, KS 66604, 785–271–2700, Gary Smith
Kentucky State Office, Suite 200, 771 Corporate Drive, Lexington, KY 40503, 859–224–7300, Vernon C. Brown
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, 318–473–7920, Danny Magee
Maine State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, 207–990–9106, Alan Daigle
Massachusetts State Office,* 451 West Street, Amherst, MA 01002, 413–253–4300, Daniel Beaudette
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, 517–324–5100, Philip Wolak
Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, 651–602–7800, James Maras
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, 601–965–4316, Darnella Smith-Murray
Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, 573–876–0976, Randall Griffith
Montana State Office, Unit 1, Suite B, P.O. Box 850, 900 Technology Boulevard, Bozeman, MT 59715, 406–585–2580, Mary Lou Affleck
Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, 402–437–5551, Denise Brosius-Meeks
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, 775–887–1222, Mike E. Holm
New Hampshire State Office, 10 Ferry Street, Concord Center, P.O. Box 317, Concord, New Hampshire 03301–5004, 603–223–6035, William Konrad
New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 WoodLane Road, Mt. Holly, NJ 08060, 609–265–3600, Michael P. Kelsey
New Mexico State Office, 6200 Jefferson Street, NE, Room 255, Albuquerque, NM 87109, 505–761–4950, Clyde Hudson
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, 315–477–6400, Gail Giannotta
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, 919–873–2000, Phyllis Godbold
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, 701–530–2037, Don Warren
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, 614–255–2400, David Douglas
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, 405–742–1000, Rock W. Davis
Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, 503–414–3300, Bill Daniels
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, 717–237–2299, Gary Rothrock
Puerto Rico State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, 787–766–5095, Pedro Gomez
South Carolina State Office, Strom Thurmond Federal Bldg., 1835 Assembly Street, Room 1007, Columbia, SC 29201, 803–765–5163, Larry Floyd
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street SW., Huron, SD 57350, 605–352–1100, Dwight Wullweber
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, 615–783–1300, Keith Head
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, 254–742–9700, Mike Meehan
Utah State Office, Wallace F. Bennett, Federal Building, 125 S. State Street, Rm. 4311, P.O. Box 11350, Salt Lake City, UT 84147–0350, 801–524–4320, Jack Cox
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, 802–828–6000, Rhonda Shippee
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, 804–287–1550, Carrie Schmidt
Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5715, 360–704–7740, Jack Gleason
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, 304–284–4860, Dianne Crysler
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, 715–345–7600, Mark Brodziski
Wyoming State Office, 100 East B, Federal Building, Room 1005, P.O. Box 820, Casper, WY 82601, 307–261–6300, John Cochran

Dated: April 3, 2001.

James C. Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. 01–8769 Filed 4–9–01; 8:45 am]

BILLING CODE 3410–XV–U

* The Florida State Office also administers the Virgin Islands program.

* The Massachusetts State Office, also administers the Rhode Island and Connecticut programs.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on April 26, 2001, at the Sheraton Hotel, 401 East 6th Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to plan future activities and discuss civil rights issues including concerns of Alaska's Native population.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 4, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–8695 Filed 4–9–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1 p.m. and recess at 8 p.m. on Monday, May 7, 2001, at the Adams Mark, 743 Horizon Drive, Grand Junction, Colorado 81506. The purpose of the meeting is to plan future activities and brief the Committee on community forum format. The Committee will reconvene at 8:30 a.m. and adjourn at 8 p.m. on Tuesday, May 8, 2001, at the same location (the Adams Mark). The purpose of the meeting is to hold a community forum to obtain information on civil rights issues affecting Grand Junction and western Colorado by inviting community leaders, elected officials and institutional representatives to share views, experiences and information.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 4, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–8696 Filed 4–9–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 1 p.m. on Thursday, April 26, 2001, at the Embassy Suites Hotel, 110 W. Washington, Indianapolis, Indiana 46204. The purpose of the meeting is to hold a press conference to release the Committee's report, The Decision to Prosecute Homicides and Drug Offenses in Marion County, Indiana. Also, the Committee will discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 4, 2001.

Edward A. Hailes,

General Counsel.

[FR Doc. 01–8697 Filed 4–9–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on April 25, 2001, at the Sheraton Hotel, 1 Europa Drive, Chapel Hill, North Carolina 27278. The purpose of the meeting is to discuss the status of civil rights issues in the State and Nation, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 4, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–8698 Filed 4–9–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on May 2, 2001, at the Westin Seattle, 1900 Fifth Avenue, Seattle, Washington, 98101. The purpose of the meeting is to plan future activities and discuss civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 4, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–8699 Filed 4–9–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040501B]

Submission for OMB Review; Comment Request.

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Small-Craft Facility Questionnaire.

Form Number(s): NOAA Form 77-1.

OMB Approval Number: 0648-0021.

Type of Request: Regular submission.

Burden Hours: 213.

Number of Respondents: 1,600.

Average Hours Per Response: 133 (8 minutes).

Needs and Uses: NOAA's National Ocean Services produces nautical charts

to ensure safe navigation. Small-craft charts are designed for recreational boaters and include information on local marine facilities and the services they provide (fuel, repairs, etc.). Information must be gathered from marinas to update the information provided to the public. Forms are sent to marinas when the relevant chart is to be updated. Forms are also made available at boat shows.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 3, 2000.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–8816 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Open Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on April 26, 2001, at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The meeting will begin at 9:30 a.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encyrption products.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Issue briefings.
5. Open discussion.

The meeting is open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSENC members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address below: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave, NW., Washington, DC 20230.

For more information or copies of the minutes, contact Ms. Carpenter at (202) 482–2583.

Dated: April 5, 2001.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 01–8757 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by producers/exporters of subject merchandise and by the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers ten producers/exporters of the subject merchandise. The period of review (POR) is July 1, 1999, through June 30, 2000.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or the constructed export price (CEP), as applicable, and the NV.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. Further, we would appreciate parties submitting written comments to provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Charles Riggle, at (202) 482–0631 or (202) 482–0650, respectively; AD/CVD Enforcement OfficeV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2000).

Case History

On July 18, 1995, the Department issued an antidumping duty order on CPF from Thailand. *See Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand,* 60 FR 36775 (July 18, 1995). On July 20, 2000, we published in the **Federal Register** the notice of opportunity to request the fifth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR 45037 (July 20, 2000).

On July 20, 2000, July 24, 2000, and August 3, 2000, the following companies requested that the Department conduct an administrative review for the period from July 1, 1999, through June 30, 2000 respectively: Vita Food Factory (1989) Co., Ltd. (Vita), Kuiburi Fruit Canning Company Limited (KFC) and Malee Sampran Public Co., Ltd. (Malee); The remaining companies requested reviews for the same period on July 31, 2000: Siam Food Products Public Co. Ltd. (SFP), The Thai Pineapple Public Co., Ltd. (TIPCO), Thai Pineapple Canning Industry (TPC), and Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, ''Dole'');

In addition, on July 28, 2000, the petitioners, Maui Pineapple Company

and the International Longshoremen's and Warehousemen's Union, in accordance with 19 CFR 351.213(b)(1), requested a review of KFC, Malee, Prachuab Fruit Canning Company (Praft), Siam Fruit Canning (1988) Co., Ltd. (SIFCO), SFP, TIPCO, TPC, Vita, Dole, and Siam Agro Industry Pineapple and Others Co., Ltd. (SAICO).

On August 3, 2000, Malee withdrew its own request for an administrative review and requested that the Department reject the petitioners' request for an administrative review of Malee. Malee argued that the petitioners' request does not comply with 19 CFR 351.213(b)(1) governing review requests by domestic interested parties because the petitioners did not explain sufficiently why they had ''reason to believe'' that the current antidumping duty rates do not reflect the true margin of less-than-normal-value sales. However, based on the Department's precedent for granting requests for administrative reviews, the Department deemed the petitioners' request to be adequate and decided to initiate an administrative review of Malee along with other companies for which reviews had been requested.

On September 6, 2000, we published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 1999, through June 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980 (September 6, 2000).

On September 12, 2000 and September 15, 2000 respectively, in response to the Department's questionnaire, Praft and SAICO stated that they made no shipments to the United States of the subject merchandise during the POR. On September 26, 2000, the Department issued a letter to SAICO requesting confirmation that SAICO had made no sales through other pineapple companies or trading companies. On October 3, 2000, SAICO confirmed that it had no shipments to the United States through any channel. The Department independently confirmed with the U.S. Customs Service that there were no shipments from Praft or SAICO during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are treating these firms as non-shippers for purposes of this review and are preliminarily rescinding this review with respect to Praft and SAICO.

Scope of the Review

The product covered by this review is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.,* juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by Dole and TPC. We used standard verification procedures, including on-site inspection of the respondent producers' facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification reports, which are in the case file in Room B–099 of the Main Department of Commerce Building. Additionally, since the petitioners have submitted a written request for verification of the factual information submitted by SIFCO, and since SIFCO has not been verified in the last three reviews in which it participated, verification is mandatory in accordance with 19 CFR 531.307(b)(1)(v). For this review, due to limited staffing resourses, SIFCO will be verified after the preliminary determination.

Fair Value Comparisons

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. For all respondents except SIFCO, we based the date of sale on the date of the invoice. For SIFCO, we based the date of sale on the contract date. According to SIFCO, there were no changes to the material terms of sale after the original contract was signed, and these terms did not change once the contract was issued. Therefore, because the material terms of sale were set on this date, we relied on contract date as the date of sale, as we had in the 1998/1999 review involving SIFCO.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses, export taxes and U.S. import duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to CEP. Accordingly, for all relevant sales we deducted direct and indirect selling expenses incurred in the United States and an amount for profit.

We determined the EP or CEP for each company as follows:

TIPCO

For TIPCO's U.S. sales, the merchandise was sold either directly by TIPCO or indirectly through its U.S. affiliate, TIPCO Marketing Co. (TMC), to the first unaffiliated purchaser in the United States prior to importation. We calculated an EP for all of TIPCO's sales because CEP was not otherwise warranted based on the facts of record. Although TMC is a company legally incorporated in the United States, the

company has neither business premises nor personnel in the United States. All activities transacted on behalf of TMC, including invoicing, paperwork processing, receipt of payment, and arranging for customs and brokerage, are conducted in Thailand where all TMC employees are located. Accordingly, as the merchandise was sold before importation by TMC outside the United States, we have determined these sales to be EP transactions. *See Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 37518 (June 15, 2000) and accompanying Decision Memo at Hylsa Comment 3.

We calculated EP based on the packed FOB or CIF price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, port charges, stuffing expenses, and inland freight), international freight, U.S. customs duties, and U.S. brokerage and handling. In addition, we revised the stuffing cost to reflect an arms-length price. *See Analysis Memorandum for the Thai Pineapple Public Co., Ltd.,* dated April 2, 2001 (*TIPCO Analysis Memo*).

SFP

We calculated an EP for all of SFP's sales because the merchandise was sold directly by SFP outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. SFP has one employee in the United States; however, this employee does not: (1) Take title to the subject merchandise; (2) issue invoices or receive payments; or (3) arrange for other aspects of the transaction. The merchandise was shipped directly by SFP in Bangkok to the unaffiliated customer in the United States. The information on the record indicates that SFP's Bangkok office is responsible for confirming orders and for issuing the invoice directly to the customer. Payment also is sent directly from the unaffiliated U.S. customer to SFP in Bangkok. Therefore, the Department has determined that these sales were made in Bangkok prior to importation and, thus, are properly classified as EP transactions.

We calculated EP based on the packed FOB or C&F price to unaffiliated purchasers for exportation to the United States. We made deductions for foreign movement expenses and international freight in accordance with section 772(c)(2)(A) of the Act. *See Analysis Memorandum for Siam Food Products Public Co. Ltd.,* dated April 2, 2001 (*SFP Analysis Memo*).

Vita

We calculated an EP for all of Vita's sales because the merchandise was sold directly by Vita outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed FOB price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, terminal handling charge, bill of lading fee, customs clearance (shipping) charge, port charges, document fee, stuffing expenses, inland freight and other miscellaneous charges), U.S. customs duties, and U.S. brokerage and handling. *See Analysis Memorandum for Vita Food Factory (1989) Co., Ltd.,* dated April 2, 2001 (*Vita Analysis Memo*).

KFC

We calculated an EP for all of KFC's sales because the merchandise was sold directly by KFC outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses and international freight. *See Analysis Memorandum for Kuiburi Fruit Canning Company Limited,* dated April 2, 2001 (*KFC Analysis Memorandum*).

SIFCO

We calculated an EP for all of SIFCO's sales because the merchandise was sold directly by SIFCO outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise indicated. We calculated EP based on the packed, FOB or C&F price to unaffiliated purchasers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses including inland freight (which consisted of brokerage and handling, port/ gate charges, staffing charges, document charges, and truck costs), international freight, and U.S. brokerage and handling. *See Analysis Memorandum for Siam Fruit Canning (1988) Co., Ltd.,* dated April 2, 2001 (*SIFCO Analysis Memo*).

TPC

During the POR, TPC had both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by TPC outside the United States to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by TPC's affiliated U.S. reseller, Mitsubishi International Corporation (MIC), after importation of the subject merchandise into the United States. EP and CEP were based on the packed FOB, ex-warehouse, or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for discounts and rebates, including early payment discounts, promotional allowances, freight allowances, and billback discounts and rebates. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include inland freight from plant to port of exportation, foreign brokerage and handling, other miscellaneous foreign port charges, international freight, marine insurance, U.S. customs brokerage, U.S. customs duty, harbor maintenance fees, merchandise processing fee, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including commissions, direct selling expenses (credit costs, warranty expenses), and indirect selling expenses incurred by MIC in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act. *See Analysis Memorandum for the Thai Pineapple Canning Industry,* dated April 2, 2001 (*TPC Analysis Memo*).

Malee

For this POR, the Department found that all of Malee's U.S. sales were properly classified as CEP transactions because these sales were made in the United States by Malee's affiliated trading company, Icon Foods.

CEP was based on the packed ex-dock U.S. port price to unaffiliated purchasers in the United States. We made deductions from the starting price for discounts in accordance with 19 CFR

351.401(c). We also made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. Because all of Malee's sales were CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with selling the subject merchandise in the United States, including direct selling expenses and indirect selling expenses incurred by Icon Foods in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act. *See Analysis Memorandum for Malee Sampran Public Co., Ltd.,* dated April 2, 2001 (*Malee Analysis Memo*).

Dole

For this POR, the Department found that all of Dole's U.S. sales were properly classified as CEP transactions because these sales were made in the United States by Dole Packaged Foods (DPF), a division of Dole.

CEP was based on DPF's price to unaffiliated purchasers in the United States. We made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland movement expenses, insurance and international freight in accordance with section 772(c)(2)(A) of the Act. Because all of Dole's sales were CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with selling the subject merchandise in the United States, including direct and indirect selling expenses incurred by DPF in the United States. We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act.

In addition, based on verification findings we made changes to Dole's control numbers, marine insurance, advertising expense, indirect selling expenses, early payment discounts, the shipment ratio between Dole Thailand and Dole Philippines, inventory carrying cost, packing materials and the standard case factor for one product. We also added certain sales reported by Dole at verification and made an adjustment to the vendor allowance reported for these sales. *See Memorandum to Gary Taverman from Constance Handley and Christopher Riker, Verification of the U.S. and Comparison Market Sales Information and the Cost Information in the Response of The Thai Pineapple Public Company Ltd. in the 1999–2000 Administrative Review of Canned Pineapple Fruit from Thailand,* dated April 2, 2001, (*Dole Verification Report*) (at X); *see also Analysis Memorandum for Dole Food Company, Dole Packaged Foods and Dole Thailand,* dated April 2, 2001 (*Dole Analysis Memo*).

Normal Value

A. Selection of Comparison Markets

Based on a comparison of the aggregate quantity of home market sales and U.S. sales, we determined that, with the exception of Malee, the quantity of foreign like product each respondent sold in Thailand did not permit a proper comparison with the sales of the subject merchandise to the United States because the quantity of each company's sales in its home market was less than five percent of the quantity of its sales to the U.S. market. *See* section 773(a)(1) of the Act. Therefore, for all respondents except Malee, in accordance with section 773(a)(1)(B)(ii) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in each respondent's largest viable third-country market, i.e., Germany for Vita, France for SIFCO, Netherlands for TPC, the United Kingdom for SFP, Finland for TIPCO, and Canada for Dole and KFC. With respect to Malee, we based NV on the price at which the foreign like product was first sold for consumption in the home market.

B. Cost of Production Analysis

Pursuant to section 773(b)(1) of the Act, we initiated a cost of production (COP) investigation of comparison-markets for each respondent. Because we disregarded sales that failed the cost test in the last completed review of TIPCO, SFP, TPC, Malee, KFC, SIFCO, and Vita, and in the investigation (i.e., the last segment in which Dole participated) for Dole, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act.[1] We conducted the COP analysis as described below.

1. Calculation of COP/Fruit Cost Allocation

In accordance with section 773(b)(3) of the Act, for each respondent, we calculated the weighted-average COP, by model, based on the sum of the costs of materials, fabrication, selling, general and administrative expenses (SG&A), and packing costs. We relied on the submitted COPs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with production of the merchandise. In addition, as the statute indicates, the Department considers whether an accounting methodology, particularly an allocation methodology, has been historically used by the company. *See* section 773(f)(1)(A) of the Act. In previous segments of this proceeding, the Department has determined that joint production costs (i.e., pineapple and pineapple processing costs) cannot be reasonably allocated to canned pineapple on the basis of weight. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand,* 60 FR 29553, 29561 (June 5, 1995), and *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 63 FR 7392, 7398 (February 13, 1998).[2] For instance, cores and shells are used in juice production, while trimmed and cored pineapple cylinders are used in CPF production. Because these various parts of a pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts of the pineapple equally by using a weight-based allocation methodology.

Several respondents that revised their fruit cost allocation methodologies during the 1995–96 POR changed from their historical net realizable value (NRV) methodology to weight-based methodologies and did not incorporate any measure of the qualitative factor of the different parts of the pineapple. As a result, such methodologies, although in conformity with Thai GAAP, do not reasonably reflect the costs associated with production of CPF. Therefore, for

[1] The 1998/1999 review was not completed until three months after the current review was initiated. Therefor, at the time the questionnaires were issued, we initiated the COP investigations based on the results of the completed 1997/1998 review for all companies except KFC and SIFCO. With regard to KFC and SIFCO, we initiated a COP investigation on March 21, 2001, based on the results of the 1998/1999 review. *See. Memorandum from Christopher Riker to Gary Taverman, Re: Initiation of COP Investigations,* (March 21, 2001).

[2] This determination was upheld by the Court of Appeals for the Federal Circuit. *The Thai Pineapple Public Co.* v. *United States,* 187 F. 3d 1362 (Fed. Cir. 1999).

companies whose fruit cost allocation methodology is weight-based, we requested that they recalculate fruit costs allocated to CPF based on NRV methodology.

Consistent with prior segments of this proceeding, the NRV methodology that we requested respondents to use was based on company-specific historical amounts for sales and separable costs during the five-year period of 1990 through 1994. We made this request of all companies in this review except for Malee. Because Malee already allocates fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products in its normal accounting records, we have not required it to recalculate its reported costs using the NRV methodology.

We made the following company-specific adjustments to the cost data submitted in this review.

• Dole. We revised the NRV ratio reported by Dole. In the questionnaire, we requested that Dole report the NRV by deducting the separable cost of processing, which was defined as ''post-split off costs,''[3] from the revenues earned on the sale of all joint products (*i.e.* solid products and pineapple juice). Dole provided a chart purporting to show that it had done so, and therefore we had no reason to believe that the submission was deficient.[4] At verification, we discovered that Dole had in fact deducted all costs except pineapple, including processing costs incurred before the split off-point. *See Dole Verification Report* (at 12).

As noted in past reviews, to capture the actual cost of the pineapple, it is necessary to deduct processing costs after the split-off point from the revenue earned. *See Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not to Revoke Order in Part: Canned Pineapple Fruit from Thailand,* 65 FR 77851 (December 13, 2000) and accompanying Decision Memo at Comment 4. By also deducting non-separable costs, Dole failed to arrive at the correct NRV. Pursuant to section 782(d) the Department is required to provide the respondent an opportunity to remedy its deficient submission, to the extent practicable and provided that such remedy can be made within the applicable deadlines. Because verification has already taken place and the deadline for submitting factual information has passed, we have determined that it is not practicable to provide Dole with an opportunity to correct its deficient submission. Because Dole failed to follow the explicit directions provided by the Department and did not provide the requested information, we have determined that it failed to act to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we are making an adverse inference and assigning Dole, as adverse facts available, the highest NRV ratio from among the other companies in this segment of the proceeding.[5]

We also revised Dole's fruit cost to assign the same per-standard-case fruit cost to all solid products. *See Dole Verification Report,* (at 10) and the *Dole Analysis Memo,* (at 3).

• *Malee.* We revised Malee's fruit cost allocation to reflect its historic fruit cost allocation for the entire POR. As noted above, we did not require Malee to recalculate its reported costs using the Department's prescribed NRV methodology because, in its normal accounting records, Malee had consistently allocated fruit costs on a basis that reasonably takes into account qualitative differences between pineapple parts used in CPF versus juice products. However, in Malee's February 6, 2001 response to the Department's supplemental questionnaire, Malee stated that, effective January 2000, it revised its cost allocation methodology used in the ordinary course of business, and calculated fruit costs for the last six months of the POR based on a revised fruit cost allocation methodology.

In its February 6, 2001 supplemental questionnaire response, Malee explained that it allocated fruit costs to each particular product, based on the ''expected'' net realizable value of the finished good. In a second supplemental questionnaire issued on March 2, 2001, the Department asked Malee to explain further its revised methodology and to provide details on how selling expenses and other separable costs were deducted from the overall revenue in order to calculate the NRV. On March 14, 2001, Malee provided information on how fruit costs are calculated after the ''expected sales value'' factors are established. However, it is not clear from Malee's response how selling expenses and other separable costs were deducted from overall revenue to obtain the NRV.

Since Malee did not provide sufficient information to support its claim that the new fruit cost allocation methodology is based on NRV, we are using Malee's historic fruit cost allocation as used in prior reviews to calculate fruit costs for this POR. We have adjusted the overall model-specific fruit costs accordingly using information already on the record for this review. For further discussion of this adjustment, *see* the *Malee Analysis Memo.*

• *TPC.* Based on cost verification findings, we made changes to TPC's reported juice costs. *See* Verification Exhibit C–18, and *TPC Analysis Memo,* for a further discussion of these changes.

2. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP for each respondent to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

Consistent with the third and fourth reviews, we have not deducted from the COP the value of certain tax certificate revenues. In the third review, we determined that the certificate is not tied to any duty drawback scheme, but rather, represents revenue paid to companies upon the export of domestically-produced merchandise. *See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 64 FR 69481, 69485 (December 13, 1999). Therefore, no adjustment was made to our dumping calculation for this payment.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where (1) 20 percent or more of a respondent's sales of a given product were made at prices below the COP and thus such sales were made within an extended period of time in substantial quantities in accordance

[3] In pineapple processing the split-off point occurs after the fruit is cored and peeled by the Ginaca machine.

[4] On September 15, 1999, Dole submitted a letter requesting that it be permitted to submit NRV data for 1990–1993 rather than through 1994, as requested by the Department. Dole did not mention in this request that it was having trouble determining the non-separable costs of production.

[5] Corroboration of this figure is not necessary because it is not secondary information.

with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act, we disregarded the below-cost sales.

We found that for certain CPF products, Dole, TIPCO, SFP, SIFCO, Malee, TPC and Vita made comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We determined price-based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. Company-specific adjustments are described below.

TIPCO

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Finland. We adjusted for the following movement expenses: brokerage and handling, port charges, stuffing expenses, liner expenses and foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (commissions, credit expenses and bank charges) and adding U.S. direct selling expenses (commissions, credit expenses and bank charges). *See* TIPCO Analysis Memorandum, dated April 2, 2001 (at 2).

SFP

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in the United Kingdom. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, warranties and commissions) and adding U.S. direct selling expenses (credit expenses and bank charges). We applied the commission offset in the manner described above.

Vita

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in Germany. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, warranty expenses, commissions, and bank charges) and adding U.S. direct selling expenses (credit expenses, commissions and bank charges).

SIFCO

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in France. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges, and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

TPC

We based third-country market prices on the packed, FOB or C&F prices to unaffiliated purchasers in the Netherlands. We adjusted for foreign movement expenses and international freight. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, letter of credit charges, and bank charges) and adding U.S. direct selling expenses (credit expenses, letter of credit charges, bank charges, and warranties). For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses other than those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act (i.e., we added expenses for letters of credit and bank charges incurred by TPC in Thailand).

In addition, because we verified that TPC's affiliate, Princes, could in fact report billing adjustments on an invoice-specific basis, we are, where possible, relying on the verification exhibits to correct the sales database to reflect actual adjustments on an invoice-specific basis. Where we do not have verified, invoice-specific information on billing adjustments, we are disallowing the allocated adjustment on sales made through Princes for purposes of the preliminary determination in accordance with 19 CFR 351.401(g)(2). In addition, we have disallowed royalties paid by Princes to Princes Ltd. *See* TPC Analysis Memorandum, dated April 2, 2001.

KFC

We based third-country market prices on the packed, FOB prices to unaffiliated purchasers in Canada. We adjusted for foreign movement expenses. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (credit expenses, bank charges and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions).

Malee

We based home market prices on the packed, delivered prices to unaffiliated purchasers in Thailand. We adjusted for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses, warranty expenses, advertising expenses and commissions) and adding U.S. direct selling expenses (credit expenses, bank charges and commissions). We also made a level of trade (LOT) adjustment where appropriate.

Dole

We based third-country market prices on Dole Foods of Canada Ltd.'s (DFC) prices to unaffiliated purchasers in Canada. We adjusted for foreign movement expenses and international freight. We made COS adjustments by deducting direct selling expenses incurred on third-country market sales. In addition, because the NV level LOT is more remote from the factory than the

CEP LOT (see the LOT section below), and there is no basis for determining whether the difference in the levels of trade between NV and CEP affects price comparability, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act.

In addition, based on verification findings we made changes to Dole's control numbers and the shipment ratio between Dole Thailand and Dole Philippines. *See* Dole Verification Report.

D. Calculation of Normal Value Based on Constructed Value

For those CPF products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product in the ordinary course of trade, we compared the EP or CEP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for SG&A expenses, comparison market profit, and U.S. packing costs. We calculated each respondent's CV based on the methodology described in the ''Calculation of COP'' section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market to calculate SG&A expenses and comparison market profit.

For price-to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stage involved in the reported U.S. and comparison market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

We note that the U.S. Court of International Trade (''CIT'') has held that the Department's practice of determining levels of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.* v. *United States*, 4 F.Supp.2d 1221 (1998); and *Micron Technology, Inc.* v. *United States*, 40 F.Supp.2d 481 (1999). The U.S. Court of Appeals for the Federal Circuit, however, has reversed the Court of International Trade's holdings in both Micron and Borden on the level of trade issue. The Federal Circuit held that the statute unambiguously requires Commerce to deduct the selling expenses set forth in section 772(d) from the CEP starting price prior to performing its LOT analysis. *See Micron Technology, Inc.* v. *United States*, Court Nos. 00–1058,–1060 (Fed. Cir. March 7, 2001); *see also Borden, Inc.* v. *United States*, Court Nos. 99–1575,–1576 (Fed. Cir. March 12, 2001)(unpublished opinion). Consequently, the Department will continue to adjust the CEP, pursuant to section 772(d), prior to performing the LOT analysis, as articulated by the Department's regulations at § 351.412.

In this review, all respondents except Malee and Dole claimed that all of their sales involved identical selling functions, irrespective of channel of distribution or market. We examined these selling functions for Vita, SIFCO, SFP, TIPCO, TPC, and KFC, and found that sales activities were limited to negotiating sales prices, processing of purchase orders/contracts, invoicing, and collecting payment. There was little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or after-sale service performed in either market by the respondents. Therefore, for all respondents except Malee and Dole, we have preliminarily found that there is an identical LOT in the U.S. and relevant comparison market, and no level-of-trade adjustment is required for comparison of U.S. sales to third-country sales.

Malee

Malee reported that all of its sales made to the United States were to importer/distributors and involved minimal selling functions on the part of Malee. Malee reported two different channels of distribution for its sales in the home market: (1) sales through Malee Supply (1994) Co. Ltd. (Malee Supply), an affiliated reseller which are made at a more advanced marketing stage than the factory-direct sales, and (2) factory-direct sales involving minimal selling functions and which are at a marketing stage identical to that of the CEP transactions after deductions.

In the home market, Malee reported numerous selling functions undertaken by Malee Supply for its resales to small wholesalers, retailers and end-users. In addition to maintaining inventory, Malee Supply also handled all advertising during the POR. The advertising was directed at the ultimate consumer. Malee also reported that Malee Supply replaces damaged or defective merchandise and, as necessary, breaks down packed cases into smaller lot sizes for many sales. Malee made direct sales to hotels, restaurants and industrial users. Malee claimed that its only selling function on direct sales was delivery of the product to the customer.

Our examination of the selling activities, selling expenses, and customer categories involved in these two channels of distribution indicates that they constitute separate levels of trade, and that the direct sales are made at the same level as Malee's U.S. sales. Where possible, we compared sales at Malee's U.S. LOT to sales at the identical home market LOT. If no match was available at the same LOT, we compared sales at Malee's U.S. LOT to Malee's sales through Malee Supply at the more advanced LOT.

To determine whether a LOT adjustment was warranted, we examined the prices of comparable product categories, net of all adjustments, between sales at the two home market LOTs we had designated. We found a pattern of consistent price differences between sales at these LOTs.

In making the LOT adjustment, we calculated the difference in weighted-average prices between the two different home market LOTs. Where U.S. sales were compared to home market sales at a different LOT, we reduced the home market price by the amount of this calculated LOT difference.

Dole

Dole reported six specific customer categories and one channel of distribution (sales through an affiliated reseller) for both its home market and U.S. sales. In its response, Dole claims that all of its sales to unaffiliated comparison market customers (i.e., the six customer categories) are at the same LOT because these sales are made through the same channel of distribution and involve the same selling functions.

Dole had only CEP sales in the U.S. market. Dole reported that its CEP sales were made through a single channel of distribution (i.e., sales through its U.S. affiliate, Dole Packaged Foods (DPF)), which we have treated as one LOT because there is no apparent difference in the selling functions performed by DPF for the different customers. After making the appropriate deductions under section 772(d) of the Act for these CEP sales, we found that the remaining expenses associated with selling activities performed by Dole are limited to expenses related to the arrangement of freight and delivery to the port of export that are reflected in the CEP price. In contrast, the normal value prices include a number of selling expenses attributable to selling activities performed by DFC in the comparison market, such as inventory maintenance, warehousing, delivery, order processing, advertising, rebate and promotional programs, warranties, and market research. Accordingly, we concluded that CEP is at a different LOT from the normal value LOT.

Having determined that the comparison market sales were made at a level more remote from the cannery than the CEP transactions, we then examined whether a LOT adjustment or CEP offset may be appropriate. In this case, Dole only sold at one LOT in the comparison market; therefore, there is no information available to determine a pattern of consistent price differences between the sales on which normal value is based and the comparison market sales at the LOT of the export transaction, in accordance with the Department's normal methodology as described above. *See Porcelain-on-Steel Cookware from Mexico Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000). Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the comparison market is at a more advanced stage of distribution than the LOT of the CEP transactions, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the comparison market not exceeding the amount of indirect selling expenses deducted from the U.S. price in accordance with 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margins exist for the period July 1, 1999, through June 30, 2000:

Manufacturer/exporter	Margin (percent)
Siam Food Products Company Ltd. (SFP)	0.18
Dole Food Company, Inc. (Dole)	1.02
The Thai Pineapple Public Company, Ltd. (TIPCO)	4.73
Kuiburi Fruit Canning Co. Ltd. (KFC)	1.66
Thai Pineapple Canning Industry (TPC)	2.33
Siam Fruit Canning (1988) Co. Ltd. (SIFCO)	1.41
Vita Food Factory (1989) Co. Ltd. (Vita)	4.57
Malee Sampran Public Co., Ltd. (Malee)	10.45

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or hearing, within 120 days from publication of this notice.

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on all entries of subject merchandise by that importer. We have calculated each importers' duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Where the assessment rate is above *de minimis,* the importer-specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CPF from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section

751(a)(1) of the Act: (1) The cash deposit rate for companies listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, de minimis, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 24.64 percent, the ''All Others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 2, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–8820 Filed 4–9–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Preliminary Results of Antidumping Duty New Shipper Administrative Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting new shipper administrative reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from China Kingdom Import & Export Co., Ltd. (China Kingdom), Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang), Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa), and Rizhao Riyuan Marine and Food Products Co., Ltd. (Rizhao Riyuan). The reviews cover the period September 1, 1999 through March 31, 2000.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. (*See* the ''Preliminary Results of Review'' section of this notice.)

EFFECTIVE DATE: April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4052 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997 (62 FR 48218). On March 29, 2000 and March 31, 2000, the Department received timely requests for review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, from China Kingdom, Weishan Fukang, Nantong Shengfa, and Rizhao Riyuan to conduct a new shipper administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. The order has a September anniversary month and a March semiannual anniversary month. These requests were made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; and (iv) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. *See* 351.214(b)(2) of the Department's Regulations.

The requests received from China Kingdom, Weishan Fukang, Nantong Shengfa, and Rizhao Riyuan were

accompanied by information and certifications establishing the effective date on which each company first shipped and entered freshwater crawfish tail meat for consumption in the United States, the volume of each shipment, and the date of first sale to an unaffiliated customer in the United States. Each of these four companies certified that it was not affiliated with any company which exported freshwater crawfish tail meat from the PRC during the POI. In addition, China Kingdom, Weishan Fukang, Nantong Shengfa, and Rizhao Riyuan each certified that its export activities are not controlled by the central government. On June 1, 2000, the Department published its initiation of these new shipper reviews for the period September 1, 1999 through March 31, 2000. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New-Shipper Antidumping Administrative Reviews,* FR 35046 (June 1, 2000).

On July 11, 2000, Rizhao Riyuan withdrew its request for review, in accordance with section 351.214(f)(1) of the Department's regulations. On September 15, 2000, the Department published the rescission of the new shipper review of Rizhao Riyuan. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Partial Rescission of New Shipper Antidumping Duty Review,* 65 FR 55940 (September 15, 2000).

On October 30, 2000 the Department published an extension of the deadline for completion of the preliminary results of these new shipper reviews until March 21, 2001. *See Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 65 FR 64666 (October 30, 2000).

Scope of Reviews

The product covered by these reviews is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in mid-year 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Date of Sale for China Kingdom

American Coast Processing Enterprises Corp. (American Processing) made a sale to its customer on February 18, 2000. The material terms of the contract—notably, the price and quantity—were established on this date. American Processing's customer issued a purchase order and American Processing issued an invoice to its customer on this date. The crawfish tail meat arrived at the U.S. port on March 1, 2000, at which time the Food and Drug Administration (FDA) seized this shipment for random inspection. Although the FDA released the crawfish tail meat on March 23, 2000, the FDA's inspection process consumed four cartons of the product.

On March 24, 2000, American Processing reissued its earlier invoice with the original price and quantity. The customer, however, reissued its purchase order showing the reduced total quantity on April 20, 2000. The unit price did not change.

China Kingdom argues that, despite the changed purchase order, the date of sale remains February 18, 2000, because the material terms of the sale did not change.

We agree with China Kingdom that the original purchase order and invoice date best reflects the date of sale on which the exporter established the material terms of sale. *See* section 351.401(i) of the Department's regulations. The unit price remained the same. Although the total price changed, that was due to circumstances that were beyond the control of both the buyer and the seller; the FDA's inspection, which consumed these four cartons of crawfish tail meat, did not change the material terms of sale. Therefore, we are reviewing China Kingdom's sale in this new shipper review.

Verification

As provided in section 782(i) of the Act, we conducted a verification of the responses of China Kingdom and its affiliated importer in the United States, American Processing; Weishan Fukang; and Nantong Shengfa. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (room B099 of the Main Commerce Building).

New Shippers

Based on the questionnaire responses received from China Kingdom, Weishan Fukang, and Nantong Shengfa, and our verification thereof, we preliminarily determine that these companies have met the requirements to qualify as new shippers during the period of review (POR). We have determined that they made their first sale or shipment of subject merchandise to the United States during the POR, that these sales were *bona fide* sales, and that these companies were not affiliated with any exporter or producer that previously shipped to the United States.

At verification, we noted that Anhui Chaohu Daxin Foodstuff Co., Ltd. (Chaohu Daxin), China Kingdom's producer, supplied, from the same production season, other exporters with crawfish for sale to the United States. We considered whether the circumstances were such as to render China Kingdom ineligible for consideration as a new shipper. At verification, we found that Chaohu Daxin did not begin crawfish operations until May 1999 and, therefore, could not have produced or exported crawfish before that date. Since Chaohu Daxin's sales to the other exporters are contemporaneous with its sales to China Kingdom, we preliminarily determine that there are no grounds to dismiss China Kingdom as a new shipper.

We note that Nantong Shengfa assumed the debt and acquired the facilities and all of the equipment of Qidong Baolu Aquatic Products Co., Ltd. (Qidong Baolu), a producer which supplied another exporter during the period of the original investigation. For the final results of this review, we will examine whether the activities of Qidong Baolu and Nantong Shengfa's connection to Qidong Baolu preclude us from determining Nantong Shengfa to be a new shipper.

Separate Rates

China Kingdom, Weishan Fukang, and Nantong Shengfa have requested separate, company-specific rates. In their questionnaire responses, the above companies state that they are independent legal entities. In addition, Weishan Fukang and Nantong Shengfa have both reported that they are PRC-foreign joint ventures.

To establish whether a company operating in an NME country is sufficiently independent to be entitled

to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by, *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of all the companies reviewed, evidence on the record indicates that China Kingdom, Weishan Fukang, and Nantong Shengfa are not controlled by the government. All of the above companies submitted evidence of their legal right to set prices independent of all government oversight. The business license of each company indicates that it is permitted to engage in the exportation of crawfish. We find no evidence of *de jure* government control restricting any of the reviewed companies from the exportation of crawfish. *See* ''Separate Rates Analysis in the New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China,'' dated March 21, 2001 (*Separate Rates Memorandum*), which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

No export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity specific export licenses required and no quotas for the seafood category ''Other,'' which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities.* (*See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).)

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over companies owned by ''all the people'' and that control over these enterprises has been transferred from the government to the enterprises themselves. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons* (*Legal Persons Law*), issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC and placed on the record of these reviews, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). *The People's Republic of China All People's Ownership Business Law* (*Company Law*), also on the record of these reviews, states that a foreign company shall bear civil responsibility for the operational activities of its branch organization in China. At verification, we saw that business licenses for China Kingdom, Weishan Fukang, and Nantong Shengfa were granted in accordance with these laws.

Weishan Fukang provided a copy of the *Foreign Trade Law*, which identifies the rights and responsibilities of business enterprises with foreign investment, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Weishan Fukang and Nantong Shengfa provided *The Sino-Foreign Equity Joint Venture Law of the PRC*, which grants export rights to Sino-foreign equity joint venture companies without additional approval from a government entity. China Kingdom submitted the *Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises*, which is designed to motivate state-owned industrial enterprises to enter the market by granting companies the ability to appoint managers, set their own prices, sell their own products, and to make decisions regarding the distribution of profits. Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to these firms.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information provided, and reviewed at verification, indicates that the respective managements of China Kingdom, Weishan Fukang, and Nantong Shengfa are responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for any of these companies. In addition, we have found that these respondents' pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. Each company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject any level of governmental approval. Each company has stated that its management is selected by its board of directors and/or its employees and that there is no government involvement in the selection process. Lastly, decisions made by respondents concerning purchases of subject merchandise from other suppliers are not subject to government approval. For more information, *see Separate Rates Memorandum*. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over their export activities, we preliminarily determine that separate rates should be applied to these exporters. For further discussion of the Department's preliminary

determination that separate rates should be applied to these exporters, *see Separate Rates Memorandum*.

Normal Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at prices below NV, we compared their United States prices to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For China Kingdom, we based United States price on CEP in accordance with section 772(b) of the Act, because the first sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices from the affiliated importer to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (gross unit price), where applicable: foreign inland freight, international (ocean) freight, foreign and U.S. brokerage and handling expenses, the affiliated purchaser's U.S. credit expenses, the affiliated purchaser's indirect selling expenses, and CEP profit. *See* sections 772(c) and (d) of the Act. We valued foreign inland freight and foreign brokerage and handling using surrogate values since they were incurred in an NME country.

Because U.S. brokerage and handling expenses, credit expenses, and CEP profit are market-economy costs incurred in U.S. dollars, we used actual costs rather than surrogate values for these deductions to gross unit price. Because American Processing reported indirect selling expenses that only consisted of phone charges, but did not reflect other costs incurred, we used the facts otherwise available to determine American Processing's indirect selling expenses, in accordance with section 776(a) of the Act and section 351.308 of the Department's regulations. As partial facts available we used American Processing's general ledger to derive a more accurate expense. In addition, at verification, American Processing was unable to support its reported credit expense. We compared the interest rate American Processing used to derive its reported credit expense to the weighted average interest rate reported for the relevant period by the Federal Reserve Bank on all commercial and industrial loans maturing between one month and one year in accordance with *Policy Bulletin 98.2*. We found the interest rate reported by American Processing to be higher. Therefore, as partial facts available, we have calculated American Processing's credit expense using the actual interest rate it reported to the Department. *See* ''Memorandum to the File from Jacqueline Arrowsmith; Analysis for the Preliminary Results of the New Shipper Review for China Kingdom,'' dated March 21, 2001.

For Weishan Fukang and Nantong Shengfa, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight, brokerage and handling expenses, and international freight from an NME carrier, where applicable, from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the first administrative review of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exception of the crawfish input, we valued the factors of production using publicly available information from India. In the original investigation of sales at less than fair value (LTFV) and in previous reviews of this order, for the crawfish input, we used Spanish import statistics for crawfish imported from Portugal. However, Spanish imports from Portugal have declined drastically. From April 1999 through March 2000, the production period corresponding to the current review, Spanish imports from Portugal were only 17 metric tons, in contrast to the 357 metric tons used during the investigation, and 160 metric tons used during the 1997–98 administrative review. This represents a decline of 95.2 percent since the period of the LTFV investigation. In addition, unlike in other years, Spanish imports from Portugal were heavily weighted towards one month. This one month accounted for 71% of the total volume of imports from Portugal for that year. Small import volumes as a whole, and one month accounting for the vast proportion of imports, seems to indicate that crawfish is no longer a product that is regularly traded between Portugal and Spain. Therefore, we looked for data reflecting a more substantial volume of trade. For these preliminary results, we have used Spanish export statistics for exports of crawfish to the European Union (EU). For further discussion, *see* ''Memorandum from The Crawfish Team, Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values Memorandum,'' dated March 21, 2001 (*Factor Values Memo*). We used Indian import prices to value many factors. As appropriate, we adjusted import prices by adding freight expenses to make them delivered prices.

Because Nantong Shengfa was unable to support its reported electricity, water, and direct labor usage rates at verification, we are using partial facts available for these factors, in accordance with section 776(a) of the Act and section 351.308 of the Department's regulations. For electricity and direct labor, we are using the higher of what was reported or what we found at verification. For electricity, we are using the amount calculated at verification. For direct labor, we are using the amount reported as partial facts available. *See* ''Verification Report of Sales and Factors for Nantong Shengfa Frozen Foods Co., Ltd.,'' dated March 21, 2001. Because we were unable to calculate an amount for water at verification, for water we are using an average of the water factors from the other respondents' data. *See* ''Memorandum to the File from Jacqueline Arrowsmith; Analysis for the Preliminary Results of the New Shipper Review for Nantong Shengfa,'' dated March 21, 2000. In addition, we found at verification that Nantong Shengfa had reported incorrectly the distance between the factory and its plastic bag supplier. As partial facts available, we used the reported amount, which was greater than the amount found at verification.

We valued the factors of production as follows:

• To value whole crawfish, we used the Spanish export price for fresh (not frozen) crawfish exported to the EU. In order to factor out seasonal fluctuations in the price of the Spanish export data, we valued whole crawfish using an average of monthly data from the POR. For further details, *see Factors Value Memorandum*.

• To value the by-product of shells, we used a September 1999 free-on-board (FOB) factory price quote for crab and shrimp shells from a Canadian seller of crustacean shells. For further details, *see Factors Value Memorandum*.

• To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of ''Steam Coal for Industry'' and ''Electricity for Industry,'' published in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of energy and water prices to the factors reported for the crawfish processing periods applicable to the companies under review, we adjusted these factor values to reflect inflation to the applicable crawfish processing season using the Wholesale Price Index (WPI) for India, as published in the 2000 and 2001 *International Financial Statistics* (*IFS*) by the International Monetary Fund (IMF).

• To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon Indian import data from the April 1998 through March 1999 issues of *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*). We adjusted these prices to reflect inflation to the applicable crawfish processing season. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

• To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we calculated simple average rates using publicly available financial statements of four Indian seafood processing companies, and applied these rates to the calculated cost of manufacture. *See Factor Values Memorandum.*

• For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000. *See http://ia.ita.doc.gov/wages/.* Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's Web site is the *1998 Year Book of Labour Statistics,* International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

• We valued movement expenses as follows:

To value truck freight expenses we used seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of *Bulk Aspirin from the People's Republic of China,* 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation through the POR using the WPI for India from the *IFS.*

To value brokerage and handling in the home market, we used information reported in the antidumping administrative review of *Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews,* 63 FR 48184 (September 9, 1998) (*Stainless Steel Wire Rod from India*), and also used in the *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review,* 65 FR 20948 (April 19, 2000). We adjusted the rates to reflect inflation through the POR using the WPI for India from the *IFS.*

We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing of the public questionnaire response submitted in the antidumping review of Viraj Group, Ltd. in *Stainless Steel Wire Rod from India.* Charges were reported on a per metric ton basis. We adjusted these values to reflect inflation through the POR using the WPI for India from the *IFS.* For further discussion, *see Factor Values Memorandum.*

To value ocean freight, we obtained publicly available price quotes from Maersk Sealand for shipping frozen crawfish tail meat from various PRC ports to various ports in the United States. *See Factor Values Memorandum.* We adjusted these rates to reflect deflation to the POR, where appropriate, using the WPI for India from the *IFS.*

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank. *(See Http://ia.ita.doc.gov/exchange/index. html).*

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
China Kingdom	9/1/99–3/31/00	7.55
Weishan Fukang	9/1/99–3/31/00	0.00
Nantong Shengfa	9/1/99–3/31/00	0.00

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street

and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(2) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of these preliminary results, unless the time limit is extended.

Upon completion of these new shipper reviews, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we intend to calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. For both EP and CEP sales, we will divide the total dumping margins (calculated as the difference between NV and EP (or CEP)) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting ad valorem rates against the entered value of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firms will be the rates established in the final results of these reviews; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is currently 201.63 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper reviews and this notice are published in accordance with sections 751(a)(1) and 777 (i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: March 21, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–8819 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Certain In-Shell Pistachios From Iran: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 6, 2000, in response to a request made by Cyrus Marketing, an importer, the Department of Commerce (the Department) published in the **Federal Register** (65 FR 53980) a notice announcing the initiation of an administrative review of the antidumping duty order on certain in-shell pistachios from Iran. The review period is July 1, 1999 to June 30, 2000. This review has now been rescinded because Cyrus Marketing has withdrawn its request for review.

EFFECTIVE DATE: April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398 or (202) 482–0194 respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

Scope of the Review

The product covered by this review is raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells, and edible meats from Iran. This merchandise is currently provided for in item 0802502000 of the Harmonized Tariff Schedule.

Background

On July 24, 2000, Cyrus Marketing (an importer) requested an administrative review of the antidumping duty order on certain in-shell pistachios from Iran published in the **Federal Register** on July 17, 1986 (51 FR 25922) with regard to Rafsanjan Pistachio Producers Cooperative (RPPC), an Iranian producer and exporter of in-shell pistachios. On September 6, 2000, the Department published in the **Federal Register** (65 FR 53980) a notice of ''Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part'' initiating the administrative review. On April 2, 2001, the Department received a letter dated March 23, 2001, from Cyrus Marketing withdrawing its request for review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of

initiation of the requested review, the Secretary will rescind the review. Although Cyrus Marketing's request for withdrawal was made after the 90-day deadline, in accordance with 19 CFR 351.213(d)(1), the Secretary may extend this time limit if the Secretary decides it is reasonable to do so. Given that we have received no submissions opposing Cyrus Marketing's request for withdrawal of the administrative review and Cyrus Marketing was the only party to request the administrative review, we find it reasonable to accept the withdrawal request. Therefore, we are rescinding this review of the antidumping duty order on certain in-shell pistachios from Iran covering the period July 1, 1999 through June 30, 2000.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: April 2, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–8821 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Stainless Steel Plate in Coils From Taiwan: Final Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final rescission of antidumping duty administrative review.

SUMMARY: In response to timely requests from petitioners and Yieh United Steel Corporation (''YUSCO'') [1], a Taiwan producer and exporter of subject merchandise, on July 7, 2000, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by YUSCO and Ta Chen Stainless Pipe, Ltd. (''Ta Chen'') for the period November 4, 1998 through April 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 65 FR 41942 (July 7, 2000). On December 4, 2000, the Department of Commerce published a notice of preliminary rescission of this review as a result of the absence of entries into the United States of subject merchandise during the period of review (65 FR 75760). The Department is now publishing its final determination to rescind this review.

Petitioners are Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization.

EFFECTIVE DATE: April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2000).

Background

On July 10, 2000, the Department issued its antidumping duty questionnaire to YUSCO and Ta Chen. On July 19, 2000, along with withdrawing its request for an administrative review, YUSCO requested that the Department rescind this review, claiming it made no entries of subject merchandise into the United States during the POR. On July 27, 2000, the Department solicited comments on YUSCO's request for rescission. *See Memo to the File from Juanita H. Chen* (July 27, 2000). On August 8, 2000, YUSCO submitted its Section A response to the Department's questionnaire. YUSCO reiterated its request for rescission on August 16, 2000. Also on that date, petitioners filed comments opposing YUSCO's request for rescission, which included references to the original investigation indicating that Ta Chen's U.S. affiliate, Ta Chen International (CA) Corp. (''TCI''), made sales of YUSCO's merchandise during the POR and had additional inventory not yet sold. On July 31, 2000, Ta Chen stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR, and requested that it not be required to answer the Department's questionnaire. On August 1, 2000, the Department asked Ta Chen a supplemental question regarding shipments in the POR falling under a certain Harmonized Tariff Schedule of the United States (''HTS'') number, and gave Ta Chen an extension of time in which to respond to the antidumping duty questionnaire. On August 9, 2000, Ta Chen repeated its statement that it did not have any U.S. sales, shipments or entries during the POR, stated that imports under the HTS number were cut-to-length stainless steel plate and not subject merchandise, and repeated its request not to have to answer the Department's questionnaire. On August 24, 2000, the Department denied Ta Chen's request that it not be required to answer the questionnaire, and issued supplemental questions to Ta Chen. On August 31 and September 5, 2000, Ta Chen responded to the Department's supplemental questions, stating that of TCI's sales of YUSCO's merchandise from TCI's U.S. warehouse inventory during the POR, all merchandise entered before the POR. Ta Chen also stated that while there was a sale of subject merchandise from YUSCO to TCI during the POR, such subject merchandise entered the United States and was resold after the POR. Ta Chen also stated that, for these reasons, it did not intend to answer the Department's questionnaire.

On September 12, 2000, petitioners submitted comments on Ta Chen's response to the Department's supplemental questions, arguing that the Department should review TCI's resales of YUSCO's merchandise as constructed export price (''CEP'') sales, citing to *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42806 (August 19, 1994). On September 26, 2000, the Department informed Ta Chen of its intention to conduct a review of TCI's sales, and asked that Ta Chen submit its response no later than October 10, 2000. Ta Chen failed to submit a response. On September 19, 2000, the Department conducted an inspection of Customs documentation at the U.S. Customs Service (''Customs'') in Long Beach, California. A review of a random sampling of entries during the POR revealed that none of the entries were of subject merchandise. *See Memo to the File from Carrie Blozy and Juanita H. Chen* (October 19, 2000). On October 24, 2000, the Department informed petitioners that as a result of this inspection, as well as a separate Customs inquiry, the Department intended to revisit the issue of whether

[1] YUSCO withdrew its request for review on July 19, 2000.

it is appropriate to continue this administrative review. *See Memo to the File from Juanita H. Chen through Edward Yang* (October 25, 2000).

On December 4, 2000, the Department published a notice of preliminary rescission of antidumping duty administrative review on stainless steel plate in coils from Taiwan with respect to YUSCO and Ta Chen (65 FR 75670), based on record evidence indicating that there were no entries into the United States of subject merchandise during the POR.

On December 18, 2000, petitioners filed comments objecting to the Department's preliminary findings. Neither YUSCO nor Ta Chen filed comments. *See ''Interested Party Comments''* below.

Scope of the Review

For purposes of this review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this review are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process. The merchandise subject to this review is currently classifiable in the HTS at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.0070, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Interested Party Comments

Comment 1: Petitioners request that the Department reconsider its policy of considering merchandise entered into the United States prior to suspension of liquidation under an antidumping duty order not to constitute subject merchandise within the meaning of section 771(25) of the Act. Petitioners recognize that this policy is explicitly stated in the preamble to the Department's regulations and has been followed in prior determinations by the Department. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27314 (May 19, 1997) (''*Preamble*''); *Certain Stainless Steel Wire Rods from France*, 61 FR 47874, 47875 (September 11, 1996) (''*French Wire Rod*''). However, petitioners argue that the statute defines subject merchandise as the class or kind of merchandise within the scope of an investigation and order and not by when the merchandise enters the United States. Petitioners argue that the merchandise Ta Chen resold during the period of the first administrative review, but that apparently entered the United States prior to the period of review, is subject merchandise of the class or kind under order under the ''classic'' standards listed in the Department's regulations at 19 CFR 351.225(k). *See also Diversified Products Corp.* v. *United States*, 572 F. Supp. 883, 887 (CIT 1983) (''*Diversified Products*'').

Petitioners therefore argue that the Department should proceed with an administrative review of Ta Chen's CEP sales for the purposes of setting a cash deposit rate. While petitioners recognize that no entries will be liquidated at the new rate, they argue that neither the statute nor the legislative history indicate that a review should be rescinded unless there are entries to be liquidated as well as a cash deposit rate to be established. In fact, petitioners assert that conducting a review to establish cash deposit rates is consistent with the goal highlighted in *Rhone Poulenc, Inc.* v. *United States*, 899 F. 2d 1185, 1191 (Fed. Cir. 1990) (*Rhone Poulenc*) of maintaining current, accurate dumping margins as much as possible. Petitioners stress that the significance of the cash deposit requirement should not be lost or minimized, as recognized, for example, by the court in *Badger-Powhatan, A Div. of Figgie Intern.* v. *United States*, 633 F. Supp. 1364 (CIT 1986). Moreover, petitioners maintain that there is nothing to suggest that dumping margins for cash deposits must include or reflect margins based upon U.S. sales prices of entered goods to some extent, and refer to the Department's approach in *Torrington Co.* v. *United States*, 44 F.3d 1572, 1578 (Fed. Cir. 1995) as an example of establishing a cash deposit rate based on information other than traceable entries during the period of review.

Petitioners also argue that the Department's regulations, at 19 CFR 351.213(e)(1)(ii), support review of Ta Chen's CEP sales. Specifically, petitioners maintain that a reasonable interpretation of the Department's regulations is that the Department will conduct an administrative review as long as there are any entries, exports, *or* sales {petitioners' emphasis}.

Finally, petitioners add that the Department has reviewed sales which entered the United States prior to suspension of liquidation in past cases, and has been upheld by the court in doing so (as long as those sales were not assessed antidumping duties), citing, *e.g., Ad Hoc Committee of S. Ca. Producers* v. *United States*, 914 F. Supp. 535 (CIT 1995), and *STC Corp.* v. *United States*, 990 F. Supp. 829 (CIT 1997) (''*STC Corp.*''). However, in citing *STC Corp.* petitioners take issue with the Court's agreement with Commerce that a link must be established between sales and entries (that is, that sales will not be reviewed if they are linked to entries occurring prior to suspension of liquidation). Specifically, the court noted that it found ''that the employment of Commerce's link test results in a more accurate administration of the dumping statute because it properly excludes irrelevant sales from the dumping determination.'' Petitioners argue that the legality of the Department's linking policy does not appear to have been before the court for decision, and the court's comments do not seem to have been necessary to the court's holding that the plaintiff had not established the link with respect to the single U.S. sale that it wanted not to be considered in the Department's dumping calculations. Petitioners continue that the court ''simply assumed'' that ESP (now CEP) sales made during a first review period are irrelevant when their entries occur before suspension of liquidation.

Department's Position: We disagree with petitioners. As the Department stated in the preliminary rescission notice, the Department has previously

determined that ''(s)ales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department.'' *See French Wire Rod* at 47875; *see also Preamble* at 27314. This long-standing practice is based on the Department's interpretation of the statute and various policy considerations. Petitioners have not presented convincing arguments warranting a change in this practice.

Petitioners have disputed the Department's description of merchandise which entered prior to suspension of liquidation as being ''not subject merchandise within the meaning of 771(25) of the Act.'' *See French Wire Rod* at 47875. We disagree with petitioners. Section 771(25) of the Act defines ''subject merchandise'' as meaning ''the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this subtitle or section 1303 of this title, or a finding under the Antidumping Act, 1921.'' 19 USC 1677(25). Therefore, if merchandise is not within the scope of the order (or, as the case may be, the investigation, review, or suspension agreement), it is not subject merchandise. While we do not disagree with petitioners that the sales in question are of merchandise physically meeting the scope of the order, we believe that the statute's reference to ''an investigation, a review, a suspension agreement, an order'' necessarily limits the definition of subject merchandise to that merchandise which is subject to an investigation, a review, a suspension agreement, and/or an order. It is in this regard that the Department must consider the timing of the entries at issue.

In accordance with section 736(b) of the statute, the order on stainless steel plate in coils from Taiwan covers entries of merchandise beginning on the date of publication of the affirmative preliminary determination, which was November 4, 1998. That this date represents the first date of the antidumping order is evident from the order notice itself. *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999) (''In accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties * * * for all relevant entries of stainless steel plate in coils from * * * Taiwan. * * * These antidumping duties will be assessed on all unliquidated entries of stainless steel plate in coils from * * * Taiwan * * * entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date on which the Department published its notices of preliminary determination in the **Federal Register** (63 FR 59524 through 59544).'').

The Department has a long-standing and consistent practice of excluding sales of merchandise entering prior to suspension of liquidation, on the grounds that such merchandise was not covered by the order, as long as the sales made after entry can be demonstrably linked to entries made prior to suspension of liquidation. *See, e.g., High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review,* 59 FR 32181, 32182 (June 22, 1994). While petitioners do not argue that such merchandise be assessed the new calculated rate, petitioners' assertion that such sales can serve as the basis for setting a cash deposit rate is inaccurate, because, as discussed above, the sales at issue are not of subject merchandise. As the Department stated in *French Wire Rod:* ''{s}ales of non-subject merchandise are not an appropriate basis for the Department to estimate the duties that will be due on future entries of subject merchandise.'' 61 FR at 47878. Certainly, consideration of the establishment of a new cash deposit rate in *Stainless Steel Plate in Coils from Taiwan* is doubly inappropriate when a cash deposit rate based on sales of subject merchandise appropriately covered by the investigation has indeed been established.

Finally, we believe that the Department's finding of middleman dumping in the LTFV investigation does not constitute sufficient grounds to allow for the Department's consideration of the sales at issue. Regardless of the existence of middleman dumping, the sales at issue are CEP sales that have been demonstratively linked to entries made prior to the suspension of liquidation under the order. The identity of the exporter (*e.g.,* whether the producer or the middleman) is irrelevant to the question of whether such merchandise is subject or non-subject.

For the foregoing reasons, the Department is hereby rescinding the administrative review based on the absence of entries into the United States of the subject merchandise during the period of review.

Final Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be. As discussed above, in this case, the available evidence indicates that there were no entries of stainless steel plate in coils produced or exported from Taiwan during the POR. Therefore, we have decided to rescind this review with respect to both Ta Chen and YUSCO in accordance with 19 CFR 351.213(d)(3). The cash-deposit rates for Ta Chen and YUSCO will remain as established in the original less-than-fair-value investigation.

This notice is published in accordance with 19 CFR 351.213(d)(4). Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 3, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–8818 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1996 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–005. *Applicant:* Pennsylvania State University, University Park, PA 16802–6300. *Instrument:* Dilution Refrigerator and Superconducting Magnet System, Models 126–250 TOF and 6T–76–H3. *Manufacturer:* Leiden Cryogenics B.V., The Netherlands. *Intended Use:* See notice at 66 FR 10483, February 15, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides capability for measurements in a magnetic field up to 6.0 tesla at temperatures down to 0.015° K with field uniformity to 0.15% in a 1.0 cm^3 central region. A domestic manufacturer of similar equipment advised March 14, 2001 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–8822 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 98–029US.

Title: Method And Apparatus For Bias And Readout Of Bolometers Operated On A Hysteretic Metal-Insulator Transition.

Abstract: This invention consists of a bias and readout scheme for resistive bolometers. It is chiefly intended for use with bolometer materials which exhibit a phase transition that is hysteretic. The most obvious example of such a bolometer material is vanadium dioxide, which has a metal-semiconductor phase transition at 68 degrees Celsius and a hysteresis of typically 5 degrees Celsius depending on material preparation. The existence of hysteresis precludes the use of a conventional DC bias or a conventional pulsed bias in a bolometer operated on the phase transition. In the technique we are disclosing, the bias consists of an AC current. (This is for phase transitions in which the resistance decreases with increasing temperature. For phase transitions in which the resistance increases with temperature, an AC voltage bias would be used.) The waveform of the AC bias consists of a short ''reset'' segment, in which the peak current is high enough to bring the bolometer completely into its metallic state, followed by a longer ''data'' segment, in which the bias current and bias power monotonically decrease, so as to sweep the bolometer's physical temperature downward across the phase transition. The frequency of the AC bias is determined by the condition that the slew rate in bias power during the data segment must always exceed the slew rate in signal power, for all signals of interest. The signal is read out by averaging the bolometer voltage over a time window lying entirely within the data segment. With this bias and readout scheme, the full slope of the bolometer R(T) characteristic is reflected in the output from small signals, which would not be the case for a conventional DC or pulsed bias scheme. Since the full slope of the R(T) characteristic is accessible, the bolometer can operate in the extreme electrothermal feedback regime, which provides major improvements in speed 1/f-noise, and sensitivity.

Dated: April 3, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–8767 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040301B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel and Scallop Plan Development Team (PDT) and Skate Oversight Committee in April 2001 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on April 26 and 27, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Comfort Inn Airport, 1940 Post Road, Warwick, RI 02886; telephone: (401) 732–0470.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, April 26, 2001, 9:30 a.m.—Skate Oversight Committee Meeting

The committee will finalize Skate Fishery Management Plan (FMP) Goals and Objectives. The agenda will include continued development of draft Skate FMP alternatives for public hearings; alternatives may include specifications for a skate permit and catch reporting system, prohibitions on the possession of certain skate species, management measures for the bait and/or wing fishery, limited access provisions, possession limits, minimum size restrictions, and/or any other appropriate measures. The committee will possibly consider a control date for skate fishing.

Thursday, April 26, 2001, 10:00 a.m. and Friday, April 27, 2001, 8:30 a.m.—Joint Scallop Advisory Panel and PDT Meeting

The Scallop Industry Advisory Panel will meet jointly with the Scallop PDT to develop management alternatives for

Amendment 10. These alternatives will include strategies for area rotation; new or revised gear restrictions; changes to the fishing year and the framework adjustment process; changes in permits and restrictions for limited access, history, and/or general permit categories; measures to reduce habitat impacts and/or bycatch; transferability of effort units; industry-funded research and observer programs; experimental fishing permit procedures; and other options as needed. The Council's goals for Amendment 10 are to substantially revise the FMP to improve the management of the resource and increase optimum yield, to update the analysis of cumulative impacts of the FMP on the human environment, and to re-evaluate the Essential Fish Habitat (EFH) components of the FMP and minimize adverse effects on EFH. These alternatives will be submitted to the Council in July for approval to hold public hearings and gather comments on the draft amendment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 5, 2001.

Richard W. Surdi,

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

[FR Doc. 01–8812 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040301C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold advisory group meetings in the Territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). Advisory Panel, Plan Team, Scientific and Statistical Committee, and Council Members from each respective island area will meet to discuss local fishery issues and comment on current issues being addressed by the Council.

DATES: The American Samoa meeting will be held on April 26, 2001, from 3 to 6 p.m.. The Guam meeting will be held on May 3, 2001, from 6:30 to 9 p.m. The CNMI meeting will be held on May 4, 2001, from 6:30 to 9 p.m.

ADDRESSES: The American Samoa meeting will be held at the Department of Marine and Wildlife Resources conference room, Pago Pago, American Samoa; telephone: (684) 633–4456. The Guam meeting will be held at the Guam Fishermen's Cooperative, Barrigada, Guam; telephone: (671) 472–6323. The CNMI meeting will be held at the Multipurpose Center, Susupe, Saipan; telephone: (670) 664–6080.

Council address: Western Pacific Fishery Management Council; 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: At each island area meeting, respective Advisory Panel, Plan Team, Scientific and Statistical Committee and Council members will meet to discuss local fishery issues, brief new Advisory Panel members on key Council issues and identify agenda items for a full Advisory Panel meeting to be held in June, 2001.

The agenda for each meeting will include the items listed below:

1. Introduction
2. Orientation including overview of the Magnuson Stevens Act, Council decision making process and fishery management plans.
3. Summary of current fishery issues including, but not limited to, the Council's fishery management plans, draft environmental impact statements, biological opinions, indigenous initiatives, coral reef fishery management, and other issues affecting the management of fisheries in the Western Pacific Region.
4. Discussion of local fishery issues
5. Recommend agenda items for full Advisory Panel meeting to be held in June 2001.
6. Outreach efforts including supporting fishermen's forums in each island area and Council participation in organized public events.
7. Other issues

The order in which agenda items are addressed may change. The groups will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the group for discussion, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: April 5, 2001.

Richard W. Surdi,

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

[FR Doc. 01–8813 Filed 4–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2001.

Take notice that on March 30, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the notice attached to the filing, to become effective May 1, 2001.

The proposed rate changes would increase revenues from jurisdictional service by approximately $9.4 million based on the 12-month period ending December 31, 2000, as adjusted. CIG states that $9.4 million rate increase would be necessary to: (1) Compensate CIG for the inflation in operating costs that has occurred since its last general rate case in 1996, including the expansion filings in Docket No. CP00–452–000 (Raton Basin Expansion), Docket No. CP01–1–000 (Valley Line I

Expansion), safest-related system integrity, as well as substantial electronic and computer enhancements; (2) modify rates to reflect CIG's current business and discounting profile and; (3) would allow CIG to earn a rate of return on CIG's assets, at a level that will be competitive in capital markets.

CIG states that the tariff sheets listed in Appendix A include two new transportation services, and change significantly the nature and the cost of its two no-notice delivery services, as well as multiple conforming tariff modifications.

CIG states that a full copy or abbreviated copy of its filing are being serviced on all jurisdictional customers, applicable state commissions, and interested parties that have requested service.

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 202–208–222 for assistance). Comments, protests,and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–8790 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–021]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 4, 2001.

Take notice that on March 30, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following Amendment Agreement to a recently filed negotiated rate transaction:

Amendment Agreement to ITS–2 Service Agreement No. 70083 between Columbia Gulf Transmission Company and Exxon Mobil Corporation, Dated November 30, 2000, as Amended March 23, 2001

Columbia Gulf states that this transportation service commenced in December, 2000 and was scheduled to terminate on March 31, 2001. The instant filing includes an executed Amendment Agreement that extends the Service Agreement's term through July 31, 2001 and increases the minimum delivery to 200,000 Dths in a given month. All other terms and provisions remain unchanged and in full force and effect.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8784 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–406–030 and RP01–74–005]

Dominion Transmission, Inc.; Notice of Compliance Filing

April 4, 2001.

Take notice that on March 30, 2000, Dominion Transmission, Inc. (DTI), tendered for filing to be part of its FERC Gas Tariff. Third Revised Volume No. 1, with an effective date of January 1, 2001:

Sixth Revised Sheet No. 32
Fourth Revised Sheet No. 34
First Revised Sheet No. 39
Original Sheet No. 40
Sheet No. 41
Second Revised Sheet No. 251
Second Revised Sheet No. 252

DTI moves to place these tariff sheets into effect on January 1, 2001, consistent with the Commission's Order and DTI's Settlement. In addition, DTI moves to place into effect on April 1, 2001:

Seventh Revised Sheet No. 32

DTI submits these tariff sheets to implement the Settlement approved by the Commission, recognizing that contesting parties have been severed from the Settlement. The filed tariff sheets include alternative rates and tariff provisions applicable to contesting and non-contesting parties. DTI explains that Seventh Revised Sheet No. 32 is included to reflect the gathering provisions filed here, as well as DTI's recent Transportation Cost Rate Adjustment filing.

DTI states that copies of its filing have been served on its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 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). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission web site at http://www.ferc.fed.us/efi/doorbell.htm

David P. Boergers,

Secretary.

[FR Doc. 01–8786 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–359–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2001.

Take notice that on March 30, 2001, Dominion Transmission, Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eighth Revised Sheet No. 32, with an effective date of May 1, 2001.

DTI states that the purpose of this filing is to remove the surcharge established under Section 18.2.B. of the General Terms and Conditions of DTI's FERC Gas Tariff, effective as of May 1, 2001. As stated in its last quarterly Stranded Cost Filing in Docket No. RP00–234–000, dated March 31, 2000, DTI's transportation contracts responsible for stranded costs have expired. DTI will file supporting workpapers detailing a reconciliation of costs and recoveries within 45 days. The effect on DTI's rates is to decrease the reservation-related charges for firm transportation service by $0.0217 per Dt.

DTI states that copies of this letter of transmittal and enclosures are being mailed by DTI to DTI's customers and interested state commissions.

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 §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8792 Filed 4–09–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–041]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 4, 2001.

Take notice that on March 30, 2001, Gulf South Pipeline Company, LP (Gulf South) filed with the Federal Energy Regulatory Commission (Commission) a contract between Gulf South and the following company for disclosure of a recently negotiated rate transaction. As shown on the contract, Gulf South requests an effective date of April 1, 2001.

Special Negotiated Rate Between Gulf South Pipeline Company, LP and Axia Energy, LP, Contract No. 28845

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Davis P. Boergers,

Secretary.

[FR Doc. 01–8782 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–006]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

April 4, 2001.

Take notice that on March 29, 2001, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A following revised tariff sheets, to be effective April 1, 2001:

First Revised Sheet No. 4G
Original Sheet No. 4H
Original Sheet No. 41

KMIGT states that the above-referenced tariff sheets reflect three separate negotiated rate contracts effective April 1, 2001. The tariff sheets are being filed pursuant to Fourth Revised Volume No. 1–A, section 36 of KMIGT's FERC Gas Tariff, and the procedures proscribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'', in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001, and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8785 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–012]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 4, 2001.

Take notice that on March 30, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 224G.01 to be effective May 1, 2001.

Natural states that the purpose of this filing is to comply with the Commission's Order Denying Rehearing and Accepting Compliance Filing with Clarification issued March 16, 2001, in Docket No. RP97–431.

Natural requests waiver of the Commission's Regulations to the extend necessary to permit Substitute First Revised Sheet No. 224G.01 to become effective on May 1, 2001.

Natural states that copies of the filing are being mailed to all parties on the official service list in Docket No. RP97–431–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 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). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(1)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Davis P. Boergers,

Secretary.

[FR Doc. 01–8787 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–032]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

April 4, 2001.

Take notice that on March 30, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26D, to be effective April 1, 2001.

Natural state that the purpose of this filing is to implement an election made by Nicor Gas Company (Nicor Gas) to exercise its unilateral MDQ reduction right, to be effective April 1, 2001, in the amount of 20,000 MMBtu per day, pursuant to Article 6 section 6.1(a) of the Firm Transportation and Storage Negotiated Rate Agreement that is currently on file with the Commission. The proposed tariff sheet sets out the information required pursuant to section 49.1(e) of the General Terms and Conditions of Natural's Tariff.

Natural concurrently tenders for filing with the Commission, under separate cover letter in this docket, copies of Nicor Gas' notice of election to exercise MDQ reduction rights, together with copies of the revisions to the primary point exhibits for each of the affected Rate Schedule FTS service agreements subject to the Firm Transportation and Storage Negotiated Rate Agreement.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8788 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–361–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2001.

Take notice that on March 30, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, to become effective May 1, 2001.

Northern Border states that purpose of this filing is to consolidate and make more consistent the credit-worthiness provisions and nonpayment terms among various services. Northern Border's customers will only need to deal with one set of such provisions regardless of the services chosen from Northern Border or shipper released capacity.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers

and interested state regulatory commissions.

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 §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with §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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8793 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–029]

Northern Natural Gas Company; Notice of Negotiated Rate

April 4, 2001.

Take notice that on March 30, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on April 1, 2001:

Seventeenth Revised Sheet No. 66
Eighth Revised Sheet No. 66A
Fourth Revised Sheet No. 66B

Northern states that the above sheets are being filed to implement a negotiated rate transaction with MidAmerican Energy Company in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. In addition, transactions that have expired have been deleted.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8778 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–355–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2001.

Take notice that on March 30, 2001, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective May 1, 2001.

Panhandle states that this filing is made in accordance with Section 25 (Flow Through of Cash-Out Revenues In Excess of Costs and Scheduling Charges Assessed Against Affiliates) of the General Terms and Conditions (GT&C) in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to Panhandle's currently effective Maximum Reservation Rates under Rate Schedules FT, EFT, LFT, HFT and SCT, and currently effective Maximum commodity rates under Rate Schedules IT and EIT:

(1) A ($0.02) per Dt. reduction from the Base Reservation Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules FT, EFT, LFT and HFT;

(2) A (0.13¢) per Dt. reduction from the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedule SCT; and

(3) (0.07¢) per Dt. reduction from the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules IT and EIT.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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 §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8791 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–141–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Application

April 4, 2001.

Take notice that on April 2, 2001, PG&E Gas Transmission, Northwest Corporation (PG&E), 1400 SW Fifth Avenue, Suite 900, Portland, Oregon, 97201, filed an application pursuant to Section 7(c) of the Natural Gas Act for authorization to increase compression at five existing compressor stations and to install approximately 21 miles of pipeline looping, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/htm* (call 202–208–2222 for assistance).

PG&E states the purpose of the project is to provide additional firm service under its existing Part 284 blanket certificate, with partial service commencing November 1, 2001, and full service commencing in the summer of 2002. These facilities, it is asserted will allow PG&E to bring more than 207,000 Mcf per day (210,800 Dth per day) of additional 20,380 Dth per day of winter only capacity will also be made available. PG&E requests that the Commission issue a decision by August 1, 2001 to allow PG&E to place the looping portion of its proposed facilities in service in time for the 2001 winter heating season and the compression facilities in service in time for the 2002 summer cooling season.

To meet its proposed aggressive schedule, PG&E requests authorization to construct a 21-mile long, 42-inch-diameter loop of its existing mainline system in Kootenai County, Idaho and Spokane County, Washington, and to increase system compression by 97,500 HP (ISO) at five existing compressor stations (Stations 4, 6, 8, 10 and 12) in Bonner County, Idaho; Spokane County, Washington; Walla Walla County, Washington; Sherman County, Oregon; and Deschutes County, Oregon, respectively (referred to herein as ''Expansion Project''). The additional compression will add approximately 169,000 Dth per day of annual capacity to the pipeline and the additional compression will add approximately 169,000 Dth per day of annual capacity to the pipeline and the additional looping will add approximately 42,000 Dth per day of annual capacity.

PG&E proposes to construct approximately 21 miles of 42-inch-diameter pipeline looping, beginning at MP 87.4 near PG&E's existing Compressor Station 5 near Athol, Idaho and ending at MP 108.4 near PG&E's existing MLV 5–2 near East Farms, Washington. A total of 19.4 miles of pipeline will be constructed in Idaho and 1.6 miles of pipeline will be constructed in Washington. The proposed pipeline loop will be within the 100-foot permanent right-of way (''ROW'') of the existing mainline system and will be installed parallel to and 20 feet east of existing Pipeline B. The proposed pipeline loop will be tied-in to the mainline system at Compressor Station 5 (MP 87.6) and at existing MLV 5–2 (MP 108.3).

PG&E indicates it held an open season extending from January 2 through February 15, 2001, to solicit interest in its proposed expansion of approximately 200,000 Mcf per day of capacity to be made available no later than November 1, 2002. PG&E states prospective shippers submitted bids for more than 2 Bcf/day of long-term, firm capacity at maximum rates, most of whom indicated that they would prefer an earlier in-service date, if possible. PG&E explains that at the close of the open-season period, it executed binding precedent agreements, one for 175,000 Dth per day of capacity for 52 years and another for the remaining 35,800 Dth per day of capacity for 40 years.

PG&E states that the Expansion Project is well-timed to bring needed gas supplies to California and the Pacific Northwest. PG&E notes that the two winning bidders of the expansion capacity, Newport Northwest, LLC and Calpine Energy Corporation, will utilize this capacity to deliver the natural gas required to fuel their new gas-fired electric generating plants located in the Pacific Northwest and California. The addition of natural gas transportation capacity will facilitate the introduction of new power supplies into those regions, which PG&E maintains will help alleviate the current energy crisis.

PG&E indicates it will provide the new services on an open-access basis under its Part 284 open-access blanket transportation certificate and pursuant to its FERC Gas Tariff, First Revised Volume No. 1–A. PG&E proposes to charge its generally applicable Part 284 rates for service rendered through the proposed facilities. In addition, consistent with PG&E's previous expansion, PG&E proposes to charge its Competitive Equalization Surcharge (''CES''). This surcharge is designed to ensure that all shippers participating in recent expansions pay equivalent rates for services. PG&E asserts that all CES revenue received will be refunded to shippers through PG&E's existing CES refund methodology as set forth in paragraph 35 of the General Terms and conditions of PG&E's FERC Gas Tariff, First Revised Volume No. 1–A.

PG&E's proposed $121.6 million expansion will increase PG&E's annual cost of service by approximately $20.5 million, an increase of approximately 9.9 percent over the cost of service underlying PG&E's general system rates. PG&E maintain that rolling the cost of the Expansion Project in with PG&E's general system costs would result in a decrease in PG&E's general system rates of approximately 0.19 percent. Thus, PG&E requests an advance determination that the costs of the Expansion Project may be rolled into PG&E's systemwide rates in PG&E's next general NGA § 4 rate case.

PG&E states that the additional compression may affect PG&E's fuel costs which are recovered through a separate tracking mechanism. When the initial looping proposed is place into service, there will be a downward pressure on PG&E's fuel rate; however, when the new compressors are placed into service, PG&E concedes there could be an increase in fuel usage as a result of increased fuel needs to operate the new compressors. PG&E explains that whether the systemwide cost of fuel would increase would depend on many factors including total pipeline volumes, which would increase, and load factors, receipt and delivery point path, and the price of fuel. In addition, PG&E states that the new compressors are more fuel efficient and have lower emissions than the existing compressors and will generally be used prior to the older compressors.

PG&E states that the expansion will not have any adverse impact on existing pipelines and their captive customers. It is noted that both entities subscribing to the proposed capacity are developing new electric generation that is not served by any existing pipeline facility. PG&E asserts the impact on landowners and other stakeholders will be minimal also since all of the station construction for this Expansion Project will take place on PG&E's existing compressor station property, or in the case of one station, on federal land under existing permits. The limited amount of pipeline looping, it is indicated, will be entirely in PG&E's existing right of way (ROW) and acquisition of additional land rights will be minimal.

Any questions regarding the application should be directed to John Roscher, Director, Rate & Regulatory Affairs, PG&E Transmission, Northwest

Corporation, 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97201, (503) 833–4254.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 2001, 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 Natural Gas Act (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. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://ferc.fed.us/efl/doorbell.htm.*

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 Natural Gas Act 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 a grant of the certificate is 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 necessary for East Tennessee to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–8772 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–68–001]

Questar Pipeline Company; Notice of Amendment

April 4, 2001.

Take notice that on March 30, 2001, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP00–68–001, an amendment to its initial application filed in Docket No. CP00–68–000, requesting authority to modify the compression and pipeline facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* (Call 202–208–2222for assistance.)

On January 10, 2000, Docket No. CP00–68–000, Questar filed to construct and operate a 24-inch diameter loop of an existing section of its M.L. No. 40 and the entirety of its M.L. No. 41 (known as M.L. No. 104) and to increase the site-rated horsepower of compression at the existing Oak Spring Compressor Station near Price, Utah. The Commission on December 14, 2000 issued a ''Preliminary Determination on Non-Environmental Issues,'' 93 FERC ¶ 61,279 (2000).

In the amended application, Questar states that recent market developments have required modifications to its initially proposed M.L. No 104 facilities. Questar indicates that these modifications include the installing of larger compressor engines at the existing Oak Spring Compressor Station; the changing of the 24-inch diameter pipe-yield strength from X–65 to X–70 to provide greater pipe strength while reducing the quantity of steel that is required in the manufacturing process; and the changing in the pipe wall thickness from 0.375 to 0.500-inch for the 18-mile section of the proposed pipeline extending from Payson to Elberta, Utah.

Questar states further, in the amended application, that the terms of the Questar/CIG Supply Partnership Agreement have changed. Upon the M.L. No. 104 facilities in-service date, Questar states that it will sell CIG Supply a 31.3 percent undivided interest, rather than 50 percent, in the M.L. No 104 project at Questar's cost. With this move, Questar states it will be retaining a 68.7 percent interest in the M.L. No 104 facilities.

Questar also states that it has renegotiated the transportation service agreement with CIG Resources Company (CIG Resources) in that Questar has sold to replacement shippers, the reserved daily capacity on M.L. No 104 that CIG Resources did not keep. In addition, Questar states that it sold the 2,000 Dth per day of M.L. No 104 capacity previously unsold and that the entire 272,000 Dth per day of incremental capacity created by the M.L. No 104 project is now fully subscribed.

Any questions regarding this application should be directed to Alan K. Allred, Questar Regulated Services Company, 180 East 100 South, P.O. Box 43560, Salt Lake City, Utah 84145–0360, at 1–801–324–5768.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before April 16, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene 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). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies

of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding.

Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issued a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Also, comments protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–8771 filed 4–9–01;8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–068]

Reliant Energy Gas Transmission Company; Notice of Negotiated Rate

April 4, 2001.

Take notice that on March 30, 2001, Reliant energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective April 1, 2001:

Third Revised Sheet No. 8J
Original Sheet No. 8AH

REGT states that the purpose of this filing is to reflect the addition of two new negotiated rate contracts and the expiration of an existing negotiated rate contract.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8776 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–069]

Reliant Energy Gas Transmission Company; Notice of Negotiated Rate

April 4, 2001.

Take notice that on March 30, 2001, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed as Appendix a to the filing, to be effective April 1, 2001.

REGT states that the purpose of this filing is to reflect the addition of new negotiated rate contracts.

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 208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(ii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8777 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–482–000]

Reliant Energy Transmission Company; Notice of Technical Conference

April 4, 2001.

Take notice that a technical conference in the above-referenced docket will be held on Thursday April 26, 2001, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 to discuss issues raised by the filing.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–8789 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–151–028]

Tennessee Gas Pipeline Company; Notice of GSR Final Report

April 4, 2001.

Take notice that on March 30, 2001, Tennessee Gas Pipeline Company (Tennessee), in accordance with Article VI, section C of the February 28, 1997 GSR Stipulation and Agreement (Stipulation), submitted its Final Report.

Tennessee states that copies of the Final Report have been served on all parties on the service list in the referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 11, 2001. 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). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8775 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–941]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 4, 2001.

Take notice that on March 30, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and The Southern Connecticut Gas Company (SCG) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement). The filed FT–A Agreement reflects a negotiated rate arrangement between Tennessee and SCG (''Negotiated Rate Arrangement''). Tennessee requests that the Commission accept and approve the Negotiated Rate Arrangement as soon as possible but no later than May 1, 2001, to be effective November 1, 2002.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8779 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–042]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 4, 2001.

Take notice that on March 30, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas transportation Agreement between Tennessee and New York State Electric & Gas Company (NYSEG) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement). The filed FT–A Agreement reflects a negotiated rate arrangement between Tennessee and NYSEG (Negotiated Rate Arrangement). Tennessee requests that the Commission accept and approve the Negotiated Rate Arrangement as soon as possible but no later than May 1,2001, to be effective November 1, 2002.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web

site at http:/www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8780 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–043]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 4, 2001.

Take notice that on March 30, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and Connecticut Natural Gas Corporation (CNG) pursuant to Tennessee's Rate Schedule FT–A (''FT–A Agreement''). The filed FT–A Agreement reflects a negotiated rate arrangement between Tennessee and CNG (Negotiated Rate Arrangement). Tennessee requests that the Commission accept and approve the Negotiated Rate Arrangement as soon as possible but no later than May 1, 2001, to be effective November 1, 2002.

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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8781 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–005]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

April 4, 2001.

Take notice that on March 30, 2001 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) copies of the executed service agreements that contain a negotiated rate under Rate Schedule FT applicable to the agreements between Transco and Coral Energy Resources, L.P.

Transco states that the purpose of the instant filing is to comply with filing requirements specified in the orders granting Transco's negotiated rate authority and the Commission's Policy Statement. The effective date of these negotiated rate transactions is April 1, 2001. In compliance with the Commission's orders, the enclosed service agreements disclose the name of the customer, the actual negotiated rate and term, the receipt and delivery points, the quantity of gas to be transported and the applicable rate schedule for the service. Transco also affirms that the negotiated rate agreements do not deviate in any material aspect from the applicable Rate Schedule FT form of service agreement in the tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing maybe viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–8783 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–015, et al.]

Standards for Business Practices of Interstate Natural Gas Pipeline; Notice of Compliance Filing

April 4, 2001.

Docket numbers: RP01–290–000, RP01–289–000, RP01–297–000, RP01–295–000, RP01–339–000, RP01–294–000, RP01–334–000, RP01–300–000, RP01–284–000, RP01–342–000, RP01–345–000, RP01–331–000, RP01–322–000, RP01–303–000, RP01–346–000, RP01–360–000, RP01–349–000, RP01–324–000, RP01–282–000, RP01–367–000, RP01–302–000, RP01–343–000, RP01–326–000, RP01–340–000, RP01–309–000, RP01–308–000, RP01–352–000, RP01–313–000, RP01–285–000, RP01–299–000, RP01–306–000, RP01–325–000, RP01–358–000, RP01–287–000, RP01–286–000, RP01–338–000, RP01–301–000, RP01–369–000, RP01–283–000, RP01–336–000, RP01–327–000, RP01–304–000, RP01–288–000, RP01–366–000, RP01–277–000, RP01–307–000, RP01–337–000, RP01–344–000, RP01–357–000, RP01–347–000, RP01–329–000, RP01–368–000, RP01–341–000, RP01–354–000, RP01–321–000, RP01–351–000, RP01–296–000, RP01–311–000, RP01–310–000, RP01–363–000, RP01–291–000, RP01–328–000, RP01–335–000, RP01–365–000, RP01–356–000, RP01–353–000, RP01–333–000, RP01–312–000, RP01–362–000, RP01–319–000, RP01–348–000, RP01–364–000, RP01–318–000, RP01–280–000, RP01–281–000, (Not Consolidated); Algonquin LNG, Inc., Algonquin Gas Transmission Company, ANR Pipeline Company, ANR Storage Company, Black Marlin Pipeline Company, Blue Lake Gas Storage Company, Canyon Creek Compression Company, Clear Creek Storage Company, L.L.C., Colorado Interstate Gas Company, Columbia Gulf Transmission Corporation, Columbia Gas Transmission Corporation, Cove Point LNG Limited Partnership, Dauphin Island Gathering Partners, Destin Pipeline Company, L.L.C., Discovery Gas Transmission LLC, Dominion Transmission, Inc., East Tennessee Natural Gas Company, Egan Hub Partners, L.P., El

Paso Natural Gas Company, Florida Gas Transmission Company, Garden Banks Gas Pipeline, LLC, Granite State Gas Transmission Inc., Great Lakes Gas Transmission Limited Partnership, Gulf South Pipeline Company, LP, Gulf States Transmission Corporation, High Island Offshore System, L.L.C., Iroquois Gas Transmission System, L.P., K N Wattenberg Limited Liability Company, Kansas Pipeline Company, Kern River Gas Transmission Company, Kinder Morgan Interstate Gas Transmission LLC, Maritimes & Northeast Pipeline L.L.C., Michigan Gas Storage Company, Mid Louisiana Gas Company, Midcoast Interstate Transmission, Inc., Midwestern Gas Transmission Company, Mississippi Canyon Gas Pipeline, LLC, Mississippi River Transmission Corporation, Mojave Pipeline Company, National Fuel Gas Supply Corporation, Natural Gas Pipeline Company of America, Nautilus Pipeline Company, L.L.C., Northern Border Pipeline Company, Northern Natural Gas Company, Northwest Pipeline Company, Overthrust Pipeline Company, Ozark Gas Transmission, L.L.C., Paiute Pipeline Company, Panhandle Eastern Pipe Line Company, Petal Gas Storage Company, Questar Pipeline Company, Reliant Energy Gas Transmission Company, Sabine Pipe Line LLC, Sea Robin Pipeline Company, Southern Natural Gas Company, Southwest Gas Storage Company, Steuben Gas Storage Company, Stingray Pipeline Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, Trailblazer Pipeline Company, TransColorado Gas Transmission Company, Transwestern Pipeline Company, Trunkline Gas Company, Trunkline LNG Company, Tuscarora Gas Transmission Co., U–T Offshore System, L.L.C., Venice Gathering System, L.L.C., Viking Gas Transmission Company, WestGas InterState, Inc., Williams Gas Pipelines Central, Inc., Williston Basin Interstate Pipeline Company, Wyoming Interstate Company, Ltd., Young Gas Storage Company, Ltd.

Take notice that the above-referenced pipelines made filings in compliance with Docket No. RM96–1–015, Order No. 587–M.[1] The tariff sheets implement Version 1.4 of the Gas Industry Standards Board (GISB) Standards accepted by the Commission in Order No. 587–M and are proposed to become effective May 1, 2001.

On November 30, 2000 at Docket No. RM96–1–015, the Commission issued Order No. 587–M to amend § 284.12(b) of its regulations to incorporate Version 1.4 of the GISB standards. The business practices and standards contained in Order 587–M make additions and revisions to Version 1.3 of the standards, which had previously been incorporated by reference. Among other things, Order No. 587–M adopted the business practices and electronic communications standards created by GISB on August 31 and November 15, 1999. Order No. 587–M requires pipelines to adopt Version 1.4 of the GISB Standards and to implement these provisions by May 1, 2001.

Any person desiring to become a party a proceeding must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filings 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 §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385,2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8794 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [Jul. 1996–Dec. 2000] ¶31,114 (Nov. 30, 2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–317–003 et al.]

The Dayton Power and Light Company, et al.; Electric Rate and Corporate Regulation Filings

April 3, 2001.

Take notice that the following filings have been made with the Commission:

1. The Dayton Power and Light Company

[Docket No. ER01–317–003]

Take notice that on March 29, 2001, The Dayton Power and Light Company (DP&L) filed amendments to DP&L's Open Access Transmission Tariff (OATT) to comply with a February 27, 2001 FERC Order.

DP&L requests an effective date of January 1, 2001 for the above-described amendments. Copies of this filing were served upon DP&L's jurisdictional customers and the Public Utilities Commission of Ohio.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Delmarva Power & Light Company

[Docket No. ER01–1640–000]

Take notice that on March 29, 2001, Delmarva Power & Light Company (Delmarva) tendered for filing an Interconnection Agreement with the Town of Berlin, Maryland (Berlin). The Interconnection Agreement provides for the interconnection of facilities at the point of interconnection between Delmarva and Berlin. Delmarva requests that the Interconnection Agreement become effective on June 1, 2001.

Copies of the filing were served upon the Delaware Public Service Commission and the Maryland Public Service Commission.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Company

[Docket No. ER01–1641–000]

Take notice that on March 29, 2001, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing, pursuant to section 35.12 of the Commission's regulations, 18 CFR § 35.12 (2000) a Wholesale Distribution Export Service Agreement between Wisconsin Electric and Alliant Energy Corporate Services, Inc. (Alliant) for the provision of wholesale distribution export service to Alliant beginning January 1, 2001.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER01–1642–000]

Take notice that on March 29, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Calpine Energy Services, L.P. designated as Service Agreement No. 315 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by

Virginia Electric and Power Company to Calpine Energy Services, L.P. designated as Service Agreement No. 316 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to Calpine Energy Services, L.P. under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of March 29, 2001, the date of filing of the Service Agreements.

Copies of the filing were served upon Calpine Energy Services, L.P., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER01–1643–000]

Take notice that on March 29, 2001, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to CMS Marketing, Services and Trading Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to CMS Marketing, Services and Trading Company NUSCO requests that the Service Agreement become effective April 2, 2001.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER01–1644–000]

Take notice that on March 29, 2001, Northeast Utilities Service Company (NUSCO), tendered for filing Service Agreement to provide Firm Point-To-Point Transmission Service to CMS Marketing, Services and Trading Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to CMS Marketing, Services and Trading Company.

NUSCO requests that the Service Agreement become effective April 2, 2001.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER01–1645–000]

Take notice that on March 29, 2001, Commonwealth Edison Company (ComEd) tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and Commonwealth Edison Company in its Wholesale Merchant Function (WMD) and an unexecuted Network Operating Agreement (Operating Agreement) between ComEd and WMD.

ComEd requests an effective date of March 1, 2001 for the Service Agreement and Operating Agreement and accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served on WMD.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER01–1646–000]

Take notice that on March 29, 2001, the California Independent System Operator Corporation (ISO) tendered for filing the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and Comisión Federal de Electicidad (CFE). The ISO requests waiver of the 60-day prior notice requirement to allow the ICAOA to become effective as of December 1, 2000.

The ISO states that the filing has been served on the Public Utilities Commission of the State of California and Comisión Federal de Electicidad.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER01–1647–000]

Take notice that on March 29, 2001, Virginia Electric and Power Company, doing business as Dominion North Carolina Power (the Company), filed a letter agreement between North Carolina Electric Membership Corporation (NCEMC) and the Company. The letter agreement, dated January 24, 2001, adds a new delivery point to the North Carolina Electric Membership Corporation Agreement for the Purchase of Electricity for Resale from Virginia Electric & Power Company, Rate Schedule FERC No. 105.

The Company requests waiver of the Commission's notice of filing requirements to allow the letter agreement to become effective on March 30, 2001. The Company will begin service under the new delivery point on or after March 30, 2001.

Copies of the filing were served upon NCEMC, North Carolina Utilities Commission Virginia State Corporation Commission.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Company

[Docket No. ER01–1648–000]

Take notice that on March 29, 2001, The Dayton Power and Light Company (Dayton) submitted service agreements establishing with FirstEnergy Services Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon FirstEnergy Services Corporation and the Public Utilities Commission of Ohio.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. NorthWestern Public Service Company

[Docket No. ER01–1651–000]

Take notice that on March 29, 2001, NorthWestern Public Service Company (NorthWestern) tendered for filing executed service agreements for Firm Point-to-Point Transmission Service with the City of Langford, South Dakota, the City of Groton, South Dakota, and the City of Aberdeen, South Dakota, and four executed service agreements for Firm Point-to-Point Transmission Service with the State of South Dakota (collectively, Transmission Customers). NorthWestern seeks an effective date of April 1, 2001 for these service agreements.

Copies of this filing were served on the Transmission Customers.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER01–1652–000]

Take notice that on March 29, 2001, PECO Energy Company tendered for filing a revision to the Owners Agreement for Peach Bottom No. 2 and 3 Nuclear Units, as amended and supplemented, PECO Energy Company FERC Rate Schedule No. 81.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Exelon Generation Company, LLC

[Docket No. ER01–1653–000]

Take notice that on March 29, 2001, Exelon Generation Company, LLC (Exelon Generation) tendered for filing a Notice of Succession notifying the Commission that is has succeeded to the Owners Agreement for Peach Bottom No. 2 and 3 Nuclear Units, as amended and supplemented, PECO Energy Company FERC Rate Schedule No. 81 (the Peach Bottom Agreement).

In conformance with Order No. 614, Exelon Generation also filed the Peach Bottom Agreement with the Commission as an Exelon Generation rate schedule.

Comment date: April 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–8741 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11516–000, 11120–002, and 11300–000—Michigan]

Commonwealth Power Company; Notice of Availability of Draft Environmental Assessment

April 4, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for original licenses for the proposed Irving and Middleville, and existing LaBarge Projects, collectively referred to as the Thornapple River Projects, located on the Thornapple River in Barry and Kent Counties, Michigan and has prepared a draft Environmental Assessment (EA) for the projects. In the draft EA, the Commission staff has analyzed the potential environmental effects of the projects and has concluded that approval of the projects, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE, Washington, DC 20426. The draft EA may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix ''Irving Project FERC No. 11516–000; Middleville Project, FERC No. 11120–002; and LaBarge Project, FERC No. 11300–000 to all comments. For further information, please contact Mark Pawlowski at (202) 219–2795.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–8773 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License and Soliciting Comments, Recommendations, Motions To Intervene, and Protests

April 4, 2001.

Take notice that the following hydroelectric application has been filed with the commission, is ready for environmental analysis, and is available for public inspection:

a. *Application Type:* Request for amendment of license to change the water surface elevation limits for the upper reservoir and an increase in the maximum daily generation for up to twenty days over a period of twelve months.

b. *Project No.:* 2485–015.

c. *Date Filed:* April 2, 2001.

d. *Applicant:* Northeast Generation Company (NGC).

e. *Name of Project:* Northfield Mountain Pumped Storage Hydroelectric Project.

f. *Location:* The project is located on the east side of the Connecticut River, in the towns of Northfield and Erving, in Franklin County, Massachusetts. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.201.

h. *Applicant Contact:* Mr. William J. Nadeau, Vice President and Chief Operating Officer, Northeast Generation Services Company, 273 Dividend Road, Rocky Hill, Connecticut 06067, (860) 665–5315 with copies of all correspondence and communications to:

Mr. John Howard, Station Manager, Northfield Mountain Station, 99 Millers Falls Road, Northfield, Massachusetts 01360, (413) 659–4489; and

Catherine E. Shively, Senior Counsel, Public Service Company of New Hampshire, P.O. Box 330, Manchester, New Hampshire 03105, (603) 624–2326

i. *FERC Contact:* Any questions on this notice should be addressed to Jack Duckworth at (202) 219–2818, or e-mail address jack.duckworth@ferc.fed.us.

j. *Deadline for Filing Comments and or Motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the Project Number (2485–015) on any comments or motions filed.

k. *Description of Amendment:* NGC seeks temporary authorization to change the upper reservoir's upper and lower water service elevation limits from 1000.5 and 938 feet, respectively, to 1004.5 and 920 feet, respectively and to allow maximum daily generation of 10,465 megawatthours for up to 20 days during the twelve months following issuance of the temporary license amendment. The project uses some of the storage behind Turner Falls Dam of Project No. 1889 as the lower reservoir for the pumped storage operations and proposes no changes in the operating limits of the Turners Falls Reservoir. NGC requests that the temporary authority become effective June 1, 2001.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street NE., Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. The application may be viewed on the website at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–8774 Filed 4–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

April 4, 2001.

The following notice of meeting is Published Pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 12, 2001, 12:00 p.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note— Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

764th—Meeting April 12, 2001, Regular Meeting, 12:00 p.m.

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
DOCKET# ER01–1233, 000, FLORIDA POWER & LIGHT COMPANY

CAE–2.
DOCKET# ER01–1223, 000, ALLEGHENY POWER SERVICE CORPORATION, ON BEHALF OF MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHER#S ER01–1232, 000, PJM INTERCONNECTION, L.L.C. AND ALLEGHENY POWER SERVICE CORPORATION

CAE–3.
DOCKET# ER01–1231, 000, SOUTHWEST POWER POOL, INC.

CAE–4.
DOCKET# ER01–1313, 000, NEW ENGLAND POWER POOL

CAE–5.
OMITTED

CAE–6.
DOCKET# ER01–1301, 000, MICHIGAN ELECTRIC TRANSMISSION COMPANY

CAE–7.
OMITTED

CAE–8.
DOCKET# ER01–1308, 000, NEW ENGLAND POWER POOL

CAE–9.
DOCKET# ER01–1441, 000, FLORIDA POWER CORPORATION
OTHER#S OA96–73, 004, FLORIDA POWER CORPORATION

CAE–10.
DOCKET# ER00–1997, 000, PPL ELECTRIC UTILITIES CORPORATION
OTHER#S ER97–3189, 030, PPL ELECTRIC UTILITIES CORPORATION; ER98–1569, 004, PPL ELECTRIC UTILITIES CORPORATION; ER00–1014, 001, PPL ELECTRIC UTILITIES CORPORATION

CAE–11.
OMITTED

CAE–12.
DOCKET# EL00–95, 015, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE
OTHER#S EL00–95, 016, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–98, 014, INVESTIGATIONS OF PRACTICES OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–98, 015, INVESTIGATIONS OF PRACTICES OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE

CAE–13.
DOCKET# EC90–10, 007, NORTHEAST UTILITIES SERVICE COMPANY
OTHER#s ER93–294, 000, NORTHEAST UTILITIES SERVICE COMPANY; ER95–1686, 000, NORTHEAST UTILITIES SERVICE COMPANY; ER96–496, 000, NORTHEAST UTILITIES SERVICE COMPANY; OA97–237, 000, NEW ENGLAND POWER POOL; ER97–1079, 000, NEW ENGLAND POWER POOL

CAE–14.
DOCKET# EL99–44, 002, ARIZONA PUBLIC SERVICE COMPANY V. IDAHO POWER COMPANY

CAE–15.
DOCKET# ER01–463, 002, ARIZONA PUBLIC SERVICE COMPANY
CAE–16.
OMITTED
CAE–17.
DOCKET# EF00–2011, 000, UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION
CAE–18.
DOCKET# ER01–256, 003, AMERICAN ELECTRIC POWER SERVICE CORPORATION
CAE–19.
DOCKET# OA97–237, 003, NEW ENGLAND POWER POOL
OTHER#S OA97–237, 006, NEW ENGLAND POWER POOL; OA97–238, 001, MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY; OA97–608, 002, NEW ENGLAND POWER POOL; OA97–608, 004, NEW ENGLAND POWER POOL; ER97–1079, 003, NEW ENGLAND POWER POOL; ER97–1079, 005, NEW ENGLAND POWER POOL; ER97–1080, 001, MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY; ER97–3574, 002, NEW ENGLAND POWER POOL; ER97–3574, 004, NEW ENGLAND POWER POOL; ER97–4421, 002, NEW ENGLAND POWER POOL; ER97–4421, 004, NEW ENGLAND POWER POOL; ER98–499, 001, NEW ENGLAND POWER POOL; ER98–3568, 001, NEW ENGLAND POWER POOL; ER99–387, 001, NEW ENGLAND POWER POOL
CAE–20.
DOCKET# ER98–917, 001, SOUTHWEST RESERVE SHARING GROUP
CAE–21.
DOCKET# EL94–5, 003, SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
OTHER#S EL96–40, 003, SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO; EL97–54, 003, SAN DIEGO GAS & ELECTRIC COMPANY V. PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–22.
DOCKET# EC99–18, 001 BOSTON EDISON COMPANY
OTHER#S EL99–22, 001 ENTERGY NUCLEAR GENERATION COMPANY; ER99–1023, 001, BOSTON EDISON COMPANY
CAE–23.
DOCKET# ER92–331, 007, CONSUMERS ENERGY COMPANY
OTHER#S ER92–332, 007, CONSUMERS ENERGY COMPANY
CAE–24.
DOCKET# ER99–4513, 001, IEC OPERATING COMPANIES
CAE–25.
OMITTED
CAE–26.
DOCKET# ER00–2208, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–27.
OMITTED
CAE–28.
DOCKET# ECO1–49, 002, PG&E NATIONAL ENERGY GROUP, LLC
OTHER#S ECO1–41, 002, PG&E NATIONAL ENERGY GROUP, LLC
CAE–29.
DOCKET# ER01–870, 002, ALLIANT ENERGY CORPORATE SERVICES
OTHER#S ER01–870, 001, ALLIANT ENERGY CORPORATE SERVICES
CAE–30.
DOCKET# EL01–38, 000, UGI UTILITIES, INC., METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PEPCO ENERGY COMPANY AND PPL ELECTRIC UTILITIES CORPORATION V. PJM INTERCONNECTION, L.L.C. AND UTILITY.COM, INC.
OTHER#S ER01–1240, 000, PJM INTERCONNECTION, L.L.C.
CAE–31.
DOCKET# OA01–3, 000, UTILICORP UNITED, INC.
CAE–32.
OMITTED
CAE–33.
DOCKET# NJ00–1, 000, CHUGACH ELECTRIC ASSOCIATION, INC.
CAE–34.
DOCKET# EL98–8, 000, FLORIDA POWER & LIGHT COMPANY
CAE–35.
DOCKET# EL01–44, 000, CALEDONIA GENERATING, LLC
CAE–36.
DOCKET# EL00–43, 000, UTILICORP UNITED INC. V. CITY OF HARRISONVILLE, MISSOURI
OTHER#S EL00–68, 000, MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION AND THE CITY OF HARRISONVILLE, MISSOURI V. UTILICORP UNITED INC.
CAE–37.
OMITTED
CAE–38.
DOCKET# ER01–889, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S EL00–95, 014, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–98, 013, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–104, 003, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–107, 004, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL01–1, 004, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; ER01–902, 001, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–39.
DOCKET# EL98–66, 001, EAST TEXAS ELECTRIC COOPERATIVE, INC. V. CENTRAL AND SOUTH WEST SERVICES, INC., CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY
CAE–40. DOCKET# EL01–36, 000, CORAL POWER, L.L.C., ENRON POWER MARKETING, INC., ARIZONA PUBLIC SERVICE COMPANY, CARGILL-ALLIANT, LLC, SAN DIEGO GAS & ELECTRIC COMPANY, AVISTA ENERGY, INC., SEMPRA ENERGY TRADING CORPORATION, PACIFICORP AND CONSTELLATION POWER SOURCE V. CALIFORNIA POWER EXCHANGE CORPORATION
OTHER#S EL01–29, 000, PACIFIC GAS AND ELECTRIC COMPANY; EL01–33, 000, SOUTHERN CALIFORNIA EDISON COMPANY; EL01–37, 000, SALT RIVER AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND SACRAMENTO MUNICIPAL UTILITY DISTRICT V. CALIFORNIA POWER EXCHANGE CORPORATION; EL01–43, 000, PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–41.
DOCKET# ER01–1286, 000, PJM INTERCONNECTION, L.L.C.
CAE–42.
DOCKET# EL00–71, 000, CITY OF DETROIT V. THE DETROIT EDISON COMPANY
CAE–43.
DOCKET# ER98–1581, 001, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PP&L, INC., POTOMAC ELECTRIC POWER COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY
OTHER#S ER97–3189, 020, PJM INTERCONNECTION, L.L.C.
CAE–44.
DOCKET# TX00–1, 000, UNITED STATES DEPARTMENT OF ENERGY—WESTERN AREA POWER ADMINISTRATION, COLORADO RIVER STORAGE PROJECT MANAGEMENT CENTER
OTHER#S ER00–896, 000, PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–45.
DOCKET# EL01–34, 000, SOUTHERN CALIFORNIA EDISON COMPANY
CAE–46.

DOCKET# ER01–889, 002, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER# ER01–902, 002, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION; EL00–95, 021, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–98, 020, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–104, 004, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL00–107, 005, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE; EL01–1, 005, SAN DIEGO GAS & ELECTRIC COMPANY V. SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR AND THE CALIFORNIA POWER EXCHANGE

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
DOCKET# RP01–205, 001, SOUTHERN NATURAL GAS COMPANY
CAG–2.
DOCKET# PR01–3, 000, MAGNOLIA PIPELINE CORPORATION
CAG–3.
DOCKET# RP98–52, 040, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–4.
OMITTED
CAG–5.
OMITTED
CAG–6.
DOCKET# RP01–22, 003, EAST TENNESSEE NATURAL GAS COMPANY
CAG–7.
DOCKET# RP01–17, 003, MARITIMES & NORTHEAST PIPELINE, L.L.C.
CAG–8.
DOCKET# RP01–23, 003, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–9.
DOCKET# RP99–477, 003, NORTH AMERICAN ENERGY CONSERVATION, INC. V. CNG TRANSMISSION CORPORATION
CAG–10.
DOCKET# RP00–388, 001, KOCH GATEWAY PIPELINE COMPANY
CAG–11.
DOCKET# RP99–351, 001, FLORIDA GAS TRANSMISSION COMPANY
CAG–12.
DOCKET# RP00–223, 003, NORTHERN NATURAL GAS COMPANY
CAG–13.
DOCKET# RP95–112, 028, TENNESSEE GAS PIPELINE COMPANY
CAG–14.
DOCKET# RP96–129, 000, TRUNKLINE GAS COMPANY
OTHER#S RP91–54, 000, TRUNKLINE GAS COMPANY
CAG–15.
DOCKET# MG01–21, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–16.
DOCKET# MG00–8, 001, EGAN HUB PARTNERS, L. P.
OTHER#S MG01–20, 000, EGAN HUB PARTNERS, L. P.
CAG–17.
OMITTED

Consent Agenda—Energy Projects—Hydro

CAH–1.
DOCKET# P–5, 059, PPL MONTANA, LLC AND CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION
CAH–2.
DOCKET# P–11856, 001, CITY OF LOCKPORT, NEW YORK
CAH–3.
DOCKET# P–2722, 009, PACIFICORP
CAH–4.
DOCKET# P–2932, 004, S.D. WARREN COMPANY
CAH–5.
OMITTED
CAH–6.
OMITTED

Consent Agenda—Energy Projects—Certificates

CAC–1.
DOCKET# CP00–404, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAC–2.
OMITTED
CAC–3.
DOCKET# CP01–4, 000, MARITIMES & NORTHEAST PIPELINE, L.L.C.
OTHER#S CP01–5, 000, ALGONQUIN GAS TRANSMISSION COMPANY
CAC–4.
DOCKET# CP01–68, 000, INDIANA GAS COMPANY, INC.
CAC–5.
DOCKET# RP99–471, 002, WILLIAMS FIELD SERVICES GROUP, INC. V. EL PASO NATURAL GAS COMPANY
OTHER#S CP00–458, 000, EL PASO NATURAL GAS COMPANY
CAC–6.
OMITTED
CAC–7.
DOCKET# CP95–218, 004, TEXAS EASTERN TRANSMISSION CORPORATION
CAC–8.
DOCKET# CP01–106, 000, KERN RIVER GAS TRANSMISSION COMPANY
OTHER# CP01–31, 000, KERN RIVER GAS TRANSMISSION COMPANY

Energy Projects—Hydro Agenda

H–1.
RESERVED

Energy Projects—Certificates Agenda

C–1.
RESERVED

Markets, Tariffs and Rates—Electric Agenda

E–1.
RESERVED

Markets, Tariffs and Rates—Gas Agenda

G–1.
RESERVED

David P. Boergers,
Secretary.

[FR Doc. 01–8853 Filed 4–5–01; 4:25 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6964–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. Seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at 260–2740, or email at *Farmer.sandy@epa.gov*, and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses To Agency Clearance Requests

OMB Approvals

EPA ICR No. 1250.06; Request for Contractor Access to TSCA Confidential Business Information; was approved 02/08/2001; OMB No. 2070–0075; expires 02/29/2004.

EPA ICR No. 1780.02; Voluntary Cover Sheet for TSCA Submissions; was approved on 02/02/2001; OMB No. 2070–0156; expires 02/29/2004.

EPA ICR No. 1591.11; Modifications to Standards and Requirements for Reformulated and Conventional Gasoline; in 40 CFR part 80, subpart D,

E, and F; was approved 02/02/2001; OMB No. 2060–0277; expires 03/31/2001

EPA ICR No. 1287.06; Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program); was approved 02/02/01; OMB No. 2040–0101; expires 02/29/2004.

EPA ICR No. 1666.05; NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations; in 40 CFR part 63 subpart O; was approved 02/02/2001; OMB No. 2060–0283; expires 02/29/2004.

EPA ICR No. 1673.03; Reporting and Recordkeeping Requirements for Importation of Nonconforming Non-road Compression Ignition (CI) & Small Spark Ignition (SI) Engines; in 40 CFR part 90.604, 90.611–90.613; was approved 02/09/2001; OMB No. 2060–0294; expires 10/31/2003.

EPA ICR No. 1176.06; NSPS for New Residential Wood Heaters; in 40 CFR 60.530–60.539(b), subpart AAA; was approved 02/09/2001; OMB No. 2060–0161; expires 02/29/2004.

EPA ICR No. 1604.06; NSPS Secondary Brass and Bronze Production Plants; in 40 CFR part 60, subparts M, P, Q, R, and S; was approved 02/02/2001; OMB No. 2060–0110; expires 02/29/2004.

EPA ICR No. 0116.06; Emission Control System Performance Warranty Regulations and Voluntary Aftermath Part Certification Program, in 40 CFR part 85, subpart V; was approved 02/12/2001; OMB No. 2060–0060; expires 02/29/2004.

EPA ICR No. 1716.03; NESHAP for Wood Furniture Manufacturing Operations; in 40 CFR part 63, subpart JJ; was approved 02/12/2001; OMB No. 2060–0324; expires 02/29/2004.

EPA ICR No. 1038.10; Invitation for Bids and Request for Proposals (IFBs and RFPs); was approved 02/09/2001; OMB No. 2030–0006; expires 02/29/2004.

EPA ICR No. 1611.04; NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; in 40 CFR part 63, subpart N; was approved 02/13/2001; OMB No. 2060–0327; expires 02/29/2004.

EPA ICR No. 1946.01; Community Water System Survey; was approved 02/13/2001; OMB No. 2040–0227; expires 02/29/2004.

EPA ICR No. 1672.03; Request for Information for Bioremediation Field Initiative Database System; was approved 02/19/2001; OMB No. 2080–0048; expires 02/29/2004.

EPA ICR No. 1427.06; National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/Certification Information; in 40 CFR parts 122, 123, 124, 125, and 501; was approved 02/23/2001; OMB No. 2040–0110; expires 02/29/2004.

EPA ICR No. 1869.02; N ESHAP for Hazardous Air Pollutants: Manufacture of Amino-Phenolic Resins; in 40 CFR part 63, subpart A and H; was approved 02/22/2001; OMB No. 2060–0434; expires 02/29/2004.

EPA ICR No. 1781.02; NESHAP for Hazardous Air Pollutants for Source Categories; Pharmaceutical Production, in 40 CFR part 63, Subpart GGG; was approved 02/27/2001; OMB No. 2060–0358; expires 02/29/2004.

EPA ICR No. 1659.04; NESHAP for Hazardous Air Pollutants; in 40 CFR part 63, subpart R; was approved 02/28/2001; OMB No. 2060–0325; expires 02/29/2004.

EPA ICR No. 1432.18; Record keeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transshipment and Feedstock Use of Ozone-Depleting Substances; in 40 CFR part 82, subpart A; was approved 03/05/2001; OMB No. 2020–0170; expires 10/31/2003.

EPA ICR No. 1550.05; Conflict of Interest; was approved 02/08/2001; OMB No. 2030–0023; expires 02/29/2004.

EPA ICR No. 1659.04; NESHAP for Gasoline Distribution Facilities; was approved 02/27/2001; OMB No. 2060–0325; expires 02/29/2004.

EPA ICR No. 1961.01; Meat Products Industry Survey; was approved 03/01/2001; OMB No. 2040–0225; expires 02/29/2004.

Short Term Extensions

EPA ICR No. 0916; Annual Updates of Emission Data to the Aromatic Information Retrieval System (AIRS); in 40 CFR parts 51.321, 322, and 323; OMB No. 2060–0088; on 01/31/2001 OMB extended the expiration through 4/30/2001.

EPA ICR No. 1414.03; Hazardous Organic NESHAP (HON); in 40 CFR part 63.100–152, subparts F. G, H, and I; OMB No. 2060–0282; on 02/15/2001 OMB extended the expiration date through 04/30/2001.

EPA ICR No. 0857.07; Polychlorinated Biphenyls (PCBs): Manufacturing, Processing, and Distribution in Commerce Exemptions; in 40 CFR part 750; OMB No. 2070–0021; on 02/23/2001 OMB extended the expiration date through 05/31/2001.

EPA ICR No. 1001.06; Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions, and Use Authorizations; in 40 CFR part 761; OMB No. 2070–0008; on 02/23/2001 OMB extended the expiration date through 05/31/2001.

Comments Filed

EPA ICR No. 1947.01; NESHAP for Vegetable Oil Production; on 02/12/2001 OMB filed a comment under comment No. 2060–0453. Note, this is not an OMB approval number.

EPA ICR No. 1966.01; Reporting and Record keeping Requirements for NESHAP for Boat Manufacturing; in 40 CFR part 63, subpart VVV; on 02/12/2001 OMB filed comment under comment No. 2060–0455. Note, this is not an OMB approval number.

EPA ICR No. 2006.01; Hazardous Waste Listing for Paint Production Wastes; on 03/12/2001 filed a comment under comment No. 2050–0177. Note, this is not an OMB approval number.

Withdrawals

EPA ICR No. 1984.01; NESHAP for Plywood and Composite Wood Products Manufacturing Plants (Proposed Rule); on 02/13/2001 this ICR was withdrawn from OMB review.

EPA ICR No. 1967.01; NESHAP for Stationary Combustion Turbines; on 02/13/2001 this ICR was withdrawn from OMB review.

EPA ICR No. 1952.01, NESHAP for Metal Furniture Surface Coating Operations; on 02/13/2001 this ICR was withdrawn from OMB review.

EPA ICR No. 2002.01; Cross-Media Electronic Reporting and Record keeping (Proposed Rule); on 02/19/2001 this ICR was withdrawn from OMB review.

EPA ICR No. 2003.01; NESHAP for Recordkeeping and Reporting Requirements for Integrated Iron and Steel Manufacturing; on 03/07/2001 this ICR was withdrawn from OMB review.

OMB Disapproval

EPA ICR No. 1989.01; Proposed Regulatory Revisions to the NPDES Regulations for Concentrated Animal Feeding Operations and Feedlot Effluent Limitation Guidelines; this ICR was disapproved by OMB 02/08/2001.

Dated: March 20, 2001

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–8804 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6964–6]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet in a regular quarterly session. This is an open meeting. The theme will be ''Mobile Source Programs At Other Federal Agencies.'' The meeting may include presentations by the Department of Transportation, Department of Commerce, Department of Energy and possibly others. The preliminary agenda for this meeting and draft minutes from the previous one are available from the Subcommittee's website at: *http://www.epa.gov/oar/caaac/mobile_sources-caaac.html*

DATES: Wednesday, April 18, 2001 from 9 am to 3:30 pm. Registration begins at 8:30 am.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, Columbia Pike & Washington Blvd., Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Ms. Cheryl L. Hogan, Alternate Designated Federal Officer, Certification and Compliance Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4402, FAX: 734/214–4053, email: hogan.cheryl@epa.gov

For logistical and administrative information: Ms. Mary F. Green, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734/214–4411, Fax: 734/214–4053, email: green.mary@epa.gov

Background on the work of the Subcommittee is available at: *http://transaq.ce.gatech.edu/epatac.*

For more current information: *www.epa.gov/oar/caaac/mobile_sources-caaac.html.*

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. Hogan at the address above by April 10, 2001. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees, e.g., status of relevant EPA regulations and mobile source programs, etc.

Dated: April 3, 2001.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 01–8802 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6964–7]

National Advisory Council for Environmental Policy and Technology, (NACEPT) Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT standing committee on compliance assistance meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Standing Committee on Compliance Assistance will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below. National Advisory Council for Environmental Policy and Technology (NACEPT) Standing Committee on Compliance Assistance; May 2–3, 2001. Notice is hereby given that the U.S. Environmental Protection Agency (EPA) will hold an open meeting of the NACEPT Standing Committee on Compliance Assistance on Tuesday, May 2, 2001 from 8:30 a.m. to 5 p.m., and Wednesday May 3, 2001 from 8:30 a.m.–4:00 p.m. The meeting will be held at the AUSA building on 2425 Wilson Blvd Arlington, VA, 22201. The agenda for both days of the meeting will be focused primarily on drafting recommendations to the EPA Administrator on compliance assistance (CA) policy issues, including integrating CA into EPA's mission, CA measurement and CA tool development and delivery. A formal agenda will be available at the meeting.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the EPA Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies. Over the last two years, EPA has undertaken a number of actions to improve our compliance assistance activities. To ensure that the Agency efforts to improve compliance assistance are implemented in a way that continues to reflect stakeholder needs, NACEPT created a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the EPA can continue to receive valuable stakeholder advice and recommendations on compliance assistance activities.

For further information concerning the NACEPT Standing Committee on Compliance Assistance, including the upcoming meeting, contact Joanne Berman, Designated Federal Officer (DFO), on (202) 564–7064, or E-mail: berman.joanne@epa.gov.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting.

Dated: April 2, 2001.

Jonathan Binder,

Acting Designated Federal Officer.

[FR Doc. 01–8803 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6961–2]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act: Prewitt Abandoned Refinery

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 concerning the Prewitt Abandoned Refinery Superfund Site (the ''Site'') which is located near Prewitt, New Mexico. The settling parties are Atlantic Richfield Company (''ARCO'') and El Paso Natural Gas Company (''EPNG'').

The settlement requires ARCO and EPNG to pay $834,055.34, to the Hazardous Substances Superfund to settle EPA's CERCLA section 107(a), 42 U.S.C. 9607(a), claim for past costs associated with EPA's Superfund response action at the Site. The settlement figure includes $211,700 to settle EPA's claim for costs that it projects it will incur during the next two years at the Site. The EPA anticipates that its response will continue beyond those two years, and the settlement does not settle EPA's claims for future costs beyond the two years described in the administrative settlement document.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency will consider all comments received and may modify, withdraw or withhold 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 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before May 10, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Region 6 offices located at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Dan Hochstetler, Enforcement Officer, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at 214.665.6569. Comments should reference the Prewitt Abandoned Refinery Superfund Site, and EPA Docket Number 06–18–99, and should be addressed to Dan Hochstetler at the address listed above.

FOR FURTHER INFORMATION CONTACT: EPA Senior Attorney James E. Costello, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at 214.665.8045.

Dated: March 14, 2001.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 01–8800 Filed 4–9–01; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 12, 2001, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- March 8, 2001 (Open)

B. Reports

- Corporate Approvals
- Annual Report on Conditions in the Farm Credit System

Dated: April 5, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–8915 Filed 4–6–01; 12:28 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Binding Arbitration

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final statement of policy.

SUMMARY: This FDIC Statement of Policy addresses the Corporation's use of binding arbitration and complies with the requirements of the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320. This policy statement reaffirms and supplements the FDIC's existing policy (62 FR 66370) to use all forms of Alternative Dispute Resolution for resolving appropriate disputes in a timely and cost efficient manner.

EFFECTIVE DATE: March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Mark G. Flanigan, Counsel (202) 898–6865, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Rm. 5082, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Board of Directors of the FDIC has adopted a Statement of Policy regarding binding arbitration. The text of the Policy Statement follows:

Statement of Policy on the Use of Binding Arbitration

The Federal Deposit Insurance Corporation (FDIC) has long been and continues to be a strong advocate for the use of various forms of Alternative Dispute Resolution (ADR) for resolving appropriate disputes in a more timely, less costly manner than litigation. The FDIC's ADR program is an organization-wide effort implementing the spectrum of ADR processes including negotiation, facilitation, mediation, evaluation and advisory ADR in internal and external conflict management and dispute resolution. This policy statement reiterates the FDIC's commitment and full support for using ADR in appropriate instances and sets forth a framework for the continuing and expanding use of ADR by providing for the use of binding arbitration as a means of dispute resolution.

Arbitration is a private, informal process by which parties agree, in writing, to submit their disputes to one or more impartial persons authorized to resolve the controversy by rendering a final and binding decision or award with limited rights of appeal. The final and binding nature of the decision distinguishes arbitration from mediation and other non-binding forms of ADR. Potential benefits of arbitration are its greater flexibility, potential for limited discovery and streamlined hearing processes, use of panels of trained and subject-area expert arbitrators, and restricted judicial review rights.

Although the FDIC encourages non-binding, consensual forms of ADR, the Corporation views the use of binding arbitration in appropriate circumstances as an additional ADR technique to accomplish its business in an efficient, economical and productive manner. The Corporation will consider using non-binding ADR to resolve disputes prior to engaging in binding arbitration.

Scope

This Policy Statement applies to disputes arising with the FDIC in all its capacities and complies with the

arbitration provisions of the Administrative Dispute Resolution Act of 1996. This Policy also applies to federal court-based arbitration programs under the Alternative Dispute Resolution Act of 1998. Offices and Divisions considering the use of binding arbitration should refer to this Policy and the separate Directive on use of Binding Arbitration. The use of binding arbitration in state court-based arbitration programs, employment/labor arbitration, contracts or leases entered into by a depository institution prior to the appointment of the FDIC as conservator or receiver, or in connection with any other of the FDIC's regulatory, compliance and enforcement activities, is not the subject of this Policy Statement.

Background

The Administrative Dispute Resolution Act of 1990 (''ADRA''), 5 U.S.C. 571–583, was amended in 1996. The 1996 amendments made significant changes in the provisions found in the ADRA of 1990, and specifically authorized federal agencies to voluntarily use binding arbitration without the former qualifying provisions that allowed the head of an agency to vacate an arbitration award. The 1996 ADRA amendments authorize an agency to use binding arbitration, in its discretion, and in appropriate cases. However, the ADRA amendments establish certain requirements an agency must meet before arbitrating disputes.

ADRA Requirements

Before engaging in binding arbitration, an agency must:

- Issue guidance, in consultation with the Attorney General, on the appropriate use of binding arbitration (5 U.S.C. 575(c));
- Require that all agreements to arbitrate disputes be in writing and specify the subject matter to be submitted to the arbitrator for decision (5 U.S.C. 575(a)(2));
- Include in the arbitration agreement the maximum award amount that may be granted by the arbitrator (5 U.S.C. 575(a)(2));
- Require any officer or employee of the agency offering to use arbitration in resolution of a dispute to have either the authority to enter into a settlement concerning the matter, or the specific authority to consent to arbitration on behalf of the agency (5 U.S.C. 575(b)(1) and (2)); and
- Not require anyone to consent to binding arbitration as a condition to contracting with the agency (5 U.S.C. 575(a)(3)).

Finally, the use of binding arbitration must be voluntary on the part of all parties (5 U.S.C. 575(a)(1)).

Aside from the foregoing, the 1996 ADRA amendments provide that an agency shall consider not using a dispute resolution proceeding such as binding arbitration if the dispute:

- Requires an authoritative determination as precedent for other cases;
- Involves a significant question of government policy;
- Significantly impacts persons who are not parties to the proceedings;
- Requires a public record of the proceedings;
- Must be monitored on an on-going basis by a court or an administrative body to ensure compliance;
- Must be adjudicated to establish a body of law.

Purpose and Intended Uses

The FDIC may use binding arbitration to resolve disputes in a number of situations where it is more practical, cost-effective, or efficient than litigation or other consensual methods of ADR such as negotiation or mediation. The FDIC may agree to use binding arbitration in Corporation contracts (before an actual dispute arises), subject to the required approval and authority. Complex commercial/business transactions, construction contracts, insurance agreements, asset sales, real estate sales, leasing, and securities and securitizations are examples of substantive areas where binding arbitration may be used to resolve disputes. The FDIC may also agree to enter into binding arbitration after a dispute has arisen, and where no previous contractual dispute resolution mechanism exists.

Directive

The Legal Division is simultaneously issuing a directive providing further guidance to employees on the Corporation's use of binding arbitration. This directive will provide the following information:

- Considerations in rendering a decision to use binding arbitration;
- Circumstances where the Corporation will not use binding arbitration;
- Considerations relating to the nature and extent of damages;
- Responsibility for costs associated with arbitration;
- Arbitrator selection criteria; and
- Arbitration case preparation, processing and review procedures.

It is the responsibility of all FDIC employees to practice and promote cost-effective dispute resolution in FDIC programs and in corporate operations. All officers and employees of Divisions and Offices of the FDIC considering the use of binding arbitration are hereby directed to take the necessary steps to implement this policy to promote effective and appropriate use of binding arbitration.

By order of the Board of Directors.

Dated at Washington, DC, this 26th day of March, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–8752 Filed 4–9–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 11, 2001.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Written Security Program for State Member Banks.

Agency form number: FR 4004.

OMB control number: 7100–0112.

Frequency: On occasion.

Reporters: state member bank.

Annual reporting hours: 47 hours.

Estimated average hours per response: 0.5 hours.

Number of respondents: 94.

Small businesses are affected.

General description of report: This recordkeeping requirement is mandatory (12 U.S.C. 1882), 12 U.S.C. 248(a)(1) and 325, and Regulation H (12 CFR 208.61) authorize the Board to require the recordkeeping of this information. Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally arises. However, copies of such documents included in examination work papers would, in such form, be confidential pursuant to exemption 8 of the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract: This mandatory information collection is a recordkeeping requirement contained in the Federal Reserve's Regulation H Section 208.61. Each state member bank must develop and implement a written security program and maintain it in the bank's records. There is no formal reporting form and the information is not submitted to the Federal Reserve.

Board of Governors of the Federal Reserve System, April 4, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–8704 Filed 4–9–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Robert Lem Kemp, and Kevin Lee Kemp, both of Columbia, Mississippi, and Christopher Lane Kemp and Carol Lynn Simpson, both of Hattiesburg, Mississippi (also known as the Kemp/Simpson family); to acquire additional voting shares of Citizens Corporation, Columbia, Mississippi, and thereby indirectly acquire additional voting shares of Citizens Bank, Columbia, Mississippi.

Board of Governors of the Federal Reserve System, April 4, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–8706 Filed 4–9–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Indiana Corporation, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Indiana Bank, National Association, Indianapolis, Indiana (in organization).

In connection with this application, Applicant also has applied to acquire Somerset Financial Services, LLC, Indianapolis, Indiana, and thereby engage in financial and investment advisory activities, pursuant to § 225.28 (b)(6) of Regulation Y; management consulting and counseling activities, pursuant to § 225.28 (b)(9) of Regulation Y; real estate and personal property appraising, pursuant to § 225.28 (b)(2)(i); data processing activities, pursuant to § 225.28 (b)(14) of Regulation Y; and to acquire First Indiana Bank, FSB, Indianapolis, Indiana, and thereby operate a savings association, pursuant to § 225.28 (b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–8705 Filed 4–9–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, April 16, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 6, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–8977 Filed 4–6–01; 3:51 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 002 3220]

Hewlett-Packard Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 3, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2699.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with an accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the compliant. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 3, 2001), on the World Wide Web, at *http://www.ftc.gov/os/2001/04/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Hewlett-Packard Company (''HP'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations for respondent's HP Jornada Pocket PC handheld computer (''Jornada'')—a personal digital assistant (''PDA''), featuring Microsoft Corp.'s Windows CE operating system. This matter concerns allegedly false and deceptive advertising claims made in cooperative advertisements, other advertisements, and product packaging regarding the ability of the Jornada to access the Internet and email accounts.

According to the FTC complaint, HP falsely claimed that the Jornada contains everything that consumers need to access the Internet and their email accounts, at anytime and from anywhere. In fact, in order to access the Internet and their email accounts using the Jornada, when away from their computers (''remotely''), consumers must purchase and carry a separate

modem or similar device that in most cases must be connected to a land telephone line or a mobile telephone; and moreover, many mobile telephones currently in use in the United States are not compatible with the Jornada Pocket PC. The complaint also alleges that in representing that consumers can use the Jornada to access the Internet and their email accounts, at anytime and from anywhere, respondent failed to disclose or failed to disclose adequately that in order to access remotely the Internet and their email accounts, consumers must purchase and carry a separate modem or similar device. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

The proposed consent order contains provisions designed to prevent HP from engaging in similar acts and practices in the future. Specifically, Parts I and II address representations regarding any PDA or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to access the Internet or email accounts remotely (''covered devices'').

Part I of the proposed order prohibits respondent from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts.

Part II of the proposed order prohibits respondent from making any representation about the ability of any covered device to access the Internet or email accounts unless respondent discloses, clearly and conspicuously, any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services (other than general-purpose ISP service, as defined in the order) that consumers must purchase in order to access the Internet or email accounts.

Parts III through VI of the order require HP to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Orson Swindle

I voted to accept both of these consent agreements for public comment, because the proposed consent orders are adequate relief for the violations alleged in the complaint. Nonetheless, I have strong reservations about the use of unenforceable ''voluntary'' consumer education. In each of these cases, staff negotiated with the proposed respondent to achieve a consumer education campaign that is being undertaken wholly outside the confines of the order. Consumer education remedies sometimes pose difficult issues and Commissioners may disagree as to whether a particular consumer education remedy is appropriate and reasonably related to the complaint allegations. Yet the solution for such disagreements is not simply to excise such remedies from the legally enforceable obligations that respondents are undertaking in settlement. If consumer education is important enough to include in negotiations, there likely is some impact on what is achieved in negotiating the terms of consent order itself. Moreover, to the extent that the FTC promotes such ''voluntary'' consumer education initiatives in our efforts to publicize the consent agreements, we may see many more deep-pocketed respondents seeking to add a bit of ''voluntary;'' and unenforceable consumer education to a broader promotional campaign in exchange for a weaker order than might otherwise be negotiated.

[FR Doc. 01–8708 Filed 4–9–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9293]

Hoechst Marion Roussel, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint previously issued and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 2, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Markus Meier or Richard Feinstein, FTC/S–3115, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3759 or 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 2, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/04/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement and proposed consent order with Hoechst Marion Roussel, Inc. (''HMR''), Carderm Capital, L.P. (''Carderm''), and Andrx Corporation (''Andrx'') to resolve the matters alleged in an administrative complaint issued by the Commission on March 16, 2000. The proposed consent order has been placed on the public record for 30 days to receive comments from interested members of the public. The proposed consent order has been entered into for

settlement purposes only and does not constitute an admission by HMR, Carderm, or Andrx (collectively ''the Respondents'') that they violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true. Respondents deny all other allegations of the complaint.

The Complaint

The complaint alleges that the Respondents entered into an agreement that had the tendency or capacity to restrain competition unreasonably by discouraging generic competition to Cardizem CD. Cardizem CD is a prescription drug manufactured and sold by HMR and is used to treat two chronic conditions that affect millions of Americans: hypertension (high blood pressure) and angina pectoris (chest pain). Andrx is a generic drug manufacturer that developed a generic version of Cardizem CD.

Generic drugs typically are sold at substantial discounts from the price of branded drugs. Generic drugs can have a swift marketplace impact, the complaint states, because pharmacists generally are permitted, and in some instances are required, to substitute lower-priced generic drugs for their branded counterparts, unless the prescribing physician directs otherwise. In addition, there is a ready market for generic products because certain third-party payers of prescription drugs (e.g., state Medicaid programs and many private health plans) encourage or insist on the use of generic drugs wherever possible.

Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as ''the Hatch-Waxman Act,'' to facilitate the entry of lower priced generic drugs while maintaining incentives to invest in new drug development. A company seeking approval from the Food and Drug Administration (''FDA'') to market a new drug must file a New Drug Application (''NDA'') demonstrating the safety and efficacy of its product. In order to receive FDA approval to market a generic version of a brand name drug a company must file an Abbreviated New Drug Application (''ANDA'') demonstrating that its product is bioequivalent to its brand-name counterpart.

The Hatch-Waxman Act establishes certain rights and procedures in situations where a company seeks FDA approval to market a generic drug prior to the expiration of a patent or patents relating to the brand name drug upon which the generic is based. In such cases, the applicant must: (1) Certify to the FDA that the patent in question is invalid or is not infringed by the generic product (known as a ''paragraph IV certification''); and (2) notify the patent holder of the filing of the certification. If the holder of the patent rights riles a patent infringement suit within 45 days, FDA approval to market the generic drug is automatically stayed for 30 months, under certain circumstances, unless before that time the patent expires or the patent is judicially determined to be inlaid or not infringed. This automatic 30-month stay allows the patent holder time to seek judicial protection of its patent rights before a generic competitor is permitted to market its product.

In addition, the Hatch-Waxman Act provides an incentive for generic drug companies to bear the cost of patent litigation that may arise when they challenge invalid patents or design around valid ones. Under current FDA regulations, the Act grants the first company to file an ANDA with a paragraph IV certification a 180-day period during which it has the exclusive right to market a generic version of the brand name drug. No other generic manufacturer may obtain FDA approval to market its product until the first filer's 180-day exclusivity period has expired. At the time the Respondents entered into the challenged agreement in 1997, the governing FDA regulations required that an ANDA applicant successfully defend the patent holder's patent suit in order to be entitled to this exclusivity.

Andrx was the first company to file an ANDA for a generic version of Cardizem CD. It filed a paragraph IV certification with the FDA stating its belief that the product did not infringe any valid patent covering Cardizem CD. In January 1996, HMR sued Andrx for patent infringement. The lawsuit triggered a 30-month stay of final FDA approval of Andrx's generic product, until July 1998.

According to the complaint, HMR and Andrx entered into an agreement in September 1997, in the midst of this patent lawsuit. At the time of the agreement, approximately nine months before the 30-month stay of FDA approval of Andrx's application would expire, the patent lawsuit had already been pending for twenty-one months and both sides had filed numerous dispositive motions with the trial court that had not been acted on. Also by that time, two other companies, Purepac Pharmaceutical Co. and Biovail Corporation International, had filed for FDA approval of a generic Cardizem CD product, neither of which had yet obtained tentative approval from the FDA.

HMR's forecasts, the complaint states, projected that a generic once-a-day diltiazem product would capture roughly 40 percent of Cardizem CD sales within the first year following its launch. Cardizem CD was HMR's largest selling product at the time. Accordingly, the complaint charges, HMR sought to delay Andrx—and all other potential generic competition to Cardizem CD—from entering the market because of the threat they represented to the high profits it was making from Cardizem CD.

The complaint alleges that on September 24, 1997, HMR, Carderm, and Andrx entered into a ''Stipulation and Agreement.'' The Stipulation and Agreement did not settle the lawsuit. Instead, under this agreement, the complaint alleges that Andrx agreed not to enter the market with its generic Cardizem CD product until the earliest of: (1) Final resolution of the patent infringement litigation; (2) Andrx's exercise of an option to obtain a license from HMR in the future; or (3) notice by HMR that it would allow entry of another generic Cardizem CD product or market its won generic version of Cardizem CD. According to the complaint, Andrx also agreed to refrain from selling during the patent infringement suit any other bioequivalent or generic version of Cardizem CD. In addition, the complaint alleges that Andrx agreed not to withdraw its pending ANDA or to relinquish or otherwise compromise any right accruing under its ANDA, including its 180-day exclusively right. In return, the complaint alleges, HMR agreed to pay Andrx $10 million per quarter during the litigation beginning when Andrx received final FDA approval of its ANDA, unless the litigation was resolved prior to that time. Under the agreement, if HMR lost the patent infringement suit it would pay Andrx an additional $60 million per year for that same time period. On September 25, 1997, the parties made public disclosures of the existence of the agreement. The Commission's complaint alleges that this agreement, at the time it was entered into, had the potential to affect Andrx's incentive to compete once it received final FDA approval.

In July 1998, upon expiration of the 30-month stay under Hatch-Waxman, Andrx received final FDA approval to market its original formulation of generic Cardizem CD that was subject to the still on-going lawsuit with HMR. Pursuant to the terms of the Stipulation and Agreement, HMR began making

quarterly payments of $10 million to Andrx.

Andrx filed a supplement to its ANDA reflecting a reformulation of its generic Cardizem CD product in September 1998. This reformulation altered the dissolution profile of the Andrx product, which was the basis of the patent dispute between Andrx and HMR. The FDA required Andrx to file a new certification and give notice to HMR of the reformulated product under the Hatch-Waxman procedures described above. Following its analysis of the reformulated product, HMR agreed that it would not assert a patent claim against the reformulated product. By June 1999, Andrx had solved the difficulties it had encountered since the summer of 1997 in consistently manufacturing commercial scale quantities of its formulations of its product in conformity with FDA regulations. Andrx received FDA approval in June 1999 to market its reformulated version of Cardizem CD. On or about the day Andrx received FDA approval of its reformulated product, the Respondents entered into a stipulation dismissing the litigation, with an agreement by Andrx not to sell its original formulation and an agreement by HMR not to sue Andrx for patent infringement on Andrx's reformulated product. The challenged agreement terminated.

On or about June 23, 1999, the federal district court dismissed the patent suit, and Andrx commenced marketing its reformulated generic Cardizem CD product, triggering its 180-day exclusivity period. At that time, Biovail Corporation International had not received tentative FDA approval for its product, and Purepac Pharmaceutical Co. had entered into a licensing arrangement with HMR for manufacture of generic Cardizem CD. Andrx's 180-day exclusivity period expired on December 19, 1999. Purepac launched its generic Cardizem CD product the next day pursuant to a license from HMR. Biovail obtained final FDA approval on December 23, 1999, and launched its product shortly thereafter.

Based on the FTC's investigation, it does not appear that there was any delay in the entry into the market of a generic version of Cardizem CD by Andrx or any other potential manufacturer, or that the conduct or agreement at issue delayed consumer access to a generic version of Cardizem CD. The agreement terminated in June 1999. It was at that time that Andrx received FDA approval to market, and commenced marketing, a reformulated generic version of Cardizem CD that HMR stipulated did not infringe any HMR patent.

The complaint alleges that the challenged agreement was not justified by countervailing efficiencies. In its complaint, the Commission alleged that the presence in the agreement of a licensing provision (permitting Andrx to obtain a license from HMR to market generic Cardizem CD in January 2000, in the event Andrx lost the patient litigation, or if another generic company obtained final FDA approval) did not justify the agreement. The complaint that entry by Andrx under a license, had it occurred, likely would have been later than entry by Andrx or another generic manufacturer absent the agreement.

Finally, the complaint charges that HMR had a monopoly in the market for once-a-day diltiazem, and, that by entering into the agreement with Andrx, HMR sought to preserve its dominance by delaying the entry of Andrx and other generic companies into the market. At the time of the challenged agreement, HMR accounted for 70% of the sales of once-a-day diltiazem in the United States. Other drugs, the complaint alleges, are not effective substitutes for once-a-day diltiazem because they are different in efficacy and side effects, and because of risks associated with switching patients from one treatment to another. In addition, the complaint alleges that HMR and Andrx conspired to monopolize the market for once-a-day diltiazem products. The complaint alleges that HMR and Andrx acted with specific intent that HMR monopolize the market for once-a-day diltiazem, and entered into a conspiracy to achieve that goal. Finally, the complaint charges that the Respondents' agreement otherwise amounts to an unfair method of competition in violation of Section 5 of the FTC Act.

The Proposed Order

In a statement issued at the time of the filing of the complaint in this matter, the members of the Commission stated that cases like this one ''must be examined with respect to [their] particular facts,'' and that the ''development of a full factual record in the administrative proceeding * * * will help to shape further the appropriate parameters of permissible conduct in this area, and guide other companies and their legal advisors.'' [1] Although the particular agreement challenged in the complaint has been terminated, the Commission believes prospective relief is necessary to prevent a recurrence of the types of agreements covered by the proposed order. Private agreements in which the brand name drug company (the ''NDA Holder'') pays the first generic to seek FDA approval (the ''ANDA First Filer''), and the ANDA First Filer agrees not to enter the market, have the potential to delay generic competition and raise serious antitrust issues. Moreover, the FDA has observed that the incentives for companies to enter into such arrangements are becoming greater, as the returns to a brand name company from extending its monopoly increasingly exceed the potential economic gains to the generic applicant from its 180 days of market exclusivity.[2]

The proposed order strikes an appropriate balance, on a prospective basis, between the legitimate interests of the Respondents and the Commission's concerns with the possible competitive effects of agreements between NDA Holders and ANDA First Filers. By not imposing any broad prohibitions on the Respondents' ability to compete, the order maintains HMR's incentive to develop and sell new drug products and Andrx's incentive to develop and sell generic products that do not infringe valid intellectual property rights held by others. In addition, the order preserves Andrx's ability to decide for itself whether to market a product in the face of a claim of patent infringement, so long as such decision is otherwise lawful.

As described more fully below, the proposed order:

- Bars (except in certain licensing arrangements) two particular types of agreements between brand name drug companies and potential generic competitors—restrictions on giving up Hatch-Waxman 180-day exclusivity rights and on entering the market with a non-infringing product;
- Requires that interim settlements of patent litigation involving payments to the generic company in which the generic company temporarily refrains from bringing its generic product to market, be approved by the court, with notice to the Commission to allow it time to present its views to the court; and
- Requires the Respondents to give the Commission written notice 30 days before entering into such agreements in other contexts.

Paragraph II prohibits two kinds of agreements between an NDA Holder and

[1] Statement of Chairman Pitofsky, Commissioner Anthony, Commissioner Thompson, Commissioner Swindle, and Commissioner Leary concerning Abbott Laboratories and Geneva Pharmaceuticals, Inc., File No. 981–0395 (March 16, 2000).

[2] FDA Proposed Rule Regarding 180-Day Generic Drug Exclusivity for Abbreviated New Drug Applications, 64 Fed. Reg. 42873, 42882–83 (August 6, 1999).

the ANDA First Filer (that is, the party possessing an unexpired right to Hatch-Waxman 180-day exclusivity). Paragraph II.A. bars agreements in which the first company to file an ANDA agrees with the NDA Holder not to relinquish its right to the 180-day exclusivity period (as interpreted by the courts at the time of the agreement). Paragraph II.B. prohibits the ANDA First Filer from agreeing not to develop or market a generic drug product that is not the subject of a claim of patent infringement. The order recognizes, however, that even these types of agreements, in the context of certain licensing arrangements, might not raise competitive concerns. Accordingly, conduct otherwise falling within the conduct described in Paragraph II would not be prohibited where the ANDA First Filer agrees to license and introduce a competitive product to the market, its 180-day exclusivity right is not extended, and the Commission is provided notice.

Paragraph II's focus on agreements between an NDA Holder and the ANDA First Filer does not mean that the Commission believes that there is no risk of competitive harm in other types of agreements. In particular substantial competitive concerns could arise from an agreement in which a generic company (other than the ANDA First Filer) agrees with the NDA Holder to refrain from marketing a non-infringing product. Given the variety of circumstances in which the restraints may arise, however, and the possibility that some legitimate justifications might exist for such arrangements, the Commission believes that it is appropriate at this time to limit the bans in Paragraph II to the described agreements between NDA Holders and ANDA First Filers.

Paragraph III covers certain private agreements involving payments form the NDA Holder to the ANDA First Filer during patent infringement litigation. Generally, the Respondents can enter into such arrangements only if (a) the agreement is presented to the court and embodied in a court-ordered preliminary injunction, and (b) the following other conditions are met: (i) Along with any stipulation for preliminary injunction, Respondents provide the court with a copy of the Commission's complaint, order, and the analysis to Aid Public Comment in this matter, as well as the proposed agreement; (ii) at least 30 days before submitting the stipulation to the court, they provide written notice (as set forth in Paragraph V of the order) to the Commission; and (iii) they do not oppose Commission participation in the court's consideration of the request for preliminary relief.

This part of the proposed order is designed to enhance the court's ability to assess the competitive implications of such agreements. This remedy, in addition to facilitating the court's access to information about the Commission's views, may also make the process more public and thereby may prompt other generic drug manufacturers (or other interested parties) to participate.

Paragraph IV addresses private agreements in which an ANDA First Filer agrees with the NDA Holder not to enter the market. Such situations would include agreements that are part of a final settlement of the litigation, and situations in which no litigation has been brought. In these circumstances, there may be no judicial role in ordering relief agreed to by the Respondents. Thus, the order requires that the Respondents notify the Commission at least 30 days before entering into such agreements. Such notice will assist the Commission because of the potential for competitive harm that these agreements may create. Absent the order, there may be no effective mechanism for the Commission to find out about such agreements.

The form of notice that the Respondents must provide to the Commission under Paragraphs II, III and IV of the order is set forth in Paragraph V. In addition to supplying a copy of the proposed agreement, the Respondents are required to provide certain other information to assist the Commission in assessing the potential competitive impact of the agreement. Accordingly, the order requires the Respondents to identify, among other things, all others who have filed an ANDA for a product containing the same chemical entities as the product at issue, and the court that is hearing any relevant legal proceedings involving either party. In addition, the Respondents must provide the Commission with all documents that evaluate the proposed agreement.

The proposed order also contains certain reporting and other provisions that are designed to assist the Commission in monitoring compliance with the order and are standard provisions in Commission orders.

The order will expire in 10 years.

Opportunity for Public Comment

The proposed order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the proposed order or make the proposed order final.

By accepting the proposed order subject to final approval, the Commission anticipates that the competitive issues alleged in the complaint will be addressed. The purpose of this analysis is to facilitate public comment on the agreement. It is not intended to constitute an official interpretation of the agreement, the complaint, or the proposed consent order, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–8707 Filed 4–9–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 002 3331]

Microsoft Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 3, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580 (202) 326–2699.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the

allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 3, 2001), on the World Wide Web, *http://www.ftc.gov/os/2001/04/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Microsoft Corporation (''Microsoft'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations about Pocket PC handheld computers (''Pocket PCs'')—personal digital assistants (''PDAs'') which feature Microsoft's Windows CE operating system, including Hewlett-Packard Company's Jornada Pocket PC and Compaq Computer Corp.'s Pocket PC. This matter concerns allegedly false and deceptive advertising claims made in advertisements regarding the ability of Pocket PCs to access the Internet and email accounts.

According to the FTC complaint, Microsoft falsely claimed that Pocket PCs contain everything that consumers need to access the Internet and their email accounts, at anytime and from anywhere. In fact, in order to access the Internet and their email accounts using Pocket PCs, when away from their computers (''remotely''), consumers must purchase and carry a separate modem or similar device that in most cases must be connected to a land telephone line or a mobile telephone; and moreover, many mobile telephones currently in use in the United States are not compatible with Pocket PCs. The complaint also alleges that in representing that consumers can use Pocket PCs to access the Internet and their email accounts, at anytime and from anywhere, Microsoft failed to disclose or failed to disclose adequately that in order to access remotely the Internet and their email accounts, consumers must purchase and carry a separate modem or similar device. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

The proposed consent order contains provisions designed to prevent Microsoft from engaging in similar acts and practices in the future. Specifically, Parts I and II address representations regrading any PDA or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to access the Internet or email accounts remotely (''covered devices'').

Part I of the proposed order prohibits Microsoft from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts.

Part II of the proposed order prohibits Microsoft from making any representation about the ability of any covered device to access the Internet or email accounts unless Microsoft discloses, clearly and conspicuously, any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services (other than general-purpose ISP service, as defined in the order) that consumers must purchase in order to access the Internet or email accounts.

Parts III through VI of the order require Microsoft to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the commission of changes in corporate structure, and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Orson Swindle

I voted to accept both of these consent agreements for public comment, because the proposed consent orders are adequate relief for the violations alleged in the complaint. Nonetheless, I have strong reservations about the use of unenforceable ''voluntary'' consumer education. In each of these cases, staff negotiated with the proposed respondent to achieve a consumer education campaign that is being undertaken wholly outside the confines of the order. Consumer education remedies sometimes pose difficult issues and Commissioners may disagree as to whether a particular consumer education remedy is appropriate and reasonably related to the complaint allegations. Yet the solution for such disagreements is not simply to excise such remedies from the legally enforceable obligations that respondents are undertaking in settlement. If consumer education is important enough to include in negotiations, there likely is some impact on what is achieved in negotiating the terms of the consent order itself. Moreover, to the extent that the FTC promotes such ''voluntary'' consumer education initiatives in our efforts to publicize the consent agreements, we may see many more deep-pocketed respondents seeking to add a bit of ''voluntary'' and unenforceable consumer education to a broader promotional campaign in exchange for a weaker order than might otherwise be negotiated.

[FR Doc. 01–8709 Filed 4–9–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Cigarette and Smokeless Tobacco Reports; Request for Public Comment

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is soliciting comments to help it determine whether to continue to issue reports on the sales, advertising and promotion of cigarettes and smokeless tobacco products, as well as the formats for any such reports.

DATES: Written comments must be received on or before June 11, 2001.

ADDRESSES: Submit comments to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Five paper copies of each written comments should be submitted. All comments also should be submitted, if possible, in electronic form, on a 3½ inch personal computer diskette, with a label on the diskette stating the name of the commenter and the name and version of the word processing program used to create the document. Windows-based programs are preferred. Files from other operating systems should be submitted in ASCII text format. Individuals filing comments need not submit multiple copies or comments in electronic form. Comments alternatively may be submitted by electronic mail (e-mail) to *Cigarette&Smokeless Tobacco Reports@ftc.gov.* Submissions should be identified as ''Cigarette and Smokeless Tobacco Reports.''

FOR FURTHER INFORMATION CONTACT: Michael Ostheimer, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2699.

SUPPLEMENTARY INFORMATION: The FTC has issued statutorily required reports to Congress on domestic sales and advertising and promotion expenditures for cigarettes and smokeless tobacco products.[1] The aggregate sales and marketing data in these reports are based on data submitted to the Commission pursuant to compulsory process by the largest cigarette and smokeless tobacco manufacturers in the United States.

The Federal Reports Elimination and Sunset Act of 1995 terminated many mandatory reporting requirements, and allows agencies to assess the need for such reports.[2] Accordingly, the Commission is seeking public comment on whether it should continue to issue reports on the cigarette and smokeless tobacco industries and what forms any such reports should take.

The Commission is seeking comments on the following questions:

1. Who uses the cigarette and smokeless tobacco reports? For what purposes do they use them?

2. What are the costs to the industries to provide the Commission with the date included in the cigarette and smokeless tobacco reports?

3. Should the Commission continue to collect and publish data regarding cigarette and smokeless tobacco sales, advertising and promotion? Why or why not?

4. What data or other information contained in the reports are useful and should be continued in any future reports? Why? What data or other information in previous reports are of little or no use, and could be omitted in future reports? Why?

5. Is there information about cigarette and smokeless tobacco sales, advertising and promotion that has not been included in the reports, but that would be of use? If so, what additional information would be of use, and why would it be useful?

6. If the Commission decides to continue issuing reports, how frequently should they be issued (e.g., annually, biennually)? Why?

7. What other information should the Commission consider in deciding whether to continue reporting on the sales and advertising and promotion of cigarettes and smokeless tobacco products. If the Commission decides to issue future reports, what formats would be useful?

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 01–8828 Filed 4–9–01; 8:45 am]

BILLING CODE 6750–01–M

[1] Beginning in 1967, the Commission submitted annual reports to Congress on cigarettes pursuant to the Federal Cigarette Labeling and Advertising Act. 15 U.S.C. 1331, *et seq.* Beginning in 1986, the Commission submitted biennially to Congress reports on smokeless tobacco pursuant to the Comprehensive Smokeless Tobacco Health Education Act. 15 U.S.C. 4401, *et seq.*

[2] Pub. L. 104–66, section 3003(a)(1), 109 Stat. 734.

GENERAL SERVICES ADMINISTRATION

Public Building Services, Portfolio Management (9PT); Notice of Availability of Draft EIS

The United States General Services Administration has filed with the Environmental Protection Agency (EPA) and made available to other government and private bodies a Draft Environmental Impact Statement (DEIS) on the following project: U.S. Courthouse, Los Angeles, California.

The project will provide a total usable area of about 680,000 square feet, housing the United States District Courts and other court related agencies. Copies of the Draft EIS are available from: Javad Soltani, General Services Administration, Portfolio Management Division (9PT), 450 Golden Gate Avenue, San Francisco, California 94102, Tel: (415) 522–3493, FAX: (415) 522–3215, Email: *javad.soltani@gsa.gov.*

Council on Environmental Quality regulations provide for a 45-day review period, which begins with the date of the **Federal Register** notice of the availability of the Draft EIS. The date is March 26, 2001; comments are due to the GSA contact named above no later than May 4th, 2001.

Dated: March 26, 2001.

Javad Soltani,

Asset Manager, General Services Administration.

[FR Doc. 01–8743 Filed 4–9–01; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

Public Building Services, Technical Support Division; Notice of Availability of Record of Decision

The United States General Services Administration has signed a Record of Decision for the proposed project: U.S. Courthouse, Inspection of State Street and Eliot Street, Springfield, Hamden County, Massachusetts.

The building will comprise approximately 160,000 gross square feet of space, housing the United States District Court, the United States Bankruptcy Court for Western Massachusetts, and other court related agencies.

The public is invited to view a copy of the Record of Decision at the Springfield Public Library or by contacting: Frank Saviano, U.S. General Services Administration, Public Building Service, Technical Support Division (1PC), Thomas P. O'Neill Federal Building, 10 Causeway Street, Room 975, Boston, MA 02222, Tel: 617–565–5494, Email: frank.saviano@gsa.gov.

Dated: March 20, 2001.

Tom Mailander,

Director, Technical Support Division, Public Building Service, General Services Administration.

[FR Doc. 01–8742 Filed 4–9–01; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Region 10; Notice of Intent To Prepare an Environmental Impact Statement

ACTION: The US General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality

Regulations (40 CFR parts 1500–1508), for the construction of a new Port of Entry facility at Peace Arch in the City of Blaine, Whatcom County, Washington.

Procedures: This project is at the feasibility stage and has not been approved by Congress. A scoping meeting is being held at this time to ensure that all significant environmental issues are identified and thoroughly studied as part of the environmental analysis. This will be the second scoping meeting about the new Port of Entry. The first scoping meeting was held on August 11, 1999. Numerous responses were received at the meeting, and in the weeks following the meeting. Based on that input, new alternatives for the new Peace Arch Port of Entry were developed and will be presented at the second scoping meeting. When the prospectus for the project is submitted to Congress for approval and funding, it will take into consideration these significant issues.

The EIS will evaluate the proposed project, including all reasonable alternatives identified through the scoping process and a no-action alternative. The scoping process will be accomplished through direct mailing correspondence to interested persons, agencies, and organizations, notices in local newspapers and through a public scoping meeting. The public scoping meeting will be held on April 12, 2001 at the Blaine Community Senior center located at 763 G Street, Blaine, Washington at 7:00 pm following an open house beginning at 6:00 pm. GSA will publish a public notice of the meeting in Blaine newspapers approximately two weeks prior to the events. Scoping will be limited to identifying significant issues to be analyzed in the environmental document and commenting on alternatives and the merit of the proposal.

Additional public meetings will be held after the release of the Draft Environmental Impact Statement and GSA will respond to all relevant comments received during the 45-day public comment period in the Final Environmental Impact Statement. After a minimum 30-day period following publication of the Final Environmental Impact Statement, GSA will issue a Record of Decision that will identify the alternative selected.

SUPPLEMENTARY INFORMATION: GSA, assisted by Herrera Environmental Consultants, will prepare the Environmental Impact Statement. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines. GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EIS, including social, economic, or environmental concerns.

Project Purpose, Historical Background, and Description: The US Customs, Immigration and Naturalization Service, and Dept of Agriculture are currently located in the existing Peace Arch Port of Entry facility. The existing facility does not currently meet the tenant agencies space requirement due to the present configuration of the site. The existing facility cannot be adapted to accommodate the required space needs of the agency tenants.

Alternatives: The EIS will examine the short- and long-term impacts on the natural and physical environment. The impact assessment will include but not be limited to impacts such as social environment, changes in land use, aesthetics, changes in park land, changes in traffic and parking patterns, economic impacts, and consideration of City planning and zoning requirements. The EIS will examine measures to mitigate significant adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the National Historical Preservation Act to identify potential impacts to existing historic or cultural resources.

The EIS will consider a no-action alternative and action alternatives. The no-action alternative would continue the occupancy in the existing Peace Arch Port of Entry facility in Blaine. The action alternatives will consist of three different configurations for construction of a new Port of Entry facility. The action alternatives reflect varying impacts on highway alignment, railroad changes and adjacent park land.

ADDRESSES: In addition to the public scoping process, you may send written comments on the scope of alternatives and potential impacts to the following address: Michael D. Levine, Regional Environmental Program Manager, 10PCP, General Services Administration, 400 15th Street SW, Auburn, WA, 98001, or fax: Michael D. Levine at 253–931–7308, or e-mail at *Michael.Levine@GSA.GOV* Written comments should be received no later than 45 days after the publishing of this notice.

FOR FURTHER INFORMATION CONTACT: John Meerscheidt at Herrera Environmental Consultants, 2200 Sixth Ave, Suite 601, Seattle, Washington, 98121 or call 206–441–9080; or Michael D. Levine, GSA (253) 931–7263.

Mailing List: If you wish to be placed on the project mailing list to receive further information as the EIS process develops, contact John Meerscheidt at the address noted above.

Dated: March 28, 2001.

Bill DuBray,

Acting Regional Administrator (10A).

[FR Doc. 01–8744 Filed 4–9–01; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I delegate to the Assistant Secretary for Children and Families, with authority to redelegate to the Director, Office of Refugee Resettlement, which may be further redelegated, the following authority vested in the Secretary under the Trafficking Victims Protection Act of 2000, Pub. L. 106–386, 114 Stat. 1464 (2000).

(a) Authority Delegated. Authority to conduct certification activities under the Trafficking Victims Protection Act of 2000, Pub. L. 106–386, section 107(b)(1), 114 Stat. 1464, 1475 (2000). In exercising this authority, personnel in the Administration for Children and Families will consult with the Attorney General.

(b) Effect on Existing Delegations. None.

(c) This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations. This delegation of authority is effective upon date of signature. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Children and Families or any other Administration for Children and Families official which, in effect, involved the exercise of these authorities prior to the effective date of these delegations.

Dated: March 28, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–8766 Filed 4–9–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01032]

Cooperative Agreement Program with the National Blood Data Resource Center; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program with the National Blood Data Resource Center (NBDRC). This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases. For additional information on ''Healthy People 2010'' visit the internet site: *http://www.health.gov/healthypeople.*

The purpose of the program is to continue an active, nationwide study begun in 1997 of recipients of blood products from identified classic or variant Creutzfeldt-Jakob Disease (CJD) donors to assess the risk of blood-borne transmission of these diseases.

The emergence of human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) and its transmission to patients through blood products has led to continued heightened concerns in the United States about blood safety. These concerns increasingly focused on classic and variant CJD when the latter illness emerged in Europe in the mid 1990s, representing spread of the outbreak of bovine spongiform encephalopathy (BSE, commonly called mad cow disease) to humans.

In the late 1990s, these concerns and several characteristics of classic and variant CJD, such as their severity, their transmissibility, the resistence of the agents to disinfection, and the absence of a practical screening test for infection, has led to an evolving blood safety policy concerning these illnesses. In 2000, this policy has included, for example, newly instituted screening criteria that excludes as blood or plasma donors, anyone with a history of being in the United Kingdom for 6 months or longer between 1980 and 1996, the period of greatest risk for human exposure to the agent of BSE. The policy has also provided for withdrawals of blood components derived from donors who subsequently develop either classic or variant CJD.

The blood safety policy in the United States and the Emerging Infectious Disease Plan elucidated the need for surveillance projects to detect and improve the understanding of newly recognized potential threats to public health, and to enable meaningful evaluations of the associated public health prevention efforts.

B. Eligible Applicants

Assistance will be provided only to NBDRC. No other applications are solicited.

NBDRC is the only presently existing national, nonprofit organization whose primary functions include collecting and disseminating national data about blood and blood products and coordinating information from multiple blood collection sites. Further, the NBDRC is the only organization that has the professional affiliations already in place that will allow it to generalize data to the entire nation and to ensure that no duplication of data occurs.

NBDRC, because of its earlier participation in the CJD Investigational Lookback Study, has unique possession of the personal identifiers of over 100 living recipients of blood components from reported donors who subsequently developed CJD. Further, NBDRC has the personal identifiers on many donor cases of CJD for which recipient reports have been collected. It is this existing data that is critical to the strength of the statistical power and success of this project.

Note: Public Law 104–65 states that an organization, described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $50,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

A continuation award within an approved 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 under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Maintain collaborative relationships with U.S. blood banks to identify classic and variant CJD blood donors and gather available, relevant, medical, and demographic information on such donors.

b. Trace classic and variant CJD donor blood components to final disposition.

c. Maintain collaborative relations with final disposition sites and collect vital statistics information from pre-existing records about recipients of the classic or variant CJD blood components.

d. Maintain study information about the recipients of the blood components from classic CJD donors who were previously identified in this study and continue to monitor these recipients' vital status, including the causes of death should they die.

e. Develop a plan that will:

(1) Search national, state, and local organizational databases to match vital statistics and causes of death for the component recipients, including utilizing non-National Death Index databases to confirm the vital status of the component recipients.

(2) Assess the risk of blood-borne transmission of CJD.

f. Publish and disseminate results of the study.

2. CDC Activities

a. Collaborate on investigation, evaluation, and assessment of the reported classic or variant CJD illness in donors and recipients in this project, as appropriate.

b. Provide assistance in development of methodologies and analysis, as needed.

c. Provide technical assistance in data pooling, management, analysis, and interpretation.

d. 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.

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. The narrative should be no more than 10 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

F. Submission and Deadline

Application

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 available at the following Internet address: *http://www.cdc.gov/...Forms*, or in the application kit.

On or before May 30, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

G. Evaluation Criteria

The application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Plan (10 points)

Extent to which the applicant presents a detailed operational plan for continuing and conducting the project, and which clearly and appropriately addresses all Recipient Activities.

2. Objectives (15 points)

Extent to which the applicant describes specific objectives for the continuation of the project which are consistent with the purpose of this program, and which are measurable and time-phased.

3. Methods (30 points)

Extent to which the applicant clearly identifies specific assigned responsibilities for all key professional personnel. Extent to which the plan clearly describes the applicant's technical approach/methods for conducting the proposed study and extent to which the plan is adequate to accomplish the purpose. Extent to which the applicant describes specific study protocols, or plans for the continuation of study protocols that are appropriate for the purpose of the project. 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 minorities, (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, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Capacity (30 points)

Extent to which the applicant can document past experience and achievement in successfully completing the types of recipient activities necessary for achieving the purpose of this project, and the extent to which the applicant demonstrates the ability to successfully collaborate with many blood banks in the United States on blood safety issues, such as those related to CJD.

5. Evaluation (15 points)

Extent to which the applicant provides a detailed and adequate plan for evaluating study results and for evaluating progress toward achieving the purpose of the project.

6. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

7. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFS Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of the following:

1. Progress reports (annual);
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial 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 ''Where to Obtain Additional Information'' section of this announcement.

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–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain additional information, contact: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2749, Email address ayw3@cdc.gov.

For program technical assistance, contact: Dr. Larry Schonberger, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone number 404–639–3091, Email address lbs1@cdc.gov.

Dated: April 4, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–8745 Filed 4–9–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Low Income Home Energy Assistance Program (LIHEAP) Grantee Survey.

OMB No.: 0970–0076.

Description: The LIHEAP Grantee Survey is an annual data collection activity, which is sent to the 50 States and the District of Columbia grantees administering the Low Income Home Energy Assistance Program (LIHEAP). The survey requests estimates on sources and uses of funds under LIHEAP—preliminary estimates for the current fiscal year and final estimates for the previous fiscal year. We are proposing changes in the collection of data using the Grantee Survey, generally to reduce the burden on grantees. In addition, the annual submission of the Grantee Survey will be changed from

voluntary to mandatory. The change from voluntary to mandatory is necessary to increase the reliability of the data and to make it available on a more timely basis. Section 2605(b)(14) of the Low Income Home Energy Assistance Act, as amended, requires grantees to provide assurance that they will cooperate with the Secretary with respect to data collecting and reporting. This is one of 16 assurances a State's governor or someone specifically designated by the governor, makes as part of each year's LIHEAP application.

To be in full compliance with section 2605(b)(14), grantees must return the completed survey by the due date.

The preliminary estimates collected by the Grantee Survey for the current fiscal year are needed to provide the Administration and Congress with fiscal and case load estimates in time for hearings about LIHEAP appropriations and program performance. Final estimates for the previous fiscal year will be included in the Department's annual LIHEAP Report to Congress and will be posted on the Department's LIHEAP web site for access by grantees and other interested parties.

Respondents: 50 States and the District of Columbia.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	51	1	3.5	178.5
Estimated Total Annual Burden Hours:				178.5

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 4, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–8765 Filed 4–9–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0787]

Parke-Davis Pharmaceutical Research et al.; Withdrawal of Approval of 14 New Drug Applications and 13 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 25, 1998 (63 FR 51359). The document announced the withdrawal of approval of 14 new drug applications and 13 abbreviated new drug applications (ANDAs). The document inadvertently withdrew approval of ANDA 80–025 for Sulf-10 (sulfacetamide sodium ophthalmic solution, USP) 10% held by Ciba Vision, 11460 Johns Creek Pkwy., Duluth, GA 30097–1556. FDA confirms that approval of ANDA 80–025 is still in effect.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

In FR Doc. 98–25713 appearing on page 51359 in the issue of Friday, September 25, 1998, the following correction is made: On page 51360, in the table, the entry for ANDA 80–025 is removed.

Dated: March 26, 2001.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 01–8718 Filed 4–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0209 and HCFA–R–0245]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

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, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently

approved collection; *Title of Information Collection:* Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* HCFA–R–0209 (OMB# 0938–0761); *Use:* The information collection requirements contained in section 484.20 state that HHAs must report data from the OASIS data set as a condition of participation for HHAs. Specifically, the above section provides guidelines for HHAs for the electronic transmission of the OASIS data set as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to establish a prospective payment system for HHAs and to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs; *Frequency:* Monthly; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 7,100; *Total Annual Responses:* 85,200; *Total Annual Hours:* 996,368.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs: Use of Outcome and Assessment Information Set (OASIS) as Part of the Conditions of Participation for Home Health Agencies and Supporting Regulations in 42 CFR 484.55 and 484.220; *Form No.:* HCFA–R–0245 (OMB# 0938–0760); *Use:* These information collection requirements in 42 CFR 484.55 and 484.220 require, as a condition of participation for home health agencies in the Medicare program, that each patient receive from the agency a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs. In addition, they require that as part of the comprehensive assessment, agencies use a standard core assessment data set, the OASIS, when evaluating adult, non-maternity patients; *Frequency:* On patient assessment *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 7,100; *Total Annual Responses:* 9,510,900; *Total Annual Hours:* 10,454,100.

To obtain copies of the supporting statement and any related forms 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, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–8728 Filed 4–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–179]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

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, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Transmittal and Notice of Approval of State Plan Material and Supporting Regulations in 42 CFR 430.10–430.20 and 440.167; *Form Number:* HCFA–179 (OMB approval #: 0938–0193); *Use:* Form HCFA–179 is used by State agencies to transmit State plan material to HCFA for approval prior to amending their State plans; *Frequency:* On occasion; *Affected Public:* State, local or tribal gov't; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours Requested:* 560.

To obtain copies of the supporting statement and any related forms 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, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–8729 Filed 4–9–01; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1500]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

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, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare/Medicaid Health Insurance Common Claim Form, Instructions, and Supporting Regulations: 42 CFR 414.40, 424.32, 424.44; *Form Number:* HCFA–1500, HCFA–1490U, HCFA–1490S (OMB approval #: 0938–0008); *Use:* This form is a standardized form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. In addition, it reduces cost and administrative burdens associated with claims since only one coding system is used and maintained; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 1,321,417; *Total Annual Responses:* 1,321,417; *Total Annual Hours Requested:* 44,189,007.

To obtain copies of the supporting statement and any related forms 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, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–8730 Filed 4–9–01; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–26]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

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, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) and the ICRs contained in the supporting regulations in 42 CFR 493.1–.2001; Form Number: HCFA–R–26 (OMB approval #: 0938–0612); *Use:* The ICRs referenced in 42 CFR Part 493 outline the requirements necessary to determine an entity's compliance with CLIA. CLIA requires laboratories that perform testing on human beings to meet performance requirements (quality standards) in order to be certified by HHS; *Frequency:* Other: As needed; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal government, State, local or tribal gov't; *Number of Respondents:* 149,700; *Total Annual Responses:* 700,650; *Total Annual Hours Requested:* 10,230,714.

To obtain copies of the supporting statement and any related forms 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, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 19, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–8731 Filed 4–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Workplace Helpline Call Record Form and Followup Survey—New—The Workplace Helpline is a toll-free, telephone consulting service which provides information, guidance and assistance to employers, community-based prevention organizations and

labor offices on how to deal with alcohol and drug abuse problems in the workplace. The Helpline was required by Presidential Executive Order 12564 and has been operating since 1987. It is located in the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP), where it is managed out of the Division of Workplace Programs. Callers access the Helpline service through one of its Workplace Prevention Specialists (WPS) who may spend several up to 30 minutes with a caller, providing guidance on how to develop a comprehensive workplace prevention program (written policy, employee assistance program services, employee education, supervisor training, and drug testing) or components thereof.

When a call is received, the WPS uses a Call Record Form to record information about the call, including the name of the company or organization, the address, phone number, and the number of employees. Each caller is advised that their responses are completely voluntary, and that full and complete consultation will be provided by the WPS whether or not the caller agrees to answer any question. To determine if the caller is representing an employer or other organization that is seeking assistance in dealing with substance abuse in the workplace, each caller is asked for his/her position in the company/organization and the basis for the call. In the course of the call, the WPS will try to identify the following information: basis or reason for the call (i.e., crisis, compliance with State or Federal requirements, or just wants to implement a prevention program or initiative); issues discussed; current program status, if any; urine testing; employee assistance programs; and the industry represented by the caller (e.g., mining, construction, etc.).

Finally, a note is made on the Call Record Form about what specific type(s) of technical assistance was given, which publications were sent, and how the caller heard about the Helpline.

Callers to the Helpline may not, for a variety of reasons, contact the Helpline to describe any successes or failures they are having in implementing any prevention initiatives discussed with the Helpline staff. In addition, CSAP wants to know if the Helpline service is working as intended. Accordingly, the Helpline staff contacts a sample of callers to discuss the caller's progress in taking action based on the Helpline consultation, and whether or not they were satisfied with the Helpline service.

Callers are told the reasons for the call and that their responses to questions are completely voluntary. If the caller is willing to participate, they are asked about the actions, if any, they took as a result of the consultation with the Helpline and if there were any obstacles to taking the desired action, such as resistance from employees and lack of time. The callers are also asked several questions to help determine if the consultation was useful and if the Helpline staff was helpful, and whether or not they would refer others to the Helpline. The annual average burden associated with the Helpline Call Record and Followup Survey are summarized below.

Form	Number of respondents	Responses/ respondent	Burden/ response (hrs.)	Total burden (hrs.)
Call Record Form	4,200	1	.167	701
Followup Survey	960	1	.058	56
Total	4,200			757

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before June 11, 2001.

Dated: April 3, 2001.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–8748 Filed 4–9–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Extension of Application Deadline Date for ''Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services''

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Extension of deadline date to May 16, 2001 for applications submitted under CSAT's Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services—TI 01–007, (short title: TCE/HIV).

This notice is to inform the public that SAMHSA/CSAT has extended the deadline date for applications for its TCE/HIV (TI 01–007) funding announcement *from May 4 to May 16, 2001*. This extension is provided to allow applicants additional time to develop comprehensive, competitive applications. The original notice of the availability of funding for the TCE/HIV program was published in the **Federal Register** on March 15, 2001 (Vol. 66, No. 51, pages 15133–15135).

The full funding announcement and necessary application materials may be obtained from the National Clearinghouse for Alcohol and Drug Information at 1–800–729–6686, or downloaded from the SAMHSA web site—www.samhsa.gov.

Questions related to the TCE/HIV program should be directed to David C. Thompson at 301–443–6523 or dthompso@samhsa.gov.

Dated: April 4, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–8756 Filed 4–9–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Soboba Band of Mission Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Soboba Band of Mission Indians Liquor Control Ordinance. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Soboba Band trust lands, and is in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on February 12, 2000, it does not become

effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Soboba Band of Mission Indians Liquor Control Ordinance, Resolution No. 2, was duly adopted by the Soboba Tribal Council on February 12, 2000. The Soboba Band of Mission Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Soboba Band Reservation.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.

I certify that by Resolution No. 2, the Soboba Band of Mission Indians Liquor Control Ordinance was duly adopted by the Soboba Band Tribal Council on February 12, 2000.

Dated: March 28, 2001.

James H. Mc Divitt,

Deputy Assistant Secretary—Indian Affairs (Management).

The Soboba Band of Mission Indians Liquor Control Ordinance

The Soboba Band of Mission Indians Liquor Control Ordinance, Resolution No. 2, reads as follows:

Article I—Declaration of Public Policy and Purpose

Section 1. The introduction, possession and sale of liquor on the lands of the Soboba Indian Reservation is a matter of special concern to the Soboba Band of Mission Indians.

Section 2. Federal law, 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except as provided therein and in accordance with State law as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted.

Section 3. The General Council of the Soboba Band of Mission Indians has the inherent right to enact ordinances to safeguard and provide for the health, safety and welfare of the Soboba Indian Reservation and the Soboba General Council has determined that it is in the best interest of the Soboba Band of Mission Indians to enact a tribal ordinance governing the introduction, possession and sale of liquor on the Soboba Indian Reservation and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Reservation. Further, the Soboba Band of Mission Indians has determined that said purchase, distribution and sale shall take place only at tribally owned enterprises and/or at tribally-licensed establishments operating on land leased from or otherwise owned by the Soboba Band of Mission Indians as a whole.

Section 4. The Soboba General Council finds that the sale or other commercial distribution of liquor on allotted land is not in the best interest of the Soboba Band of Mission Indians and is therefore prohibited.

Section 5. The Soboba General Council finds that violations of this Ordinance would damage the Soboba Band of Mission Indians in an amount of five hundred dollars ($500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Ordinance the Soboba Band of Mission Indians will impose a tax on the sale of liquor on the reservation. Based upon the foregoing findings and determinations, the Soboba Band of Mission Indians General Council hereby ordains as follows:

Article II—Definitions

As used in this title, the following words shall have the following meanings, unless the context clearly requires otherwise.

Section 1. Alcohol means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2. Alcoholic Beverage has the same meaning as the term *liquor* as defined in Article II, Section 5 of this Ordinance.

Section 3. Bar means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 4. Beer means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as strong beer.

Section 5. Liquor means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 6. Liquor Store means any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 7. Malt liquor means beer, strong beer, ale, stout and porter.

Section 8. Package means any container or receptacle used for holding liquor.

Section 9. Public Place includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 10. Sale and *Sell* mean any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

Section 11. Spirits means any beverage, which contains alcohol obtained by distillation, including

wines exceeding seventeen percent (17%) of alcohol by weight.

Section 12. Tribal Council means the Soboba Tribal Council as defined in the Constitution of the Soboba Band of Mission Indians.

Section 13. Tribal Gaming Commission means the gaming regulatory body established under the Gaming Ordinance of the Soboba Band of Mission Indians that has been approved by the Chairperson of the National Indian Gaming Commission.

Section 14. Tribal Land means any land within the exterior boundaries of the Soboba Indian Reservation that is held in trust by the United States for the Soboba Band of Mission Indians.

Section 15. Wine means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III—Powers of Enforcement

Section 1. The Soboba Gaming Commission, in furtherance of this Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations governing the sale, manufacture and distribution of alcoholic beverages in public places on the Soboba Indian Reservation as the Soboba Gaming Commission may deem necessary, subject to approval by the Soboba Tribal Council;

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Gaming Commission to perform its functions. Such employees shall be tribal employees;

(c) Issue licenses permitting the sale, manufacture and/or distribution of liquor on the Soboba Indian Reservation;

(d) Hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) Determine and seek damages for violation of this Ordinance;

(g) Make such reports as may be required by the Tribal Council;

(h) Collect sales taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts; and

(i) Exercise such other powers as may be delegated from time to time by the Tribal Council.

Section 2. Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the Tribal Gaming Commission and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or

(b) Waive the immunity of the Soboba Band of Mission Indians from suit without the express consent of the Soboba General Council.

Section 3. Inspection Rights. The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Gaming Commission at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto.

Article IV—Sale of Liquor

Section 1. License Required. No sales of alcoholic beverages shall be made on or within public places within the exterior boundaries of the Soboba Indian Reservation, except at a tribally licensed or tribally owned business operated on tribal land within the exterior boundaries of the Reservation.

Section 2. Sales for Cash. All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit credit cards or credit cards issued by any financial institution.

Section 3. Sale for Personal Consumption. Except for sales by businesses owned by the Soboba Band of Mission Indians, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from Tribal lands or liability for money damages of up to five hundred dollars ($500), as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

Article V—Licensing

Section 1. Procedure. In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Soboba Indian Reservation must apply to the Tribal Gaming Commission for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the Reservation for which no money is requested or paid.

Section 2. State Licensing. No person shall be allowed or permitted to sell or provide liquor on the Soboba Indian Reservation if s/he does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the Tribal license shall automatically be revoked or suspended as well.

Section 3. Application. Any person applying for a license to sell or provide liquor on the Soboba Indian Reservation shall complete and submit an application provided for this purpose by the Tribal Gaming Commission and pay such application fee as may be set from time-to-time by the Tribal Gaming Commission for this purpose. An incomplete application will not be considered.

Section 4. Issuance of License. The Tribal Gaming Commission may issue a license if it believes that such issuance is in the best interest of the Soboba Band of Mission Indians, the residents of the Soboba Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Gaming Commission.

Section 5. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 6. Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California; however, the Tribal Gaming Commission may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Soboba Band of Mission Indians.

Section 7. Revocation of License. The Tribal Gaming Commission may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to

demonstrate why the license should not be suspended or revoked.

Section 8. Transferability of Licenses. Licenses issued by the Tribal Gaming Commission shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI—Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the Reservation in the amount of one percent (1%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the Reservation, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 2. Payment of Taxes to the Tribe. All taxes from the sale of alcoholic beverages to the Soboba Indian Reservation shall be paid over to the General Treasury of the Soboba Band of Mission Indians and be subject to the distribution by the Soboba General Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Gaming Commission and administration of this Ordinance.

Section 3. Taxes Due. All taxes upon the sale of alcoholic beverages on the Reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at eighteen percent (18%) per annum.

Section 4. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done periodically by the Tribal Gaming Commission through its agents or employees whenever in the discretion of the Tribal Gaming Commission such a review is necessary to verify the accuracy of reports.

Article VII—Rules, Regulations and Enforcement

Section 1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this title.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Gaming Commission. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Soboba Band of Mission Indians for their personal or other non-commercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Soboba Indian Reservation shall be governed solely by the laws of the State of California.

Section 3. Any person within the boundaries of the Soboba Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

Section 4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 5. No person under the age of twenty-one (21) years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7. Any person guilty of a violation of this Ordinance shall be liable to pay the Soboba Band of Mission Indians the amount of five hundred dollars ($500) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The amount of such damages in each case shall be determined by the Tribal Gaming Commission based upon a preponderance of the evidence available to the Tribal Gaming Commission after the person alleged to have violated this Ordinance has been given notice and an opportunity to respond to such allegations.

Section 8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27), the prospective purchaser shall be required to present any one of the following officially-issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Drivers license of any state or identification card issued by any state Department of Motor Vehicles;

(2) United States Active Duty Military identification documents;

(3) Passport; or

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

Article VIII—Abatement

Section 1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 2. The Tribal Chairperson, upon authorization by a majority of the Tribal Council or, if he/she fails to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Soboba Band of Mission Indians to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than twenty-five thousand dollars ($25,000) payable to the Soboba Band of Mission Indians and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereof in violation of the provision of this title or of any other applicable tribal law, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this title or other Tribal liquor laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Soboba Band of Mission Indians.

Section 3. In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other

property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

Article IX—Profits

Section 1. The gross proceeds collected by the Tribal Gaming Commission from all licensing of the sale of alcoholic beverages on the Soboba Indian Reservation, and from proceedings involving violations of this Ordinance, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Soboba Band of Mission Indians and expended by the Tribal Council for governmental services and programs on the Soboba Indian Reservation.

Article X—Severability and Effective Date

Section 1. If any provision or application of this Ordinance is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all-prior enactments of the Soboba Band of Mission Indians that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. § 1154, but only to the extent required by the laws of the United States.

Article XI—Amendment

This Ordinance may only be amended by majority vote of the Soboba General Council attending a duly noticed meeting at which a quorum is present.

[FR Doc. 01–8749 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Nevada State Museum, Carson City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Nevada State Museum, Carson City, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Nevada State Museum professional staff in consultation with State Historic Preservation Office staff, and representatives of the Moapa Band of the Southern Paiute Tribe and the Hopi Tribe of Arizona, in coordination with the Southern Paiute Consortium.

At an unknown date, human remains representing one individual were removed from within the boundary of the Gibson Ranch, Lincoln County, NV, by an unknown person. At an unknown time these human remains were donated to the Nevada State Museum by an unknown person. No known individual was identified. The 55 associated funerary objects are glass and shell beads, and a projectile point.

Based on the presence of glass and shell beads, these human remains are identified as Native American. The glass beads also date the burial to the post-1840s contact period. Based on the date of the burial and the geographical location of the burial within the known historic territory of the Moapa Band of the Southern Paiute Tribe, these human remains are determined to be affiliated with the Moapa Band of the Southern Paiute Tribe.

Based on the above-mentioned information, officials of the Nevada State Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Nevada State Museum also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 55 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Nevada State Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Moapa Band of the Southern Paiute Tribe.

This notice has been sent to officials of the Moapa Band of the Southern Paiute Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Alanah Woody, Nevada Division of Museums and History NAGPRA Coordinator, 600 North Carson Street, Carson City, NV 89701, telephone (775) 687–4810, extension 229, before May 10, 2001. Repatriation of the human remains and associated funerary objects to the Moapa Band of the Southern Paiute Tribe may begin after that date if no additional claimants come forward.

Dated: March 26, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–8701 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Nevada State Museum, Carson City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Nevada State Museum, Carson City, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this

notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Nevada State Museum professional staff in consultation with State Historic Preservation Office staff and representatives of the Winnemucca Indian Colony of Nevada Council.

In 1997, human remains representing four individuals were recovered from a construction project on non-Federal land within the community of Winnemucca, NV. After consultation with the Winnemucca Indian Colony of Nevada Council, the remains were donated to the Nevada State Museum. No known individuals were identified. The 25 associated funerary objects include Euro-American textiles, shoes, buttons, and large and small glass beads.

Osteological evidence, archeological context, and the presence of glass trade beads indicate that the human remains are Native American. The Euro-American clothing dates the remains to the post-1840s. The location of Winnemucca, NV, is within the known historic territory of the Winnemucca Indian Colony of Nevada. Based on the historic evidence, oral history, and geographic location, the remains are determined to be affiliated with the Winnemucca Indian Colony of Nevada.

Based on the above-mentioned information, officials of the Nevada State Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Nevada State Museum also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 25 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Nevada State Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Winnemucca Indian Colony of Nevada.

This notice has been sent to officials of the Winnemucca Indian Colony of Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Alanah Woody, Nevada Division of Museums and History NAGPRA Coordinator, 600 North Carson Street, Carson City, NV 89701, telephone (775) 687–4810, extension 229, before May 10, 2001. Repatriation of the human remains and associated funerary objects to the Winnemucca Indian Colony of Nevada may begin after that date if no additional claimants come forward.

Dated: March 26, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–8702 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the Possession of the Nevada State Museum, Carson City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the possession of the Nevada State Museum, Carson City, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Nevada State Museum professional staff in consultation with representatives of the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.

In 1966, human remains representing one individual were recovered from the Fort McDermitt Indian Reservation, Humboldt County, NV, by State of Nevada Planning Board staff George J. Pitta and Stanley Szymanski, who donated the remain to the Nevada State Museum the same year. No known individuals were identified. The 323 associated funerary objects are a brass bullet case, 300 small bone beads, 5 large bone beads, 15 white glass beads, a metal fragment, and fabric.

Cranial morphology indicates that the individual is Native American. Small twigs in soil samples taken from near the burial imply that pack rats lived in the vicinity, suggesting that burial took place in a rock shelter, crevice, or cave, a common practice by Native Americans prior to contact in the 1850s. The presence of the metal casing and Euro-American clothing indicates that burial took place post-1840s. The location of the burial is within the known historic territory of the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon. Oral history and historic records document the presence of this group in the area prior to Euro-American contact. On the basis of osteological evidence, mortuary customs, and geographic location, these human remains and associated funerary objects are determined to be affiliated with the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.

Based on the above-mentioned information, officials of the Bureau of Indian Affairs and the Nevada State Museum have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Bureau of Indian Affairs and the Nevada State Museum also have determined that, pursuant to 43 CFR 10.2(d)(2), the 323 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Indian Affairs and the Nevada State Museum have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.

This notice has been sent to officials of the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should

contact Dr. Alanah Woody, Nevada Division of Museums and History NAGPRA Coordinator, 600 North Carson Street, Carson City, NV 89701, telephone (775) 687-4810, extension 229, before May 10, 2001. Repatriation of the human remains and associated funerary objects to the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon may begin after that date if no additional claimants come forward.

Dated: March 26, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–8703 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the Apache Tribe of Oklahoma; the Arapahoe Tribe of the Wind River Reservation, Wyoming; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Cheyenne-Arapaho Tribes of Oklahoma; the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Comanche Indian Tribe, Oklahoma; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux; the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Pawnee Nation of Oklahoma; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe); the Standing Rock Sioux Tribe of North and South Dakota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; and the Yankton Sioux Tribe of South Dakota.

Sometime between the 1920s and the 1950s, human remains representing one individual (catalog number DU 6054) were recovered near Greeley, Weld County, CO, by F.B. Dunn. The remains were transferred to Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology and Museum of Anthropology, sometime during that period. No known individual was identified. No associated funerary objects are present.

The only information available for these remains is a note in the museum records that describe the remains as an ''Historic Indian Skull.'' This suggests that the remains may have been found with artifacts or other indications that postdate the introduction of European-derived trade goods in the 1600s.

In 1931, human remains representing one individual were recovered from site CO E:2:1 (5WL59) on the Prosser Ranch, formerly known as the Ketcham Ranch, Weld County, CO, by Dr. E.B. Renaud, of the University of Denver Department of Anthropology and Museum of Anthropology. No known individual was identified. The 10 associated funerary objects are 6 chipped stone flakes, 1 worked animal bone, 1 ground stone object, and 2 Dismal River ceramic sherds.

The Dismal River aspect, circa A.D. 1650-1725, is an early contact-period cultural development on the central plains characterized by distinctive ceramics, multifamily houses, and an economy based on horticulture and hunting. Many archeologists have identified the Dismal River people as ancestral to the Plains Apache tribes, based on interpretations of the material culture, ethnohistoric record, and geography. Oral historical information presented during the consultations indicates a broader cultural affiliation with the tribes of the central plains.

In 1934, human remains representing two individuals were recovered from site CO E:8:4 (5WL177), Weld County, CO, by Dr. E.B. Renaud, of the University of Denver Department of Anthropology and Museum of Anthropology, and his assistant, Wayne Kraxberger. No known individuals were identified. The 54 associated funerary objects are 51 chipped stone flakes, 1 scraper, 1 shell, and 1 nonhuman bone.

Site CO E:8:4 is a camp, burial, and hunting blind site. No additional information on the age or context of the site is available. There are no additional artifacts from this site in the University of Denver Department of Anthropology and Museum of Anthropology.

In 1965, human remains representing one individual were recovered from the Spring site, CO K:12:3 (5DA120), Douglas County, CO, by Dr. A.P. Olson, a member of the University of Denver Department of Anthropology. No known individual was identified. The 54 associated funerary objects are 3 cord-marked ceramic sherds, 34 chipped stone flakes, and 17 nonhuman bone fragments.

The Spring site has multiple occupations beginning in the Paleoindian or Archaic periods and extending to the Plains Woodland period (A.D. 400-1000). The presence of the cord-marked ceramics in association with these remains indicates that they date no earlier than the Plains Woodland period, when pottery first appeared in eastern Colorado.

In 1954, human remains representing one individual were recovered from site CO L:11:20 (5EL66), Elbert County, CO, during an archeological project led by Dr. Arnold Withers, a University of Denver Department of Anthropology faculty member. No known individual was identified. The 50 associated funerary objects are 16 chipped stone flakes, 2 projectile points, 9 rocks, 2 ground stone fragments, 2 shell fragments, and 19 sherds, including cord-marked and stamped sherds.

Site CO L:11:20 (5EL66) is a hilltop camp and burial site located in the West Bijou Valley. The ceramics indicate that the site was occupied after A.D. 400, when ceramics were first introduced to the area, and is possibly a Plains Woodland period (A.D. 400-1000) site.

Sometime between the 1920s and the 1950s, human remains representing one individual (catalog number DU 6055) were recovered from Hugo, Lincoln County, CO, by F. Hines. The remains were transferred to Dr. E.B. Renaud, of the University of Denver Department of Anthropology and Museum of Anthropology, sometime during that period. No known individual was identified. No associated funerary objects are present.

The only information available for these remains is a note in the museum records that describes the remains as an ''Historic Indian Skull.'' This suggests that the remains may have been found with artifacts or other indications that postdate the introduction of European-derived trade goods in the 1600s.

In 1955, cultural objects associated with human remains were recovered from site CO T:3:10 (5LN32), Jod Ranch, Lincoln County, CO, by Dr. Arnold Withers, of the University of Denver Department of Anthropology, Willena D. Cartwright, and Maurice Frink, executive director of the Colorado Historical Society. The human remains (Colorado Historical Society catalog number 0.7364.1) and some of the associated funerary objects are presently held by the Colorado Historical Society. The University of Denver Department of Anthropology and Museum of Anthropology holds 61 associated funerary objects. The 61 associated funerary objects are 26 sherds; 10 bone beads; 5 projectile point fragments, 1 of which is Paleoindian; 5 metate fragments; 2 manos; 1 bone tool; 2 stone knifes; 4 scrapers; 1 coprolite; 1 chert core; 1 chopper; 1 utilized flake; and 2 stone flakes.

Site CO T:3:10 was described as a ''burial pit blowout,'' containing the remains of at least four individuals. The sherds from the burials have not been identified but probably date to a period later than the Plains Woodland (A.D. 400-1000). A post-Woodland date, combined with the absence of any European-derived trade goods, suggests that these burials dated to the period of approximately A.D. 1000-1700. The information available for the burials does not indicate the original context of the Paleoindian point, and the burials are associated with much later artifacts that indicate that they do not date to the Paleoindian period (circa 10000-6000 B.C.).

In 1989, human remains representing two individuals were recovered from the Herrell site, CO T:5:1, near Pumpkin Corners, Lincoln County, CO, by a group of amateur archeologists under the supervision of Jim Herrell, a University of Denver alumnus. Mr. Herrell apparently gave the materials to Dr. Sarah Nelson, a professor in the University of Denver Department of Anthropology, for transmittal to the museum. No known individuals were identified. The 38 associated funerary objects are 3 marked ceramic sherds and 35 Native American clay pipe fragments.

The exact date of the occupation of the Herrell site has not been determined. The presence of the ceramics in association with these remains indicates that they date no earlier than the Plains Woodland period (A.D. 400-1000), when pottery first appeared in eastern Colorado.

In 1930, human remains representing one individual were recovered from site CO U:16:1 (5PW20), near Granada, Prowers County, CO, by Dr. E.B. Renaud, of the University of Denver Department of Anthropology, and his assistant, Charlie Steen. No known individual was identified. The 10 associated funerary objects are 7 chipped stone flakes, 2 ground stone artifacts, and 1 marked ceramic sherd.

The exact date of the occupation of site CO U:16:1 has not been determined. The presence of the ceramics in association with these remains indicates that they date no earlier than the Plains Woodland period (A.D. 400-1000), when pottery first appeared in eastern Colorado.

At an unknown date, human remains representing one individual were recovered from site CO BB:10:3, Baca County, CO, by an unknown individual. There is no information on how the museum acquired these remains. No known individual was identified. The 15 associated funerary objects are 14 ceramic sherds, 1 of which is tube-shaped, and 1 chipped stone flake.

The exact date of the occupation of site CO BB:10:3 has not been determined. The presence of the ceramics in association with these remains indicates that they date no earlier than the Plains Woodland period (A.D. 400-1000), when pottery first appeared in eastern Colorado.

Unless specifically stated above, collections documentation is limited concerning possible dates, cultural affiliation(s), or the circumstances under which the Native American human remains and associated funerary objects described above were found. Colorado's history of tribal relocation, however, suggests that all of the human remains and associated funerary objects described above date prior to contact with Europeans. The ''Indian Land Areas Judicially Established 1978 Map'' indicates the legal claim to land based upon traditional use for the Cheyenne and Arapaho. The ''Early Indian Tribes, Culture Areas, and Linguistic Stocks Map'' establishes the presence of Arapaho, Cheyenne, Kiowa, Comanche, and Jicarilla Apache at the time of contact with Europeans. The Colorado Office of Archaeology and Historic Preservation map of Native American distribution in Colorado establishes the presence of the Pawnee, Arapaho, Cheyenne, Comanche, Kiowa, Apache, and Kiowa-Apache. Representatives from five Sioux tribes presented oral testimony during consultation that placed the Sioux in Colorado back to at least the Plains Woodland period. The five Sioux tribes are the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; and the Yankton Sioux Tribe of South Dakota. Based on the totality of the circumstances surrounding the acquisition of these human remains and associated funerary objects, the evidence of traditional territories, oral traditions, archeological context, and material culture, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that there is cultural affiliation with the present-day Indian tribes who claim a presence in the region prior to and during the contact period.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains described above represent the physical remains of 11 individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 289 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR

10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Apache Tribe of Oklahoma; the Arapahoe Tribe of the Wind River Reservation, Wyoming; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Cheyenne-Arapaho Tribes of Oklahoma; the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Comanche Indian Tribe, Oklahoma; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux; the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Pawnee Nation of Oklahoma; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe); the Standing Rock Sioux Tribe of North and South Dakota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; and the Yankton Sioux Tribe of South Dakota.

This notice has been sent to officials of the Apache Tribe of Oklahoma; the Arapahoe Tribe of the Wind River Reservation, Wyoming; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Cheyenne-Arapaho Tribes of Oklahoma; the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Comanche Indian Tribe, Oklahoma; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux; the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Pawnee Nation of Oklahoma; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Skull Valley Band of Goshute Indians of Utah; the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; the Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe); the Standing Rock Sioux Tribe of North and South Dakota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah; and the Yankton Sioux Tribe of South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80208-2406, e-mail jbernste@du.edu, telephone (303) 871-2543, before May 10, 2001. Repatriation of the human remains and associated funerary objects to the Apache Tribe of Oklahoma; the Arapahoe Tribe of the Wind River Reservation, Wyoming; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Cheyenne-Arapaho Tribes of Oklahoma; the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Comanche Indian Tribe, Oklahoma; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the Kiowa Indian Tribe of Oklahoma; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux; the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Pawnee Nation of Oklahoma; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe); the Standing Rock Sioux Tribe of North and South Dakota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; and the Yankton Sioux Tribe of South Dakota may begin after that date if no additional claimants come forward.

Dated: March 20, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–8700 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Acquisition of Additional Water for Meeting the San Joaquin River Agreement Flow Objectives, 2000–2010

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Supplemental Environmental Impact Statement/Environmental Impact Report (Final SEIS/EIR).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the San Joaquin River Group Authority (SJRGA) have prepared a joint Final SEIS/EIR for the acquisition of additional water for meeting the San Joaquin River Agreement Flow Objectives, 2001–2010. Reclamation and SJRGA prepared a Draft SEIS/EIR for the Proposed Action/Project in December 2000. This supplemental document covers minor additions to the Proposed Project/Action addressed in the Final EIS/EIR (1999 FEIS/EIR) prepared for Meeting Flow Objectives for the San Joaquin River Agreement (SJRA), 1999–2010 (January 1999). The 1999 FEIS/EIR

documented the environmental consequences of acquiring and using flows specified in the SJRA.

The purpose of the Proposed Project/Action is to supplement, under Paragraph 8 of the SJRA, the water provided by the SJRA that has been analyzed in the 1999 FEIS/EIR. The supplemental water consists of up to 47,000 acre-feet from the Tuolumne and Merced Rivers to provide full Vernalis Adaptive Management Plan (VAMP) test flow conditions at Vernalis during ''double step years'' for water years 2001 through 2010. This supplemental water may also assist Reclamation in meeting the Anadromous Fish Restoration Plan, Bay-Delta flow objectives as required by State Board Decision 1641, and the U.S. Fish and Wildlife Service's 1995 Biological Opinion for Delta Smelt.

The Proposed Project/Action area includes the Tuolumne, Merced, Stanislaus, and San Joaquin Rivers and related reservoirs and water districts in the counties of Tuolumne, Merced, Stanislaus, San Joaquin, Mariposa, and Calaveras.

DATES: No decision will be made on the Proposed Project/Action until at least 30 days after the release of the Final SEIS/EIR. After the 30-day waiting period, Reclamation will be preparing a Record of Decision which will state the action to be implemented and the factors leading to the agency's decision.

ADDRESSES: Copies of the Final SEIS/EIR may be requested from Mr. John Burke, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, MP–410, Sacramento, CA 95825–1898, (916) 978–5556, or Mr. Dan Fults, SJRGA, 200 Capitol Mall, Suite 900, Sacramento, CA 95814, (916) 449–3957.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Final SEIS/EIR are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. John Burke, Reclamation, at (916) 978–5556 [TDD (916) 978–5608]; or Mr. Dan Fults, SJRGA, at (916) 449–3957.

SUPPLEMENTARY INFORMATION: The SJRA was established to provide a level of protection equivalent to the San Joaquin River flow objectives contained in the State Water Resources Control Board's (SWRCB) 1995 Water Quality Control Plan for the lower San Joaquin River and San Francisco Bay-Delta Estuary (Delta). A key part of the SJRA is the VAMP which is a scientifically based adaptive fishery management plan to help determine the relationships between flows, exports, and other factors on fish survival in this region of the Delta. The SWRCB adopted pertinent provisions of the SJRA on December 29, 1999, and issued its Revised Water Right Decision 1641 (D–1641) containing these provisions on March 15, 2000. D–1641 approved implementation of the VAMP through December 31, 2011.

The 1999 FEIS/EIR was prepared in January 1999 by the SJRGA and Reclamation to meet CEQA and NEPA requirements to address environmental impacts associated with acquiring water to meet the flow objectives in the SJRA. This document addressed the need for up to 110,000 acre-feet to meet a 31-day spring pulse flow target in the San Joaquin River at Vernalis. The SJRA allows for willing sellers among the SJRGA to sell Reclamation additional water when the spring pulse flow target exceeds 110,000 acre-feet. The 1999 FEIS/EIR prepared for the SJRA acknowledged the need for this additional water from willing sellers in some water years but did not address the environmental impacts associated with acquiring this supplemental water.

The purpose of the Final SEIS/EIR is to update and supplement analyses presented in the 1999 FEIS/EIR to address the acquisition of up to 47,000 acre-feet of water annually during the 2001 through 2010 water years.

Copies of the Final SEIS/EIR are available for public inspection and review at the following locations:

- San Joaquin River Group Authority, 400 Capitol Mall, Suite 900, Sacramento, California 95814; telephone: (916) 449–3957
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 445–2072
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento, California 95825–1898; telephone: (916) 978–5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240–0001

Dated: March 13, 2001.

Lowell F. Ploss,

Deputy Regional Director.

[FR Doc. 01–8754 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Potholes Reservoir Resource Management Plan, Grant County, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of review and comment period.

SUMMARY: A Notice of Availability and Public Hearing was published in the **Federal Register** on February 6, 2001 (66 FR 9094–9095). This notice extends the period for review and comment from March 27, 2001, to April 27, 2001.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), prepared a draft environmental impact statement (Draft EIS) to document the analysis of four alternatives, including the No Action Alternative, for resource management in the Potholes Reservoir Study area. The alternatives respond differently to the issues and concerns identified during project planning. The Preferred Alternative is Alternative B, which balances the management agencies' and public's long-term vision for Potholes Reservoir and recognizes the need to protect the natural and cultural environment while supporting the overall recreational interest of the visitors.

DATES: Written comments on the Draft EIS must be received no later than April 27, 2001 at the address listed in **ADDRESSES** section below.

ADDRESSES: Written comments on the Draft EIS should be submitted to Mr. Jim Blanchard, Bureau of Reclamation, Ephrata Field Office, 32 C Street, Box 815, Ephrata, WA 98823; or by fax (509) 754–0239.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

See Supplementary Information section for locations where copies of the Draft EIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: For information, or to obtain a copy of the Draft EIS, contact Mr. Jim Blanchard at (509) 754–0239, extension 226.

SUPPLEMENTARY INFORMATION: The purpose of developing a RMP for Potholes Reservoir is to balance the

resource protection and conservation objectives with the rising demand for increased recreation opportunities, visitor facilities, and support services.

Review and Inspection of the Draft EIS

Copies of the Draft EIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW, Washington, D.C.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington.
- Bureau of Reclamation, Ephrata Field Office, 32 C Street, Box 815, Ephrata, WA.

Libraries

- Bridgeport Community Library, Bridgeport WA.
- Des Moines Library, 21620 11th Avenue S., Des Moines, WA.
- Coulee City Community Library, Coulee City, WA.
- East Wenatchee Community Library, 271 9th Street NE, East Wenatchee, WA.
- Ephrata Public Library, 45 Alder NW, Ephrata, WA.
- Moses Lake Public Library, 418 E. 5th Avenue, Moses Lake, WA.
- Royal City Community Library, Royal City, WA.
- Soap Lake Community Library, Soap Lake, WA.
- Wenatchee Public Library, 310 Douglas Street, Wenatchee, WA.

Internet

The Draft EIS is also available on the Internet at http://www.pn.usbr.gov/

J. Eric Glover,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 01–8723 Filed 4–9–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Highland Mining Company

[Docket No. M–2001–001–C]

Highland Mining Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.1905(a) (dispensing of diesel fuel) to its Highland Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner requests a modification of the existing standard to allow underground diesel fueled vehicles to be refueled from a surface diesel fuel storage tank. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Kentucky May Mining Company

[Docket No. M–2001–002–C]

Kentucky May Mining Company, P.O. Box 462, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its Genesis Mine No. 1 (I.D. No. 15–17452) located in Knott County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Eagle Coal Company, Inc.

[Docket No. M–2001–003–C]

Eagle Coal Company, Inc., P.O. Box 399, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 18 Mine (I.D. No. 15–18307) located in Martin County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Long Fork Development, Inc.

[Docket No. M–2001–004–C]

Long Fork Development, Inc., P.O. Box 480, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 5 Mine (I.D. No. 15–18279) located in Martin County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Taurus Coal Company, Inc.

[Docket No. M–2001–005–C]

Taurus Coal Company, Inc., P.O. Box 480, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 8 Mine (I.D. No. 15–18239) located in Johnson County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Coalburg Enterprises, Inc.

[Docket No. M–2001–006–C]

Coalburg Enterprises, Inc., P.O. Box 399, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 1 Mine (I.D. No. 15–17559) located in Martin County,

Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Beech Fork Processing, Inc.

[Docket No. M–2001–007–C]

Beech Fork Processing, Inc., P.O. Box 190, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 3 Mine (I.D. No. 15–18170) located in Martin County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Beech Fork Processing, Inc.

[Docket No. M–2001–008–C]

Beech Fork Processing, Inc., P.O. Box 190, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 2 Mine (I.D. No. 15–18128) located in Martin County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Eagle Coal Company, Inc.

[Docket No. M–2001–009–C]

Eagle Coal Company, Inc., P.O. Box 399, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 7 Mine (I.D. No. 15–17696) located in Johnson County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment instead of using padlocks, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. RAG Emerald Resources, LP

[Docket No. M–2001–010–C]

RAG Emerald Resources, LP, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.360(b)(10) (preshift examination) to its Emerald Mine (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner requests a modification of the existing standard to permit examinations to be conducted immediately before work commences in certain areas where work is scheduled before the preshift examination starts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. C.W. Mining Company

[Docket No. M–2001–011–C]

C.W. Mining Company, P.O. Box 1245, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Bear Canyon #1 Mine (I.D. No. 42–01697), Bear Canyon Mine #2 (I.D. No. 42–02095), and Bear Canyon Mine #3 (I.D. No. 42–02263) all located in Emery County, Utah. The petitioner proposes to use a 480-volt, wye connected, (275 KW/356 KVA) diesel-powered generator for utility power and to move electrically powered mining equipment in and around the mine. The generator, serial number is I3379E, 480-volt output would be connected through a 285-KVA step-up transformer to develop 995-volts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. C.W. Mining Company

[Docket No. M–2001–012–C]

C.W. Mining Company, P.O. Box 300, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.901 (protection of low-and medium-voltage three-phase circuits used underground) to its Bear Canyon #1 Mine (I.D. No. 42–01697), Bear Canyon #2 Mine (I.D. No. 42–02095), and Bear Canyon #3 Mine (I.D. No. 42–02263) all located in Emery County, Utah. The petitioner proposes to use a 480-volt, wye connected, (275KW/356 KVA) diesel-powered generator for utility power and to move electrically powered mining equipment in and around the mine. The generator, serial number is I3379E, 480-volt output would be connected through a 285-KVA step-up transformer to develop 995-volts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 2001. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 27th day of March 2001.

David L. Meyer,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 01–8733 Filed 4–9–01; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Newtown Energy, Inc.

[Docket No. M–2000–158–C]

Newtown Energy, Inc., 13905 MacCorkle Avenue, One Carbon Center, Suite 200, Chesapeake, West Virginia 25315 has filed a petition to modify the application of 30 CFR 75.350 (air course and belt haulage entries) to its Eagle Mine No. 1 (I.D. No. 46–08759) located in Kanawha County, West Virginia. The petitioner requests a modification of the existing standard to permit the use of belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire-detection system in all belt entries used to course air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. G & P Contractors, Inc.

[Docket No. M–2000–159–C]

G & P Contractors, Inc., Rt. 1 Box 419–A1, Gray, Kentucky 40634 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(I) (escapeways; bituminous and lignite mines) to its Powers Branch Mine (I.D. No. 15–18276) located in Whitley County, Kentucky. The petitioner proposes to use two ten-pound portable chemical fire extinguishers on each Mescher Jeep. The fire extinguishers would be readily accessible to the equipment operator. The petitioner proposes to instruct the equipment operator to inspect each fire extinguisher daily before entering the mine, replace all defective fire extinguishers before entering the mine, and maintain records of all inspections of the fire extinguishers. The petitioner asserts that because of the low, 24-inch height of the coal seam, available fire suppression systems will not fit on the equipment being used at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. G & P Contractors, Inc.

[Docket No. M–2000–160–C]

G & P Contractors, Inc., Rt. 1 Box 419–A1, Gray, Kentucky 40634 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Powers Branch Mine (I.D. No. 15–018276) located in Whitley County, Kentucky. The petitioner proposes to use hand-held, continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Rosebud Mining Company

[Docket No. M–2000–161–C]

Rosebud Mining Company, R.D. #9, Box 379A, Kittanning, Pennsylvania 16201 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its Clementine Mine (I.D. No. 36–08862) located in Armstrong County, Pennsylvania. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. PennAmerican Coal, L.P.

[Docket No. M–2000–162–C]

PennAmerican Coal, L.P., RD #1, Box 119, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt-haulage entries) to its Burrell Mine (I.D. No. 36–08525) located in Indiana County, Pennsylvania. The petitioner requests a modification of the existing standard to permit air ventilating the belt entry and associated entries in common with the belt to be used to ventilate a working section or sections. The petitioner proposes to install a carbon monoxide monitoring system in all belt entries in which air coursed through the belt entry is used to ventilate active working places. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. T.J.S. Mining, Inc.

[Docket No. M–2000–163–C]

T.J.S. Mining, Inc., R.D. #1, Box 260–D, Shelocta, Pennsylvania 15774 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting and location of firefighting equipment) to its T.J.S ı1 Mine (I.D. No. 36–08255), T.J.S. ı4 Mine (I.D. No. 36–08694), Darmac ı3 Mine (36–08278), and Darmac ı2 Mine (I.D. No. 36–08135) all located in Armstrong County, Pennsylvania. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Excel Mining, LLC

[Docket No. M–2000–164–C]

Excel Mining, LLC, HC 67 Box 615, Pilgrim, Kentucky 41250 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Mine No. 1 (I.D. No. 15–08413), and Mine No. 2 (I.D. No. 15–09571) located in Martin County, Kentucky, and Mine No. 3 (I.D. No. 15–08079) located in Pike County, Kentucky. The petitioner proposes to use a 480-volt, three-phase, 150–KW diesel-powered generator in its underground coal mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard. In subsequent correspondence, the petitioner has requested that this petition be withdrawn.

8. Excel Mining, LLC

[Docket No. M–2000–165–C]

Excel Mining, LLC, HC 67 Box 615, Pilgrim, Kentucky 41250 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Mine No. 1 (I.D. No. 15–08413), and Mine No. 2 (I.D. No. 15–09571) located in Martin County, Kentucky, and Mine No. 3 (I.D. No. 15–08079) located in Pike County, Kentucky. The petitioner proposes to use 480-volt, three-phase, 150–KW diesel-powered generator in its underground coal mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard. In subsequent correspondence, the petitioner has requested this petition be withdrawn.

9. Straight Fork Mining, Inc.

[Docket No. M–2000–166–C]

Straight Fork Mining, Inc., P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its Skullfork Mine (I.D. No. 15–18186) located in Knott County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded device on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles instead of using padlocks. The petitioner asserts that the

proposed alternative method would provide at least the same measure of protection as the existing standard.

10. Big Ridge, Inc.

[Docket No. M–2000–167–C]

Big Ridge, Inc., 29 West Raymond Street, P.O. Box 444, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Willow Lake Portal Mine (I.D. No. 11–03054) located in Saline County, Illinois. The petitioner proposes to plug oil and gas wells and then mine in close proximity or through the plugged wells using specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. D & R Coal Company, Inc.

[Docket No. M–2000–168–C

D & R Coal Company, Inc., P.O. Box 728, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine #2 (I.D. No. 15–18261) located in Knox County, Kentucky. The petitioner proposes to use hand-held, continuous-duty methane and oxygen indicators on three-wheel tractors with drag bottom buckets instead of using machine-mounted monitors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. D & R Coal Company, Inc.

[Docket No. M–2000–169–C]

D & R Coal Company, Inc., P.O. Box 728, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways, bituminous and lignite mines) to its Mine #2 (I.D. No. 15–18261) located in Knox County, Kentucky. The petitioner proposes to install two five-pound or one ten-pound portable chemical fire extinguisher in the operator deck of each Mescher tractor. The fire extinguishers would be readily accessible to the equipment operator. The petitioner proposes to instruct the equipment operator to inspect each fire extinguisher daily before entering the mine, replace all defective fire extinguishers before entering the mine, and maintain records of all inspections of the fire extinguishers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

13. Penn View Mining, Inc.

[Docket No. M–2000–173–C]

Penn View Mining, Inc., R.D. #1, Box 260–D, Shelocta, Pennsylvania 15774 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting and location of firefighting equipment) to its and Penn View Mine (I.D. No. 36–08741) located in Indiana County, Pennsylvania. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 10, 2001. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 27th day of March 2001.

David L. Meyer,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 01–8732 Filed 4–9–01; 8:45 am]

BILLING CODE 4510–43–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before May 25, 2001. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the

National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, National Institutes of Health (N9–443–01–1, 11 items, 11 temporary items). Electronic copies of records created using electronic mail and word processing that relate to operational and administrative activities of the agency's Clinical Center. Included are electronic copies of records associated with such series as the Clinical Center central files, program and analysis review records, organization and functions files, minutes of meetings, case files on volunteers, and documentation concerning instrument maintenance. This schedule follows Model 1 as described in the Supplementary Information section of this notice in that it adds disposition instructions for the electronic copies associated with individual file series of records. However, it only includes the titles, not the series description, of the recordkeeping files. Recordkeeping copies of these files are included in Disposition Jobs NC1–90–78–12, NC1–90–77–2, NC1–90–78–9, NC1–90–78–19, N1–443–93–1, N1–443–96–1, and NC1–90–77–9, which may be requested in accordance with the procedures outlined in the Dates section of this notice.

Dated: April 2, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–8721 Filed 4–9–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44145; File Nos. SR–Amex–01–18; SR–CBOE–01–15; SR–ISE–01–07; SR–PCX–01–18; and SR–Phlx–01–37]

Self-Regulatory Organizations: Notice of Filing and Order Granting Partial Accelerated Approval for a Sixty Day Pilot Program of Proposed Rule Changes and Amendments by the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. Relating to the Application of the Quote Rule to Options Trading

April 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b-4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] notice is hereby given that on March 15, 2001, the American Stock Exchange LLC (''Amex''); on March 30, 2001, the Chicago Board Options Exchange, Inc. (''CBOE''); on February 28, 2001, the International Securities Exchange LLC (''ISE''); on March 29, 2001, the Pacific Exchange, Inc. (''PCX''); and on March 12, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'') (referred to collectively as ''Exchanges'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule changes as described in Items I and II below, which Items have been prepared by the Exchanges.[3]

Amex submitted to the Commission Amex Amendment No. 1 to its proposed rule change on March 21, 2001[4] and Amex Amendment No. 2 on March 28, 2001.[5] CBOE filed CBOE Amendment No. 1 to its proposed rule change on March 30, 2001.[6] ISE submitted ISE Amendment No. 1 to its proposal on March 30, 2001.[7] The PCX submitted PCX Amendment No. 1 on March 29, 2001.[8] The Phlx submitted Phlx Amendment No. 1 to its proposal on March 16, 2001[9] and Phlx Amendment No. 2 on March 29, 2001.[10] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons. As discussed below, the Commission is also granting accelerated approval to those portions of the proposals relating the implementation of sixty-day pilot programs (''Pilots'') to accommodate the Exchanges' efforts to amend their rules to conform to the Quote Rule by the compliance date of April 1, 2001.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend their rules to conform to the requirements of the Quote Rule. The text of the proposed rule changes follows. New text is italicized and deleted text is bracketed.

A. Amex Proposed Rule Text

Rule 958A. [Specialist Options Transactions]

[(a) Firm Quotes. At all times other than during rotation, a specialist is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading post where the option class is located for trading. Option series that are subject to this rule shall be determined from time to time at the discretion of the Exchange. A Floor Official may determine on a case by a case basis that an exception to the rule is warranted for, among other things, a change in market conditions, an obvious error occurring in the posting of the display market quote due to reporter errors or system malfunctions.

(b) Public Customer Definition. Only non-broker-dealer customer orders shall be entitled to executions pursuant to the provisions of this rule. For purposes of this Rule, the term ''broker/dealer'' includes foreign broker/dealers.

(c) Registered Option Trader Orders. Specialists are not required to display as a market quotation bids or offers of a Registered Option Trader for less than 10 contracts.

* * * Commentary

.01 Trade or Fade. With respect to broker-dealer orders to buy (sell) at the displayed offer (bid), or portions of customer orders that are not entitled to an execution pursuant to provisions of paragraph (a), the specialist is required to either (1) sell (buy) the number of contracts specified in the order, or (2) change the displayed offer (bid) to reflect that such displayed offer (bid) is no longer available. In such instance, where a displayed offer (bid) is revised, it shall be considered conduct inconsistent with just and equitable principles of trade for the specialist to immediately re-display the previously disseminated offer (bid), unless such action is warranted by a change in market conditions].

Application of the Firm Quote Rule

(a) Definitions—(i) For purposes of this rule the terms ''aggregate quotation size'', ''best bid and best offer'', ''bid and offer'', ''quotation size'', ''quotation vendor'', ''reported security'', ''listed option'', ''option class'', ''option series'' and ''trading rotation'' shall have the meanings set forth in SEC Rule 11Ac1–1.

(ii) For purposes of this rule and SEC Rule 11Ac1–1 as applied to the Exchange and its members, the term ''responsible broker or dealer'' shall mean, with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the specialist and any registered options traders constituting the trading crowd in such option series shall collectively be the responsible broker or dealer to the extent of the aggregate quotation size specified.

(b) Dissemination Requirements of the Exchange—with respect to paragraph (b) of SEC Rule 11Ac1–1 and except as set forth in Commentary .01 of this rule, the Exchange shall, at all times it is open for trading, (A) collect, process and make available to quotation vendors the best bid, the best offer, quotation sizes and aggregate quotation sizes associated therewith for each option series that is a reported security and for which a responsible broker or dealer is obligated to execute any

[2] 17 CFR 240.19b–4.

[3] For ease of comparison and review, the Commission has consolidated the proposed rule changes of the Exchanges into one notice, which combines and summarizes the main provisions of the Exchanges' proposed rule changes.

[4] In Amendment No. 1, Amex made technical corrections to its rule text to, in part, better conform to Exchange Act Rule 11Ac1–1 (''Quote Rule''); clarified in a footnote that Nasdaq has begun trading in decimals; and requested a 60 day pilot program to accommodate the application of the Quote Rule to its market. *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 20, 2001 (''Amex Amendment No. 1'').

[5] In Amendment No. 2, Amex made further corrections to its rule text to better conform to the Quote Rule. *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated March 27, 2001 (''Amex Amendment No. 2'').

[6] In Amendment No. 1, CBOE made technical corrections to its rule text to, in part, better conform to the Quote Rule. *See* letter from Madge M. Hamilton, Legal Division, CBOE to Nancy Sanow, Assistant Director, Division, Commission, dated March 30, 2001 (''CBOE Amendment No. 1'').

[7] In Amendment No. 1, ISE made technical corrections to its rule text to, in part, better conform to the SEC's Quote Rule and requested a 60-day pilot program to accommodate the application of the Quote Rule to its market. *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 29, 2001 (replacing Form 19b-4 in its entirety) (''ISE Amendment No. 1'').

[8] In Amendment No. 1, PCX made technical corrections to its rule text to, in part, better conform to the Quote Rule. *See* letter from Michael D. Pierson, Senior Vice President Regulatory Policy, PCX, to John Roeser, Division, Commission, dated March 29, 2001 (''PCX Amendment No. 1'').

[9] In Amendment No. 1, Phlx made technical corrections to its rule text to, in part, better conform to the Quote Rule; requested a 60 day pilot program to accommodate the application of the Quote Rule to its market; and clarified that the applicable firm quote size will be the AUTO–X guarantee or ten contracts for booked limit orders. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 15, 2001 (''Phlx Amendment No. 1'').

[10] In Amendment No. 2, Phlx made further technical corrections to its rule text to conform to the Quote Rule; clarified that responsible brokers or dealers were collectively responsible for satisfying the disseminated size or quotation size; clarified the responsibility of a responsible broker or dealer when acting as an agent for a limit order; represented that Phlx would notify specified persons of an unusual market condition through OPRA using an agreed-upon indicator; and represented that Phlx will periodically publish its established quotation size for broker-dealer orders on its web site. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 28, 2001 (''Phlx Amendment No. 2'').

customer order as set forth in paragraph (c)(i) below; and (B) shall for each listed option class, establish by rule and periodically publish the quotation size for which the responsible broker or dealer is obligated to execute an order for the account of a broker or dealer to buy or sell an option series that is a reported security at its published bid or offer as set forth in paragraph (c)(ii) below. The Exchange may collect, process and make available to quotation vendors a best bid or best offer determined by an automated quotation system.

The Exchange's obligation to collect, process and make available data as set forth above shall not include (A) collecting processing or making available any such bid or offer which is executed immediately after being made in the crowd and any such bid or offer which is cancelled or withdrawn if not executed immediately after being made; or (B) data communicated during any period when trading in such reported security has been suspended or halted; prior to the commencement of trading in such reported security on any trading day; or during a trading rotation. The minimum quotation size made available to quotation vendors or established by rule and published by the exchange shall be ten contracts for each option series.

(c) Obligations of a Responsible Broker or Dealer—Pursuant to SEC Rule 11Ac1–1 each responsible broker or dealer for each series of each listed option class shall promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size. No responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than ten contracts. This obligation may be fulfilled by the use of an automated quotation system.

(i) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any customer order in an option series in an amount up to its published quotation size.

(ii) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any order for the account of a broker or dealer in a listed option in an amount up to the quotation size established by rule and periodically published by the Exchange.

(iii) Subject to the provisions of paragraph (d) of this Rule, each responsible broker or dealer shall comply with the Thirty Second Response provisions set forth in paragraph (d)(3) of SEC Rule 11Ac1–1.

(d) Use of Unusual Market Exception—Notwithstanding paragraphs (b) and (c) above and pursuant to paragraph (b)(3) of SEC Rule 11Ac1–1, if the Exchange determines, in accordance with the procedures set forth below, that the level of trading activity or the existence of unusual market conditions is such that the Exchange cannot collect, process and make available to quotation vendors quotation data in a manner which accurately reflects the current state of the market at the Exchange, the Exchange shall immediately notify the persons specified in paragraph (b)(3) of SEC Rule 11Ac1–1 below and, upon such notification, the obligation imposed upon Exchange members under paragraph (c)(2) of SEC Rule 11Ac1–1 and the Exchange under paragraphs (b)(1) and (2) of SEC Rule 11Ac1–1 shall be suspended, until a determination by the Exchange that the unusual market activity or condition has terminated and the specified persons have been notified that the unusual market activity or condition has terminated:

(i) If a responsible broker or dealer is unable to update his quotations on a timely basis due to the high level of trading activity or the existence of an unusual market condition, he shall promptly notify a Floor Official.

(ii) Upon notification by a responsible broker or dealer, the Floor Official shall promptly verify the existence of the unusual market activity or condition and if, in his judgment, the responsible broker or dealer is unable to update his quotations on a timely basis, the Floor Official shall promptly notify the Market Operations Division of the Exchange. If a Floor Official, independent of notification by a responsible broker or dealer, becomes aware of any unusual market activity or condition which adversely affects a responsible broker or dealer's ability to promptly communicate quotation data, he shall likewise promptly advise the Market Operations Division.

(iii) If the Exchange is unable to accurately collect, process, and/or disseminate quotation data owing to the high level of trading activity or the existence of unusual market conditions, the Market Operations Division of the Exchange, after consultation with a Floor Official, shall make a determination that this is the case.

(iv) The Market Operations Division, after receiving notification from a Floor Official pursuant to either subparagraphs (i) and (iii) above, shall notify the persons specified in paragraph (b)(3) of SEC Rule 11Ac1–1 regarding the Exchange's inability to accurately collect, process, and make available the quotation data required by SEC Rule 11Ac1–1. The Exchange shall append to each quotation made available to a quotation vendor an identifier which will indicate that the obligation imposed upon Exchange members and the Exchange by SEC Rule 11Ac1–1 has been suspended.

(v) The Floor Official or the Market Operations Division (as the case may be) shall monitor the unusual market activity or condition until it has terminated. Thereupon, the Market Operations Division shall immediately notify the persons specified in paragraph (b)(3) of SEC Rule 11Ac1–1 that the Exchange is once again capable of disseminating the quotation data required by Rule SEC 11Ac1–1 and responsible brokers or dealers shall be once again obligated under SEC Rule 11Ac1–1 as made applicable to Exchange members pursuant to this Rule 958A.

* * * * *

* * * Commentary

.01 As of April 1, 2001, the compliance date for application of SEC Rule 11Ac1–1 to the trading of options, the Exchange is able to disseminate to quotation vendors the quotation size or aggregate quotation size of the best bid or best offer in most, but not all, option classes. This is not expected to be a permanent condition and it is anticipated that quotation sizes will be available for all option classes shortly after the compliance date. However, until such time as the Exchange is able to disseminate quotation size for all option classes, for those option classes for which it is unable to do so, it will collect, process and disseminate the best bid and best offer, and establish by rule and periodically publish the quotation size for which the responsible broker or dealer is obligated to execute a customer order to buy or sell an option series in that class.

.02 No specialist shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist who is responsible for the published bid or published offer shall be obligated to the extent set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of one

unit of trading in the reported security in question.

.03 Absent unusual market conditions, the responsible broker or dealer shall honor any bid or offer then being displayed by quotation vendors which is erroneous, up to the quotation size then being so displayed, which has been displayed for six minutes or more. Provided, however, that the specialist shall not be required to honor such a bid or offer which is erroneous as to either price or size or both if:

(i) as a matter or record, an execution, cancellation or update of such bid or offer was in effect or in process;

(ii) in honoring such a bid or offer, the resulting transaction would violate applicable Exchange rules or federal regulations;

(iii) equipment failure prevents the specialist from monitoring such bid or offer; or

(iv) the price sought upon such quotation is above the current bid or below the current offer, on the Floor, by (a) $.25 or more in the case of a reported security trading at $3 or less or (b) $.50 or more in the case of a reported security trading at more than $3.

B. CBOE Proposed Rule Text

Rule 8.51. [Trading Crowd] *Firm Disseminated Market Quotes*

(a) Rule 8.51. *Definitions.*

(1) *For the purposes of this rule, and SEC Rule 11Ac1–1 as applied to the Exchange and members on the floor, the term ''responsible broker or dealer'' shall mean, with respect to any bid or offer for any reported security made available by the Exchange to quotation vendors, the trading crowd in a series or class of option, which shall be the responsible broker or dealer to the extent of the quotation size specified in (b) or (c) of this rule.*

(2) *For purposes of this rule, the term ''reported security'' means any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective national market system plan for reporting transactions in listed options.*

(b) *Firm Quote Requirement for Non-broker-dealer Orders. All* [The] classes and series [which] shall be subject to the requirements of this rule. [will be determined at the discretion of the appropriate Market Performance Committee (''MPC'').]

(1) *The appropriate Floor Procedure Committee may establish the firm quote requirement for each series of option, which shall be for at least one contract, for non-broker-dealer orders. The Exchange will periodically publish the firm quote requirement for each series of option. In the event the Exchange disseminates quotation size, the firm quote requirement would be for up to the disseminated size.*

[(1) Only non-broker dealer customer orders shall be entitled to an execution pursuant to the provisions of this paragraph (a). For the purposes of this Rule, the term broker-dealer includes foreign broker-dealers as defined in Rule 1.1(xx).]

(2) [The firm quote requirement shall be no less than the RAES contract limit applicable to that class of options, except where the RAES contract limit is more than fifty contracts for a particular option class then the firm quote requirement shall be fifty contracts. However, for those classes where the RAES contract limit is fifty or less, the appropriate Floor Procedure Committee, in its discretion, may establish a different firm quote requirement for a particular class of options that is no less than the RAES contract limit and no more than 50 contracts. For classes or series that are not traded on RAES, the appropriate Floor Procedure Committee may establish a firm quote requirement of between 10 and 50 contracts; The firm quote requirement applies at all times other than during rotation, unless there is a contrary FloorOfficial ruling pursuant to subparagraph (3) of this paragraph (a).]

The firm quote requirement obligates [a trading crowd] *the responsible broker or dealer* to sell(buy) at least the established number of contracts at the offer(bid) which is displayed when [a] *the responsible broker or dealer receives a* buy (sell) order [reaches] *at* the trading station where the particular option class is located for trading. [The Exchange may establish a higher firm quote requirement, of up to 100 contracts, for the trading crowd for options on the Dow Jones Industrial Average. Except in the case of rerouted RAES orders that are eligible for the RAES kick out price in accordance with Interpretation .04 to Rule 6.8, an order ordinarily will be deemed to reach the trading station when a Floor Broker represents the order in open outcry at the trading station.]

(3) When orders for the same class (whether for the same series or different series) from the same beneficial owner are represented at the trading station at approximately the same time, then only the first of such orders that cumulatively equal or add up to less than the firm quote requirement shall be entitled to an execution pursuant to paragraphs (b) and (c) [(a)(2)] above.

[(4) On a case by case basis, any two Floor Officials may grant exemptions to or suspend the provisions of this paragraph (a) for either a class or series within a class if, in their determination, to do so is in the interest of a fair and orderly market. Additionally, any two Floor Officials may determine that an exemption to Rule 8.51(a) is warranted, on a case by case basis, upon their determination that an obvious error occurred in the posting of the disseminated market quote.]

[(5) The senior person then in charge of the Exchange's Control Room shall have the authority to suspend the firm quote requirements of this paragraph (a) with respect to a class of options if a system malfunction or circumstance impairs the Exchange's ability disseminate or update market quotes in a timely and accurate manner. After exercising such authority, that senior person shall immediately seek approval by two Floor Officials, who may confirm or overrule the decision. If this authority is invoked, the Exchange's Control Room will disseminate a message notifying the public that the displayed quotes are not firm because of a data dissemination problem. Once the problem has been corrected and the market quotes have been updated, the suspension of the firm quote requirements of paragraph (a), shall be lifted by either the senior person then in charge of the Exchange's Control Room, or by two Floor Officials.]

([b]*c) Firm Quote Requirement for Broker-Dealer Orders. The appropriate Floor Procedure Committee may establish the firm quote requirement for each series of option, which shall be for at least one contract, for broker-dealer orders. The Exchange will periodically publish the firm quote requirement for each series of option. In the event the Exchange disseminates quotation size, if the disseminated quotation size is for a lesser amount than the firm quote requirement, then the broker-dealer firm quote requirement would be for the disseminated size. For purposes of this Rule, the term broker-dealer includes foreign broker-dealers as defined in Rule 1.1(xx).* [With respect to orders (or portions of orders) at the displayed offer (bid), that are not entitled to an pursuant to the provisions of paragraph (a), the trading crowd is required to either

(1) sell (buy) the number of contracts specified in the order; or

(2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.]

(d) Thirty Seconds Rule. Each responsible broker or dealer within thirty seconds from receiving an order that is greater than the quotation size

established by paragraph (b) or (c) of this rule must:

(1) Execute the entire order; or

(2) (A) Execute that portion of the order equal to at least the quotation size established by paragraphs (b) or (c) of this rule; and

(B) Revise its bid or offer.

(e) Exemptions to Firm Quote Requirements. Non-Firm Mode.

(1) With respect to paragraph (b)(3) of SEC Rule 11Ac1–1:

(i) Any two Floor Officials, on a case by case basis, for either a class or series within a class, may make a determination, that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes with respect to one or more class or series within a class of option in a manner which accurately reflects the current state of the market on the floor. During any period that the market in a reported security is in a non-firm mode, the responsible broker or dealer shall be relieved of their obligations under SEC Rule 11Ac1–1 as applicable to such members under this Rule 8.51 with respect to such reported security, but the responsible broker or dealer shall report bids and offers or revised bids and offers in such reported security, for publication, on a ''best efforts'' basis; or

(ii) The senior person, then in charge of the Exchange's Control Room, shall have the authority to suspend the firm quote requirements of paragraphs (b) or (c) with respect to a class of options if he or she determines that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes with respect to one or more class or series of option in a manner which accurately reflects the current state of the market on the floor. After exercising such authority, that senior person shall immediately seek approval by two Floor Officials, who may confirm or overrule the decision. During any period that the market in a reported security is in a non-firm mode, the responsible broker dealer shall be relieved of their obligations under SEC Rule 11Ac1–1 as applicable to such members under this Rule 8.51 with respect to such reported security, but the responsible broker or dealer shall report bids and offers or revised bids and offers in such reported security, for publication, on a ''best efforts'' basis.

(iii) Whenever two Floor Officials or the senior person then in charge of the Exchange's Control Room make a determination under subparagraphs (i) or (ii) above with respect to any reported security, the Exchange's Control Room will disseminate a message notifying the specified persons that the displayed quotes are not firm.

(iv) During any period that the market in a reported security is in a non-firm mode, the Floor Officials shall monitor the activity or condition, which formed the basis for his or their determination. No more than 30 minutes after such market has been designated to be in a non-firm mode, the DPM shall review the condition of such market with the Floor Officials. Continuation of the non-firm mode for longer than 30 minutes shall require the reaffirmation of the reviewing Floor Officials. Such review and reaffirmation shall occur not less frequently than every 30 minutes thereafter while the non-firm mode is in effect.

(v) When the Exchange is once again capable of collecting, processing and making available to quotation vendors bids and offers with respect to a reported security that is in a non-firm mode in a manner which accurately reflects the current state of the market on the floor then the senior person then in charge of the Exchange's Control Room, or two Floor Officials shall lift the non-firm mode designation. Once the non-firm mode designation has been lifted, responsible broker dealers shall be obligated for the firm quote requirement as stated in paragraphs (b) or (c).

(2) No responsible broker or dealer shall be obligated to execute a transaction for any listed option as provided in paragraphs (b) and (c) of this rule[11] *when:*

(i) (A) Prior to the presentation of an order to sell(buy), a responsible broker or dealer has communicated to the exchange, a revised quotation size; or

(B) At the time an order to sell(buy) is presented, a responsible broker or dealer is in the process of effecting a transaction in such class and/or series of option, and immediately after the completion of such transaction, it communicates to the exchange a revised quotation size, such responsible broker or dealer shall not be obligated by paragraphs (b), (c) or (d) of this Rule to sell(buy) that option in an amount greater than such revised quotation size.

(C) Before the order sought to be executed is presented, a responsible broker or dealer has communicated to the exchange, a revised bid or offer; or

(D) At the time the order sought to be executed is presented, a responsible broker or dealer is in the process of effecting a transaction in such class or series of option, and, immediately after the completion of such transaction, a responsible broker or dealer communicates to the exchange, a revised bid or offer; provided, however, that the responsible broker or dealer shall nonetheless be obligated to execute any such order as provided in paragraphs (b) or (c) of this rule at its revised bid or offer in any amount up to its published quotation size or revised quotation size; or

(ii) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

(f) Each member on the floor shall abide by such rules and procedures adopted by the Exchange, in order to enable the Exchange to meet its quotation dissemination requirements.[12]

* * * Interpretations and Policies:

.01 With respect to subsection [(a)] *(b)* of this Rule, if the disseminated bid (offer) is on behalf of an order represented by a Floor Broker, DPM, or OBO and is for less than the firm quote requirement applicable for that class of options, [the trading crowd] *a responsible broker or dealer* is obligated to buy or sell the necessary number of contracts needed to make the disseminated quote firm for the firm quote requirement for that class of options.

.02 Where a Floor Broker, DPM, or OBO has caused a bid or offer to be disseminated and the order is subsequently filled or canceled, the Floor Broker, DPM, or OBO will be responsible for causing such disseminated bid or offer to be removed. Failure to do so will result in the Floor Broker, DPM, or OBO being responsible for satisfying the firm disseminated quote commitment pursuant to subsection [(a)]*(b) or (c)* of this Rule. [A Market-Maker] *Any member* who has caused a bid or offer to be disseminated is equally responsible for removing such bid or offer when he leaves the trading crowd.

[.03 In broad-based index options, orders for accounts exempted from the firm quote treatment as defined in paragraph (a)(1) that in each case are for less than the firm quote requirement applicable for that class of options, and are represented in the crowd by a Floor Broker or DPM need not be reflected in the displayed market quote. In all option classes other than broad-based index option classes, orders for accounts

[11] *This section is pursuant to SEC Rule 11Ac1–(d)(4). The responsible broker or dealer shall also be relieved of their obligations under SEC Rule 11Ac1–1(c)(2).*

[12] *See SEC Rule 11Ac1–1.*

exempted from the firm quote treatment as defined in paragraph (a)(1) that in each case are for less than ten contracts, and are represented in the crowd by a Floor Broker or DPM need not be reflected in the displayed market quote. However, a Floor Broker or DPM remains obligated to use due diligence in the representation of such orders as set forth in Rule 6.73.]

.03[.04] Where a disseminated market quote is revised, as provided for in paragraph *(e)* [(b)] of this Rule, it shall be considered conduct inconsistent with just and equitable principles of trade for [the trading crowd] *a responsible broker or dealer* immediately to re-display the previously disseminated market quote, unless such action is warranted by a change in market conditions.

.04[.05] Floor Officials may, as provided for under Rules 6.20(c) and 17.50(g)(6), impose a fine on members of the trading crowd for violations of this Rule and its Interpretations and Policies.

.05[.06] The requirement of paragraphs [subsection] (b) *and (c)* of this Rule *that* [that the trading crowd] *the responsible broker or dealer* must honor displayed quotations up to the firm quote requirement subject to the conditions of the Rule applies not only to orders to buy or to sell options, but also to two-part spread or straddle for [equity] *all* options orders which may be executed at displayed quotations for both parts of the order. This obligation of [the trading crowd] *a responsible broker or dealer* applies to two-part orders where the two sides are on opposite sides of the market in a one-to-one ratio, and extends to the amount of the firm quote requirement on each side of the order.

.06[.07] Pursuant to Rule 6.20 Interpretation .09, the reference to any two Floor Officials in Rule 8.51 and its Interpretations and Policies includes, but is not limited to, members of the appropriate Market Performance Committee.

.07[.08 Pursuant to Rule 6.6, if a] *Under paragraph (e) of this Rule, when two Floor Officials may determine that a market in a class or series of option is* fast [market is declared] *pursuant to Rule 6.6, the Floor Officials may determine the market constitutes a level of trading activity or such unusual market conditions that the Exchange is incapable of collecting, processing and making available to* quotation vendors *bids, offers and quotation sizes in a manner that accurately reflects the current state of the market on the floor, and thus, suspend the firm quote requirement.* [any two Floor Officials have the power, but are not required, to suspend the firm quote requirement of Rule 8.51(a).]

.08[. 09] *The trading crowd shall not be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the trading crowd responsible broker or dealer is responsible for the published bid or published offer shall be obligated to the extent set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of one contract of the listed option in question.*

* * * * *

Rule 6.6. Unusual Market Conditions

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(b) If a market is declared fast, any two Floor Officials shall have the power to do one or more of the following with respect to the class or classes involved.

* * * * *

(iv) Suspend the firm quote requirement *as permitted* [of] under Rule 8.51[(a)].

* * * * *

Rule 6.20. Admission to and Conduct on the Trading Floor; Member Education

* * * * *

.09 Members of the appropriate Market Performance Committee may perform the functions of a Floor Official for the purpose of enforcing trading conduct policies, including but not limited to, enforcing policies and acting pursuant to rules related to the Retail Automatic Execution System, fast markets, and the firm quote requirement of Rule 8.51[(a)].

* * * * *

Rule 26.11. Market-Makers

* * * * *

[(e) Firm Disseminated Quotations. The trading crowd (including the DPM) at the trading station for a class of market baskets is required to sell (buy) one contract, or such greater number as shall be indicated, at the offer (bid) which is displayed when a buy (sell) order reaches that trading station.]

Supplements Rule 8.5 and replaces Rules 8.3, 8.7, *and* 8.50 [and 8.51].

* * * * *

Rule 27.6. Application of Certain Rules to BOUNDs

For purposes of Rule 6.51, a transaction in BOUNDs need not be identified as a put or a call. [The requirements contained in Rule 8.51 regarding trading crowd firm disseminated market quotes will not apply to BOUNDs.] For purposes of Rule 9.15, the requirement to deliver an Options Disclosure Document shall include the obligation to deliver any supplement thereto pertaining to BOUNDs with respect to any customer whose account is approved for trading in BOUNDs.

This Rule supplements Rules 6.51, [8.51] and 9.15

C. *ISE Proposed Rule Text*

Rule 804. Market Maker Quotations

(a) No change.

(b) Size Associated with Quotes. A market maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts *at that price* the market maker is willing to buy *from* or sell [at that price] *to (i) Public Customers (the ''Public Customer Size'') and (ii) Non-Customers (the ''Non-Customer Size'')*. Unless the Exchange has declared a fast market pursuant to Rule 704, a market maker may not *initially* enter a bid or offer [for] *with a Public Customer Size of* less than ten (10) contracts. Where the size associated with a market maker's bid or offer falls below ten (10) contracts due to executions at that price and consequently the size of the best bid or offer on the Exchange would be for less than ten (10) contracts, the market maker shall enter a new bid or offer for at least ten (10) contracts, either at the same or a different price. *Every market maker bid or offer must have a Non-Customer Size of at least one (1) contract.*

(c) No change.

(d) Firm Quotes. (1) [With respect to Public Customer Orders, market] *Market* maker bids and offers are firm *for Public Customer Orders and Non-Customer Orders both under this Rule and Rule 11Ac1–1 under the Exchange Act (''Rule 11Ac1–1'')* for the number of contracts *specified for each according to the requirements of paragraph (b) above* [associated with each, unless:]. *Market maker bids and offers are not firm under this Rule and Rule 11Ac1–1 if:*

(i) the Exchange determines that an exception is warranted, on a case by case basis, because of an obvious error; [or]

(ii) a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market

quotes in a timely and accurate manner[.];

(*iii) the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange, and as a result, the market in the option is declared to be ''fast'' pursuant to Rule 704;*

(iv) during trading rotations; or

(v) any of the circumstances provided in paragraph (c)(3) of Rule 11Ac1–1 exist.

(2) Within thirty seconds of receipt of a Public Customer Order (Non-Customer Order) to buy or sell an option in an amount greater than the Public Customer Size (Non-Customer Size), that portion of the order equal to the Public Customer Size (Non-Customer Size) will be executed and the bid or offer price will be revised.

[(2) With respect to Non-Customer Orders, market makers must either buy or sell the number of contracts specified in their quotes or change their quotes to reflect that the previously displayed quote is no longer available.]

Paragraphs (e)–(f): No change.

Rule 704. [Unusual Market Conditions] *Collection and Dissemination of Quotations*

[(a) Whenever an Exchange official who is designated by the Board shall have the power to determines, because of an influx of orders or other unusual conditions or circumstances and the interest of maintaining a fair and orderly market so requires, such designated Exchange official may declare the market in one or more classes of options contracts to be ''fast.'']

(a) Each market maker shall communicate to the Exchange its bid and offers in accordance with the requirements of Rule 11Ac1–1 under the Exchange Act and the Rules of the Exchange.

(b) The Exchange will disseminate to quotation vendors the highest bid and the lowest offer, and the aggregate quotation size associated therewith that is available to Public Customer Orders, in accordance with the requirements of Rule 11Ac1–1 under the Exchange Act.

(c) Unusual Market Conditions.

(1) An Exchange official designated by the Board shall have the power to determine that the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange. Upon making such a determination, the Exchange shall designate the market in such option to be ''fast.'' When a market for an option is declared fast, the Exchange will provide notice that its quotations are not firm by appending an appropriate indicator to its quotations.

[(b)] *(2)* If a market is declared fast, designated Exchange officials shall have the power to: (i) Direct that one or more trading rotations be employed pursuant to Rule 701; (ii) suspend the minimum size requirement of Rule 804(b); or (iii) take such other actions as are deemed in the interest of maintaining a fair and orderly market.

[(c)] *(3) The Exchange will monitor the activity or conditions that caused a fast market to be declared, and a designated Exchange official shall review the condition of such market at least every thirty (30) minutes.* Regular trading procedures shall be resumed *by the Exchange* when a designated Exchange official determines that the conditions supporting a fast market declaration no longer exist. *The Exchange will provide notice that its quotations are once again firm by removing the indicator from its quotations.*

[(d)] *(4)* If the conditions supporting a fast market declaration cannot be managed utilizing one or more of the procedures *described above* [contained in paragraphs (b) of this Rule], then a designated Exchange official shall halt trading in the class or classes so affected.

D. *PCX Proposed Rule Text*

¶ 4935 Obligations of Market Makers

RULE 6.37(a)–(c)—No change.

[(d) Trade or Update. When an order is represented at a trading post for execution at the currently disseminated bid or offer, Market Makers or Lead Market Makers at the trading post, if they do not satisfy the order in its entirety, shall lower their bid or raise their offer. Thereafter, the dissemination of such revised bid or offer must be maintained for a reasonable period of time, as specified in Commentary .09.]

Commentary:

.01–.09—No change.

[.10 For purposes of subsection (d), two minutes shall be presumed to be ''reasonable'' period of time in which to maintain a revised bid or offer. However, a revised market may be further revised before two minutes pass if the following market changes occur:

(1) A change in the market quote in the underlying security or a change in the size of the market quoted; or

(2) In the case of another option series on the same underlying security, a quote change of twice the minimum price differential resulting from a customer order.

Two Floor Officials may grant exemption from the rule on a case-by-case basis if the individual situation warrants such action.]

* * * * *

¶ 5221 [Guaranteed Markets] Firm Quotes

Rule 6.86—Deleted in its entirety.

RULE 6.86 (a) Definitions

(1) For purposes of this Rule the terms ''bid and offer,'' ''quotation size,'' ''quotation vendor,'' ''reported security,'' ''listed option,'' ''option series'' and ''trading rotation'' will have the meanings set forth in SEC Rule 11Ac1–1.

(2) For purposes of this Rule and SEC Rule 11Ac1–1 as applied to the Exchange and its members, the term ''Responsible Broker or Dealer'' means that with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the Lead Market Maker and any registered Market Makers constituting the trading crowd in such option series will collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified.

(b) Dissemination Requirements

(1) Price. The Exchange will, at all times that it is open for trading, collect, process and make available to quotation vendors the best bid and best offer for each option series that is a reported security. The Exchange may collect, process and make available to quotation vendors a best bid and best offer determined by an automated quotation system.

(2) Size. The Exchange will for each listed option, establish by rule and periodically publish the quotation size for which the Responsible Broker or Dealer is obligated to execute an order to buy or sell an option series that is a reported security at its published bid or offer as set forth in subsection (c) below.

(3) The Exchange's obligation to collect, process and make available data as set forth above will not include:

(A) *collecting, processing or making available any such bid or offer that is executed immediately after being made in the trading crowd and any such bid or offer that is cancelled or withdrawn if not executed immediately after being made; or*

(B) data communicated during any period when trading in such reported security: (i) has been suspended or halted; (ii) prior to the commencement

of trading in such reported security on any trading day; or (iii) during a trading rotation.

(c) Obligations of Responsible Brokers or Dealers

(1) Customer Orders. Except as provided in subsection (d), below, each Responsible Broker or Dealer is obligated to execute any customer order in a listed option series in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for customer orders will be 20 contracts for each option series.

(2) Broker-Dealer Orders. Except as provided in subsection (d), below each Responsible Broker or Dealer is obligated to execute any order in a listed option for the account of a broker or dealer in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for broker-dealer orders will be one contract for each option series.

(3) Each Responsible Broker or Dealer, within thirty seconds of receiving an order to buy or sell a listed option in an amount greater than the quotation size required pursuant to subsections (c)(1) or (c)(2), above, must either:

(A) *execute the entire order; or*

(B) execute the portion of the order that is equal to the size required pursuant to this subsection (c) and revise its bid or offer.

(d) Exception for Unusual Market Conditions

(1) If the Exchange determines, in accordance with the procedures set forth below, that the level of trading activity or the existence of unusual market conditions is such that the Exchange cannot collect, process and make available to quotation vendors quotation data in a manner that accurately reflects the current state of the market at the Exchange, the Exchange will immediately notify the persons specified in SEC Rule 11Ac1–1(b)(3) and, upon such notification, the obligation imposed upon Exchange members under SEC Rule 11Ac1–1(c)(2) and the Exchange under subsection (b), above, will be suspended, until the Exchange determines that the unusual market activity or condition has terminated and the specified persons have been notified that the unusual market activity or condition has terminated.

(A) If a Responsible Broker or Dealer is unable to update its quotations on a timely basis due to the high level of trading activity or the existence of unusual market conditions, the Responsible Broker or Dealer will promptly notify a Floor Official.

(B) Upon notification by a Responsible Broker or Dealer, the Floor Official will promptly verify the existence of the unusual market activity or condition and if, in the Floor Official's judgment, the Responsible Broker or Dealer is unable to update its quotations on a timely basis, the Floor Official will promptly notify the Exchange. If a Floor Official, independent of notification by a responsible broker or dealer, becomes aware of any unusual market activity or condition that adversely affects a Responsible Broker or Dealer's ability to promptly communicate quotation data, the Floor Official will likewise promptly advise the Exchange.

(C) If the Exchange is unable to accurately collect, process, or disseminate quotation data owing to a high level of trading activity or the existence of unusual market conditions, the Exchange, after consultation with a Floor Official, will make a determination that this is the case.

(D) The Exchange, after receiving notification from a Floor Official pursuant to either subsection (A) or (B), above, will notify the persons specified in SEC Rule 11Ac1–1(b)(3) regarding the Exchange's inability to accurately collect, process, and make available the quotation data required by SEC Rule 11Ac1–1. The Exchange will append to each quotation made available to a quotation vendor an identifier that will indicate that the obligation that is imposed upon Exchange members and the Exchange by SEC Rule 11Ac1–1 has been suspended.

(E) The Floor Official or Exchange staff (as the case may be) will monitor the unusual market activity or condition until it has terminated. Thereupon, the Exchange will immediately notify the persons specified in SEC Rule 11Ac1–1(b)(3) that the Exchange is once again capable of disseminating the quotation data required by SEC Rule 11Ac1–1 and Responsible Brokers or Dealers will be once again obligated under SEC Rule 11Ac1–1.

Commentary:

.01 As of April 1, 2001, the compliance date for the application of SEC Rule 11Ac1–1 to the trading of options, the Exchange will collect, process and disseminate the best bid and best offer in each option series, and establish by rule and periodically publish the quotation size for which the responsible broker or dealer is obligated to execute a customer order to buy or sell an option in that series.

.02 No Lead Market Maker or Marker Maker will be deemed to be a Responsible Broker or Dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or offer is accurate but the published quotation size associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the Lead Market Maker or Market Maker who is responsible for the published bid or published offer will be obligated to the extent set forth in SEC Rule 11Ac1–1(c), but only to the extent of one unit of trading in the option series in question.

E. *Phlx Proposed Rule Text*

Rule 1082. Firm Quotations

(a) *Definitions*

(i) *The term ''disseminated price'' shall mean the bid (or offer) price for an options series that is made available by the Exchange and displayed by a quotation vendor on a terminal or other display device.*

(ii) *The term ''disseminated size'' shall mean with respect to the disseminated price for any quoted options series, the AUTO–X guarantee for the quoted option, except that the disseminated size of bids and offers of limit orders on the book shall be ten (10) contracts.*

(iii) *The term ''SEC Quote Rule'' shall mean Rule 11Ac1–1 under the Securities Exchange Act of 1934, as amended.*

(iv) *The terms ''customer,'' ''responsible broker or dealer,'' and ''specified persons'' shall have the meaning set forth in the SEC Quote Rule.*

(b) Except as provided in paragraph (c) of this Rule, all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders at the disseminated price in an amount up to the disseminated size. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute orders presented to them at such price up to the disseminated size in accordance with Rule 1015, or, if the responsible broker or dealer is representing (as agent) a limit order, such responsible broker or dealer shall be responsible (as agent) up to the size of such limit order, but may be responsible as principal for all or a portion of the excess of the disseminated size over the size of such limit order to the extent provided in Rule 1015.

(c) The requirements of paragraph (b) or (d) of this Rule shall not apply to

displayed quotations: (i) when the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to the SEC Quote Rule in a manner that accurately reflects the current market on the Exchange as determined by two Floor Officials, with the concurrence of the Director of Surveillance, or his designee; (ii) during a trading rotation; (iii) if any of the circumstances provided in paragraph (c)(3) of the SEC Quote Rule exist; or (iv) on a case by case basis where it is determined that an exemption is warranted for an obvious error in the posting of the disseminated price or disseminated size due to reporter error or system malfunction. The Exchange shall immediately notify all specified persons of such a determination. Regular trading procedures shall be resumed when two Floor Officials determine that the conditions supporting that declaration no longer exist. The Exchange shall immediately notify all specified persons of such a determination.

Any exemption granted pursuant to paragraph (c)(iv) shall be in writing and shall set forth the basis upon which the exemption is granted.

(d) In accordance with paragraph (d)(1)(ii) of the SEC Quote Rule, the quotation size for a disseminated price with respect to an order for the account of a broker or dealer (''broker-dealer order'') shall be one (1) contract (''quotation size''), and all quotations made available by the Exchange and displayed by quotation vendors shall be firm for broker-dealer orders at the disseminated price in an amount up to the quotation size. The quotation size for broker-dealer orders provided in this paragraph (d) shall be periodically published by the Exchange. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute broker-dealer orders at such price up to the quotation size.

(e) If responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size (for customer orders) or the quotation size (for broker-dealer orders), such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size (in the case of a customer order) or the quotation size (in the case of a broker-dealer order) at the disseminated price (or better), and revise its bid or offer.

A–3 Requesting Market Quotations

A Specialist may request an ROT in the crowd to state his current bid and offer (including size) for any series of options traded at the post. A Specialist may request that staff or a Floor Official call for additional ROTs to enter the trading crowd.

A–11 Responsibility to [Make Ten-Up Markets] Fill Customer Orders

(a) *Execution* [Quotation] Guarantees—[Public] *C*[c]ustomer market or marketable limit orders in any options series on the Exchange are to be filled at the best market, in *accordance with Rule 1082,* to a minimum of the *disseminated size* [ten contracts] by floor traders (i.e., Specialists and ROTs) in the crowd as follows:

(i) If only one floor trader is quoting the availed upon best bid (or offer), that floor trader is responsible for providing a fill *for the disseminated size* [on the minimum ten contracts].

(ii) If more than one floor trader is quoting the availed upon best bid (or offer), and their combined quote size is less than *the disseminated size* [ten contracts], participation for the additional contracts needed to meet the *disseminated size* [minimum ten contract] requirement shall be decided upon agreement by those floor traders or otherwise divided proportionately among them.

(iii) If the availed upon best bid (or offer) is established by someone other than a floor trader and is not for at least *the disseminated size* [ten contracts], participation for the additional contracts needed to meet the *disseminated size* [minimum ten contract] requirement shall be supplied at that same price by the floor trader with the immediately prior best bid (or offer). If more than one floor trader was on the prior bid (or offer), participation for the additional contracts shall be decided upon agreement by those floor traders or otherwise divided proportionately among them. For example, if a 2¼ or 2.25 bid by an ROT is followed by a 2½ or 2.50 bid for five contracts by a customer, the ROT who was bidding 2¼ or 2.25 will be responsible for buying the other five contracts at 2½ or 2.50.

[(iv) ROT orders for less than ten contracts that are represented at a trading post by a Floor Broker shall not be disseminated and shall have no standing in the crowd. Floor Brokers shall otherwise remain obligated to use due diligence in the representation of orders pursuant to Rule 155.]

([v]*iv*) The ''availed upon best bid (or offer)'' for purposes of this Advice shall be the *disseminated price (as defined in Rule 1082)* [crowd markets or the displayed or screen markets, whichever is better. In the instance of a broker quoting a market on behalf of a ten-up eligible order, once the crowd market has been sought, the screen market (if superior) is available on an immediate basis and if not availed upon the displayed market may be revised].

[(vi) In each case where the responsibility to make ten-up markets based on displayed or screen quotations generally applies, an exemption will exist for the first three minutes following completion of the rotation in each series for which a quotation update to the opening quote has not yet occurred. While any such exemption is in effect, the ten-up market guarantee will be based on the crowd markets.]

([vii]*v*) Orders received by a member from a customer may not be unbundled for the primary purpose of availing upon the *execution guarantee* [ten up market] requirement, nor may a Firm solicit a customer to unbundle an order for the primary purpose of availing upon the *execution guarantee* [ten up market requirement].

([viii]*vi*) Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The responsible floor agent must legibly mark the floor ticket as ''B/D'' when it has been determined that the order is for an account of a broker/dealer.

([ix]*vii*) *The disseminated size requirement shall not apply when Exchange quotations are not required to be firm pursuant to paragraph (c) of Rule 1082.* [Exemptions from the ten-up requirement may be granted by two Floor Officials with the concurrence of the Director of Surveillance or his designee, (1) under exceptional circumstances or for good cause shown (e.g., in fast market conditions) for all or part of a trading session; or (2) on a case-by-case basis where it is determined that an exemption is warranted for an obvious error in the posting of the displayed market quote due to reporter error or system malfunction. Any such exemption shall be in writing and shall set forth the basis upon which the exemption is granted.]

(b) Trade or Fade *When paragraph (e) of Rule 1082 is applicable to an order*

received by a responsible broker or dealer, participation by Specialists or ROTs above their stated size to fill the order completely or meet the disseminated size requirement (for customer orders) or the quotation size requirement (for broker-dealer orders) shall be decided upon agreement by such Specialists or ROTs or otherwise divided proportionately among them.

[With respect to non-public customer orders to buy (sell) at the displayed offer (bid), or portions of customer orders greater than the minimum size guarantee in that option, the trading crowd is required to either: (1) sell (buy) the number of contracts specified in the order; or (2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.] Where *the* [a] disseminated market quote *of a responsible broker or dealer* is revised, as provided for in *Rule 1082* [this paragraph], it shall be considered conduct inconsistent with just and equitable principles of trade for *such responsible broker or dealer* [the trading crowd] to immediately re-display *its* [the] previously disseminated market quote, unless such action is warranted by a change in market conditions.

F–7 Bids and Offers

All bid and offer prices shall be general ones and shall not be specified for acceptance by particular members.

In the absence of a stated size to any bid or offer voiced or displayed on the Options Floor, the person responsible for such bid and offer is deemed to be quoting for one contract, except in those instances where predetermined volume guarantees are provided for the facilitation of specific account types. Floor traders *(Specialists and ROTs) are* [may], however, [be] required to trade more than one contract in connection with *the execution of a customer order pursuant to* [provisions under] Advice A–11.

The size of any disseminated bid or offer by the Exchange shall be equal to the AUTO–X guarantee for the quoted option and shall be firm, except that the disseminated size of bids and offers of *limit orders on the book* [customer limit orders] shall be ten (10) contracts and shall be firm regardless of the actual size of such orders.

F–10 Unusual [Extraordinary] Market Conditions [(Fast Markets)]

In the interest of maintaining a fair and orderly market under unusual [trading] market conditions for one or more classes of options, two Floor Officials, *with the concurrence of the Director of Surveillance or his designee,* may [declare a ''fast market'' for these options] *determine that the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to the SEC Quote Rule in a manner that accurately reflects the current market on the Exchange. The Exchange shall immediately notify all specified persons of such a determination.* Regular trading procedures shall be resumed when two Floor Officials determine that the conditions supporting that declaration no longer exist. During the period for which [a fast market is in effect] *such a determination has been made,* displayed quotes for the respective options are not firm *(as required by Rule 1082)* and volume guarantees of [Option] Advice A–11 *and Rule 1015* are not applicable, but the respective Specialists and trading crowds are required to use best efforts to update quotes and fill incoming orders in accordance with Advice A–11 *and Rule 1015.*

Rule 1015. [Quotation] *Execution* Guarantees

(a) *Execution* [Quotation] Guarantees—[Public] *C*[c]ustomer market or marketable limit orders in any options series on the Exchange are to be filled at the best market, *in accordance with Rule 1082,* to a minimum of *the disseminated size* [ten contracts] by floor traders (i.e., Specialists and ROTs) in the crowd as follows:

(i) If only one floor trader is quoting the availed upon best bid (or offer), that floor trader is responsible for providing a fill *for the disseminated size* [on the minimum ten contracts].

(ii) If more than one floor trader is quoting the availed upon best bid (or offer), and their combined quote size is less than *the disseminated size* [ten contracts], participation for the additional contracts needed to meet the *disseminated size* [minimum ten contract] requirement shall be decided upon agreement by those floor traders or otherwise divided proportionately among them.

(iii) If the availed upon best bid (or offer) is established by someone other than a floor trader and is not for at least *the disseminated size* [ten contracts], participation for the additional contracts needed to meet the *disseminated size* [minimum ten contract] requirement shall be supplied at that same price by the floor trader with the immediately prior best bid (or offer). If more than one floor trader was on the prior bid (or offer), participation for the additional contracts shall be decided upon agreement by those floor traders or otherwise divided proportionately among them. For example, if a 2¼ or 2.25 bid by an ROT is followed by a 2½ or 2.50 bid for five contracts by a customer, the ROT who was bidding 2¼ or 2.25 will be responsible for buying the other five contracts at 2½ or 2.50.

[(iv) ROT orders for less than ten contracts that are represented at a trading post by a Floor Broker shall not be disseminated and shall have no standing in the crowd. Floor Brokers shall otherwise remain obligated to use due diligence in the representation of orders pursuant to Rule 155.]

([v]*iv*) The ''availed upon best bid (or offer)'' for purposes of this [Advice] *Rule* shall be the *disseminated price (as defined in Rule 1082)* [crowd markets or the displayed or screen markets, whichever is better. In the instance of a broker quoting a market on behalf of a ten-up eligible order, once the crowd market has been sought, the screen market (if superior) is available on an immediate basis and if not availed upon the displayed market may be revised].

[(vi) In each case where the responsibility to make ten-up markets based on displayed or screen quotations generally applies, an exemption will exist for the first three minutes following completion of the rotation in each series for which a quotation update to the opening quote has not yet occurred. While any such exemption is in effect, the ten-up market guarantee will be based on the crowd markets.]

([vii]v) Orders received by a member from a customer may not be unbundled for the primary purpose of availing upon the *execution guarantee* [ten up market] requirement, nor may a Firm solicit a customer to unbundle an order for the primary purpose of availing upon the *execution guarantee* [ten up market requirement].

([viii]vi) Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The responsible floor agent must legibly mark the floor ticket as ''B/D'' when it has been determined that the order is for an account of a broker/dealer.

([ix]vii) *The disseminated size requirement shall not apply when Exchange quotations are not required to be firm pursuant to paragraph (c) of Rule 1082.* [Exemptions from the ten-up

requirement may be granted by two Floor Officials with the concurrence of the Director of Surveillance or his designee, (1) under exceptional circumstances or for good cause shown (e.g., in fast market conditions) for all or part of a trading session; or (2) on a case-by-case basis where it is determined that an exemption is warranted for an obvious error in the posting of the displayed market quote due to reporter error or system malfunction. Any such exemption shall be in writing and shall set forth the basis upon which the exemption is granted.]

(b) Trade or Fade *When paragraph (e) of Rule 1082 is applicable to an order received by a responsible broker or dealer, participation by Specialists or ROTs above their stated size to fill the order completely or meet the disseminated size requirement (for customer orders) or the quotation size requirement (for broker-dealer orders) shall be decided upon agreement by such Specialists or ROTs or otherwise divided proportionately among them.*

[With respect to non-public customer orders to buy (sell) at the displayed offer (bid), or portions of customer orders greater than the minimum size guarantee in that option, the trading crowd is required to either: (1) sell (buy) the number of contracts specified in the order; or (2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.] Where *the* disseminated market quote *of a responsible broker or dealer* is revised, as provided for in *Rule 1082* [this paragraph], it shall be considered conduct inconsistent with just and equitable principles of trade *for such responsible broker or dealer* [the trading crowd] to immediately re-display *its* [the] previously disseminated market quote, unless such action is warranted by a change in market conditions.

Rule 1033. Bids And Offers-Premium

(a) Size of Bid/Offer and *Disseminated Size* [10 up] Guarantee. All bids or offers made on the Floor for option contracts shall be deemed to be for one option contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract shall be deemed to be for the amount thereof or a smaller number of option contracts. [The Exchange, in its discretion, may require that specialists and ROTs be responsible] *Responsibility* for ensuring that *customer* [public] orders are filled to a minimum *of the disseminated size* [depth of ten (10) contracts] at the *disseminated price* [best quoted bid or offer] *is as set forth in Exchange Rules 1082 and 1015.*

(b)–(i) No change.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of, and basis for, the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

On November 17, 2000, the Commission adopted several amendments to the Quote Rule [13] to apply it to the options exchanges and options market markers. The compliance date for these amendments is April 1, 2001.[14] As a result, it is necessary for the Exchanges to amend their rules to conform to the requirements of the Quote Rule. In particular, the Quote Rule requires responsible brokers or dealers to execute orders at their disseminated quotations, unless the level of trading activities or the existence of unusual market conditions is such that the exchange in which such responsible broker or dealer is a member is incapable of collecting, processing, and making available to quotation vendors the data for the options in a manner that accurately reflects the current state of the market (''unusual market conditions exception to the Quote Rule'').[15] In the Adopting Release, the Commission noted that the options exchanges may have to amend their rules to conform to the Quote Rule's exception for unusual market conditions.[16]

In applying the Quote Rule to the options markets, the Commission provided certain accommodations, because it recognized the unique structure of the options market. For example, the Commission provided the Exchanges with the flexibility to determine whether to collect from responsible brokers or dealers and make available to quotation vendors the size associated with each quotation or to choose, instead, to establish by rule and periodically publish the size for which their disseminated bid and offer in each option series is firm. Further, the Commission gave the Exchanges the flexibility to require responsible brokers or dealers to be firm for different quotation sizes for customer orders than for broker-dealer orders. Finally, with respect to orders to buy or sell options in an amount greater than the firm quote size, the Commission also amended the Quote Rule to require a responsible broker or dealer to respond within 30 seconds to an order to buy or sell options in an amount greater than the firm quote size by either (i) executing the entire order; or (ii) executing at least that portion of the order equal to the applicable firm quote size and then revising its bid or offer (''Thirty Second Response Requirement'').[17] A brief summary of the proposed rule changes filed by each of the Exchanges is provided below.

a. *Amex.* Generally, Amex proposes a number of amendments to Amex Rule 958A to conform it to the Quote Rule. First, Amex proposes to define the term ''responsible broker or dealer'' to mean that the specialist and any registered options traders constituting the trading crowd in a given options series would be collectively responsible for the aggregate quotation size at the disseminated price. Second, for customer orders in option classes for which quotation size can be disseminated by the Options Price Reporting Authority (''OPRA'') (currently, only those option classes trading in decimals), the Amex will collect and disseminate quotes with the size at which its specialists and registered traders will be firm.[18] Third, for customer orders in option classes for which quotation size cannot be disseminated by OPRA and until such time as OPRA is able to disseminate quotation size, the Amex will establish by rule and periodically publish on its website [19] the size for which the disseminated quotation is firm.[20] Fourth, for broker-dealer orders in all option classes, the Amex will establish

[13] 17 CFR 240.11Ac1–1.

[14] Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) (''Adopting Release'').

[15] 17 CFR 240.11Ac1–1(b)(3)(i)

[16] *See* Adopting Release, *supra* note 14 at fn. 80.

[17] 17 CFR 240.11Ac1–1(d)(3).

[18] Proposed Amex Rule 958A(b). Amex will continue to require that specialists and registered traders be firm for customer orders for a minimum of 10 contracts.

[19] Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, and Deborah Flynn, Senior Special Counsel, Division, Commission, on March 30, 2001.

[20] Proposed Amex Rule 958A, Commentary .01. The minimum size established by the Amex for these option classes will also be 10 contracts.

by rule and periodically publish on its website [21] the size for which disseminated quotations are firm. Fifth, the Amex proposes to amend Amex Rule 958A to relieve responsible brokers or dealers from their obligations under Rule 11Ac1–1 in unusual market conditions,[22] and to comply with the Thirty Second Response Requirement, described above.[23] Sixth, Amex proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an error or omission on the part of the Exchange or any quotation vendor.[24] Finally, Amex, along with PCX, also has included as part of its proposal an exception from the Exchange's obligation to collect, process and make available data during a trading rotation.[25]

b. *CBOE.* CBOE proposes to amend CBOE Rule 8.51 to define the term ''responsible broker or dealer'' to mean that the trading crowd in a given series or class of option would be responsible for the aggregate quotation size at the disseminated price.[26] CBOE further proposes to allow the appropriate Floor Procedure Committee to set the firm quote requirement for both non-broker-dealer orders and broker-dealer orders.[27] The proposed rule change does require, however, that both types of order be subject to a firm quote requirement of at least one contract. The proposed rule change also requires CBOE to periodically publish its firm quote requirement. CBOE intends to publish the firm quote requirement on CBOE's public website.[28] In addition, under the proposed rule change, if CBOE disseminates quotation sizes, the firm quote requirement for non-broker-dealer orders will be no greater than the disseminated size. CBOE also proposes to amend CBOE Rule 8.51 to relieve responsible brokers or dealers from their obligations under Rule 11Ac1–1 in unusual market conditions,[29] and to comply with the Thirty Second Response Requirement.[30] In addition, CBOE proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an error or omission made by the Exchange or any quotation vendor.[31]

CBOE's proposed rule change also proposes to include foreign broker-dealers within its definition of broker-dealer for purposes of their members' firm quote obligation.[32] Finally, CBOE currently has a rule that provides that when multiple orders for the same class from the same beneficial owner are represented at the trading station at approximately the same time, only the first of such orders that cumulatively equal or add up to less than the firm quote requirement would be entitled to an execution pursuant to CBOE's rules.[33] CBOE proposes that responsible broker-dealers also would be relieved of the obligations under Rule 11Ac1–1 in these circumstances.[34]

c. *ISE.* ISE proposes to amend ISE Rule 804 to specify that each market maker's quotes must be firm for customer orders up to the size of the quotation, and that each market maker quote must also be firm to non-customers for at least one contract.[35] According to ISE, this rule change codifies current ISE practices and therefore, does not change current market maker obligations. Specifically, ISE's disseminated quotation will be firm for all public-customer orders. Also, the disseminated quotation price will be firm for non-customers for at least one contract.[36] As required under the Quote Rule, ISE also will publish on its website the fact that it is firm for non-customers for at least one contract.

ISE's proposed rule change would also relieve its market makers from their obligations under the Quote Rule in unusual market conditions,[37] and would amend ISE Rule 704 (Unusual Market Conditions) to specify that, during fast markets,[38] ISE would disseminate quotes with an indicator to provide notice that its quotes are not firm,[39] and that the indicator would be removed to provide notice when quotes become firm again. In addition, ISE proposes to adopt language to incorporate into its rules the Thirty Second Response Requirement.[40] Finally, ISE proposes to retain its existing, very general provision for obvious errors as an exception to their members' obligations under the Quote Rule.[41]

d. *PCX.* PCX proposes to define the term ''responsible broker or dealer'' to mean that the Lead Market Maker and any registered market makers constituting the trading crowd in a given option series would be responsible collectively for the aggregate quotation size at the disseminated price.[42] PCX proposes to comply with the Quote Rule by establishing by rule and periodically publishing the quotation size for which each responsible broker or dealer on PCX is obligated to execute an order to buy or sell an option series that is a reported security at its published bid or offer.[43] The PCX also proposes to establish by rule that the minimum quotation size would be 20 contracts for customer orders and one contract for broker-dealer orders.[44] PCX proposes to continue to disseminate its firm quote sizes in each option series over OPRA.[45] Further, PCX is proposing to relieve responsible brokers or dealers of their obligations under the Quote Rule in

[21] *See supra* note 19.

[22] Proposed Amex Rule 958(A)(d).

[23] Proposed Amex Rule 958A(c)(iii).

[24] Proposed Amex Rule 958A, Commentary .02.

[25] Proposed Amex Rule 958A(b).

[26] Proposed CBOE Rule 8.51(a)(1).

[27] Proposed CBOE Rule 8.51(b)(1) and (c).

[28] However, at least initially, until the information can be placed on its website, CBOE will make a paper copy available to the public at its place of business.

[29] Proposed CBOE Rule 8.51(e).

[30] Proposed CBOE Rule 8.51(d).

[31] Proposed CBOE 8.51, Interpretation and Policy .08.

[32] Proposed CBOE Rule 8.51(c). In conjunction with this proposal, CBOE has submitted a request for an exemption that would allow responsible brokers or dealers to be firm for orders from foreign broker-dealers to the same amount as they are firm for U.S. broker-dealers under the Quote Rule. *See* letter to Annette L. Nazareth, Director, Division, Commission, from Timothy H. Thompson, Esq., Assistant General Counsel, CBOE, dated March 29, 2001.

[33] Current CBOE Rule 8.51(a)(3).

[34] Proposed CBOE Rule 8.51(b)(3). In conjunction with this proposal, CBOE has submitted to the Commission a request for an exemption that would allow responsible brokers or dealers to be relieved of their obligations under the Quote Rule for multiple orders for the same class of options received from the same beneficial owner at approximately the same time. *See* letter to Annette L. Nazareth, Director, Division, Commission, from Timothy H. Thompson, Esq., Assistant General Counsel, CBOE, dated March 29, 2001.

[35] Proposed ISE Rule 804(b).

[36] Proposed ISE Rule 804(b). Because each quotation must be firm to non-customers for at least one contract, when there are multiple competing market makers quoting at the best price, the ISE's disseminated price would be firm to non-customers for more than one contract.

[37] Proposed ISE Rule 804(d)(1)(iii).

[38] The Commission notes that although ISE has decided to use the term ''fast'' market for those times when the level of trading activity or the existence of unusual market conditions is such that ISE is incapable of collecting, processing, and making available to quotation vendors quotation data, the definition of a fast market proposed by ISE in ISE Rule 704(d)(1)(iii) exactly parallels paragraph (b)(3)(i) of Exchange Act Rule 11Ac1–1.

[39] Proposed ISE Rule 704(c)(1). Each of the other Exchanges also represents that it would disseminate its quotes with an indicator to provide notice that their responsible brokers or dealers have been relieved of their obligations under the Quote Rule. Proposed Amex Rule 958A(d)(iv); Proposed CBOE Rule 8.51(e)(1)(iii); Proposed PCX Rule 6.86(d)(1)(D); and Phlx Amendment No. 2, *supra* note 10.

[40] Proposed ISE Rule 804(d)(2).

[41] Proposed ISE Rule 804(d).

[42] Proposed PCX Rule 6.86(a)(2).

[43] Proposed PCX Rule 6.86(b).

[44] Proposed PCX Rule 6.86(c).

[45] PCX notes, however, that the firm quote sizes that it will be disseminating over OPRA may not be the same sizes that PCX guarantees for automatic execution on its Auto-Ex System.

unusual market conditions [46] and to incorporate into its rules the Thirty Second Response Requirement. In addition, PCX proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an error or omission made by the Exchange or any quotation vendor.[47] Finally, PCX, along with Amex, has also included as part of its proposal an exception from the Exchange's obligation to collect, process, and make available to quotation vendors quotation data during a trading rotation.[48]

e. *Phlx.* Phlx proposes to define the term ''responsible broker or dealer'' to mean that all members in the trading crowd bidding (or offering) at the disseminated price would be collectively required to execute orders presented to them at such price up to the disseminated size.[49] Phlx also proposes to require firm quotes for customer orders up to the Phlx's disseminated size, which is defined to be the AUTO-X guarantee size unless the quote is for a limit order on the book, in which case the disseminated size is ten contracts.[50] Proposed Phlx Rule 1082(d) would allow the quotation size for broker-dealer orders to be one contract. In addition, the Phlx also proposes to amend Phlx Rule 1082 and Options Floor Procedure Advice F–10 to relieve responsible brokers or dealers of their obligations under the Quote Rule in unusual market conditions [51] and to incorporate into its rules the Thirty Second Response Requirement.[52]

In addition, Phlx proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an obvious error in the posting of the disseminated price or disseminated size due to reporter error or system malfunction.[53] Finally, Phlx proposes to retain a provision from its current rules in Proposed Phlx Rule 1015(a)(v) and Proposed Options Floor Procedure Advice A–11(a)(v) that would prohibit orders from being ''unbundled'' for the primary purpose of availing upon the execution guarantee requirement provided by the Phlx.

2. Statutory Basis

The Exchanges believe the proposed rule changes are consistent with Section 6(b) of the Exchange Act [54] in general and further the objectives of Section 6(b)(5) [55] in particular in that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believe that the proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.

The Exchanges have requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Exchange Act,[56] for approving the proposed rule changes so that they will be in place prior to April 1, 2001, the compliance date of the Quote Rule for the options market.

IV. Solicitation of Comments

CBOE currently has a rule that provides that when multiple orders for the same class from the same beneficial owner are represented at the trading station at approximately the same time, only the first of such orders that cumulatively equal or add up to less than the firm quote requirement would be entitled to an execution pursuant to CBOE's rules.[57] CBOE proposes that responsible broker-dealers also would be relieved of their obligations under Rule 11Ac1–1 in these circumstances.[58]

Similarly, Phlx proposes to retain a provision from its current rules in Proposed Phlx Rule 1015(a)(v) and Proposed Options Floor Procedure Advice A–11(a)(v) that would prohibit orders from being ''unbundled'' for the primary purpose of availing upon the execution guarantee requirement provided by the Phlx. These provisions were approved by the Commission and implemented by the respective exchanges prior to the recent adoption of amendments to the Quote Rule that extended it to the options markets. Generally, the Quote Rule requires each responsible broker or dealer to ''execute *any* order to buy or sell a subject security * * * at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or offer * * * in any amount up to its published quotation size.'' [59] The Quote Rule does not expressly provide an exception for multiple orders submitted by the same beneficial owner. And, in fact, the Quote Rule requires, subject to certain limitations, a responsible broker or dealer to execute *any* order up to its published size. As a result, the Commission specifically solicits comments on whether it would be appropriate for the Commission to grant an exemption from the requirements of the Quote Rule for multiple orders submitted by the same beneficial owner.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes, as amended, are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchanges. All submissions should refer to the File Nos. SR–Amex–01–18, SR–CBOE–01–

[46] Proposed PCX Rule 6.86(d).

[47] Proposed PCX Rule 6.86, Commentary. 02.

[48] Proposed PCX Rule 6.86(b)(3)(B).

[49] Proposed Phlx Rule 1082(b).

[50] Proposed Phlx Rule 1082(a)(ii) and (b).

[51] Proposed Phlx Rule 1082(c).

[52] Proposed Phlx Rule 1082(e).

[53] Proposed Phlx Rule 1082(c)(iv).

[54] 15 U.S.C. 78f.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78s(b)(2).

[57] Current CBOE Rule 8.51(a)(3).

[58] Proposed CBOE Rule 8.51(b)(3).

[59] 17 CFR 240.11Ac1–1(c)(2) (emphasis added).

15, SR–ISE–01–07, SR–PCX–01–18, and SR–Phlx–01–37 and should be submitted by May 1, 2001.

V. Commission Findings and Order Granting Partial Accelerated Approval of Certain Portions of the Proposed Rule Changes for a Sixty Day Pilot Period

The Commission finds that the proposed rule changes, as amended and subject to the limitations described below, relating to the implementation of the Pilots for a sixty day period, are consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange,[60] and, in particular, Section 6(b)(5) of the Exchange Act.[61] As noted in the Adopting Release, the Commission believes that the application of the Quote Rule to the options markets will provide significant and immediate benefits to investors. In particular, market participants, including customers and broker-dealers, will be able to rely on quotes up to the published size when routing orders. Further, the Commission is approving portions of the proposed rule changes as Pilots on an accelerated basis because the options exchanges and market makers must begin to comply with the Quote Rule beginning on April 2, 2001. During the 60 day Pilots, the Commission will consider any comments received and determine whether to approve the Exchanges' proposed rule changes on a permanent basis.

A. Responsible Brokers or Dealers

Each of the Exchanges' proposed rules, except for ISE's proposed rules, require that the trading crowd, as a group, be obligated under the Quote Rule for executing orders at the Exchanges' disseminated quote up to the published quotation size. The Commission believes that because all of these Exchanges disseminate one quotation, rather than independent quotations from each market maker on the floor, these proposals are consistent with the definition of responsible broker or dealer in the Quote Rule.

B. Unusual Market Conditions Exception to the Quote Rule

The Commission notes that the Exchanges have proposed rules to relieve responsible brokers or dealers from their obligations under the Quote Rule in unusual market conditions. Paragraph (b)(3)(i) of the Quote Rule provides that responsible brokers or dealers on the Exchanges will be relieved of their obligations under their rules and the Quote Rule when the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors quotation data. The Commission believes that such rules are consistent with the Exchange Act; however, the Commission expects that the Exchanges will reevaluate their rules during the Pilots to ensure that sufficient monitoring procedures are in place to fully implement the requirements of the Quote Rule.

C. Thirty Second Response Requirement

The Thirty Second Response Requirement provision of the Quote Rule requires a responsible broker or dealer to respond to an order to buy or sell a listed option in an amount greater than the firm quote size within thirty seconds by either executing the entire order or executing at least a portion of the order equal to the firm quote size and revising its bid or offer. The Commission expects that either the entire order would be executed at the disseminated price or better or that the responsible broker-dealer would execute at least that portion of the order equal to the applicable firm quote size at the disseminated price or better and then revise its bid or offer to an inferior quote. The Commission believes that the Exchanges' incorporation of the Thirty Second Response Requirement from the Quote Rule into their own rules should ensure that larger than firm quote size orders are handled in an expedited and equitable fashion.

D. Trading Rotations

As described above, PCX and Amex have each proposed an exception from the Exchanges' obligations pursuant to Rule 11Ac1–1(b)(1)(i) to collect, process and make available quotation data during a trading rotation. While the Quote Rule does not specifically provide for this exception for Exchanges,[62] the Commission believes that the proposed exception is consistent with the Quote Rule. Specifically, to the extent that a trading rotation is either an opening rotation or involves a halt or suspension in trading, the Quote Rule explicitly provides an exception for Exchanges from the dissemination requirement ''during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange.'' [63]

E. Obvious Errors

As described above, the Exchanges have proposed in their rules either to retain or incorporate an obvious error exception to the Quote Rule.[64] While ISE has retained a very general provision for obvious errors,[65] the other exchanges have limited the application of such an exception by permitting as an exception to the Quote Rule only those errors that are the result of an error or omission made by an exchange or quotation vendor or that are the result of a reporter error or system malfunction.[66]

The Commission believes that for purposes of the Pilots, an obvious error exception to the Quote Rule must be interpreted very narrowly to avoid potential abuses and limitations on the Quote Rule. As a result, the Commission believes that, consistent with the Exchange Act, only errors that are not the result of an act or omission by the responsible broker or dealer should be permissible exceptions to the requirements of the Quote Rule. The Commission believes that any broader interpretation or application of the Exchanges' rules would be inconsistent with the Quote Rule. Similarly, the Commission believes that Amex Rule 958A, Commentary .03, which provides exceptions for when a responsible broker or dealer is not required to comply with an erroneous quote, is consistent with the Quote Rule only if it is interpreted to apply only when there has been an error or omission made by the Exchange or a quotation vendor.

F. Treatment of Orders From the Accounts of Foreign Broker-Dealers

As discussed above, the Commission received a request for an exemption from CBOE that would permit its responsible brokers or dealers to treat unregistered foreign broker-dealers the same as broker-dealers for proposes of the Quote Rule. By letter dated April 2,

[60] In granting partial approval of the proposals, the Commission has considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). Approval of the Pilots should not be interpreted as suggesting that the Commission is predisposed to approving the Exchanges' proposed rule changes on a permanent basis.

[61] 15 U.S.C. 78f(b)(5).

[62] Rule 11Acl–1(d)(4) provides an exception for responsible brokers or dealers during a trading rotation. 17 CFR 240.11Ac1–1(d)(4).

[63] 17 CFR 240.11Acl–1(b)(1)(i)(B).

[64] Proposed ISE Rule 804, Proposed Amex Rule 958A Commentary .02 and .03, Proposed PCX 6.86 Commentary .02, Proposed CBOE 8.51 Interpretation and Policy .08, and Proposed Phlx Rule 1082(c).

[65] Proposed ISE Rule 804(d).

[66] Proposed Amex Rule 958A, Commentary .02, Proposed CBOE Rule 8.51 Interpretation and Policy .08, Proposed PCX 6.86 Commentary .02, and Proposed Phlx Rule 1082(c).

2001, the Commission granted the requested exemption to the CBOE, as well as all national securities exchanges, pursuant to Rule 11Ac1–1(e), permitting them to treat foreign broker-dealers the same as U.S. broker-dealers for purposes of the Quote Rule.[67] Notwithstanding the requirements of Rule 11Ac1–1(c)(2),[68] the Commission exempted responsible brokers or dealers from the requirement under paragraph (c)(2) of the Quote Rule[69] to execute any order for the account of a foreign broker or dealer to buy or sell an options series in an amount up to such responsible brokers' or dealers' published quotation size for orders for the account of a customer. This exemption was conditioned on such responsible brokers and dealers executing orders for the accounts of foreign brokers and dealers at a price at least as favorable as the responsible broker's or dealer's published bid or published offer in an amount up to their published quotation size for orders for the account of brokers and dealers. The Commission's exemption applies to responsible brokers and dealers on each of the exchanges that trade listed options.

G. Proposed CBOE Rule 8.51(b)(3), Proposed Phlx Rule 1015(a)(v), and Proposed Options Floor Procedure Advice A–11(a)(v)

As discussed above, CBOE currently has a rule that provides that when multiple orders for the same class from the same beneficial owner are represented at the trading station at approximately the same time, only the first of such orders that cumulatively equal or add up to less than the firm quote requirement would be entitled to an execution pursuant to CBOE's rules.[70] CBOE proposes that responsible broker-dealers also would be relieved of the obligations under Rule 11Ac1–1 in these circumstances.[71] Similarly, Phlx proposes to retain a provision from its current rules in Proposed Phlx Rule 1015(a)(v) and Proposed Options Floor Procedure Advice A–11(a)(v) that would prohibit orders from being ''unbundled'' for the primary purpose of availing upon the execution guarantee requirement provided by the Phlx.

The Commission notes that neither exchange has provided a basis for why such provisions are consistent with the Quote Rule.[72] Although the Commission approved these provisions as being consistent with each exchange's rules, the Commission believes that these rules are not consistent with the Quote Rule. Therefore, these rules cannot be used to relieve the Exchanges' members from their obligations under the Quote Rule to be firm for the disseminated price up to their published quotation size. The Commission, however, is soliciting comment on whether it would be appropriate for it to grant responsible brokers or dealers an exemption from their obligations under the Quote Rule when multiple orders are submitted for the account of the same beneficial owner in the same options class at approximately the same time.

The Commission finds good cause for granting the Exchanges' request for the Pilots prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that April 1, 2001 is the compliance date for the amendments to the Quote Rule extending its application to the options markets. The Commission believes that granting accelerated approval to the Pilots will allow the Exchanges to implement the conforming amendments to the Quote Rule on its compliance date.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[73] that only the portions of the proposed rule changes relating to the Pilots proposed by the Exchanges (File Nos. SR–Amex–01–18, SR–CBOE–01–15, SR–ISE–01–07, SR–PCX–01–18, and SR–Phlx–01–37), as amended, are approved until June 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[74]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–8740 Filed 4–9–01; 8:45 am]

BILLING CODE 8010–01–U

[67] *See* letter from Annette L. Nazareth, Director, Division, Commission, to Timothy H. Thompson, Esq., Assistant General Counsel, CBOE, dated April 2, 2001.

[68] 17 CFR 240.11Ac1–1(c)(2).

[69] 17 CFR 240.11Ac1–1(c)(2).

[70] Current CBOE Rule 8.51(a)(3).

[71] Proposed CBOE Rule 8.51(b)(3).

[72] In fact, as noted above, the Commission has received a request for an exemption from CBOE that would allow its responsible brokers or dealers to be relieved of their obligations under the Quote Rule with respect to multiple orders for the same class of options received from the same beneficial owner at approximately the same time. *See supra* note 34.

[73] 15 U.S.C. 78s(b)(2).

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44147; File No. SR–CBOE–01–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Clarify Certain Provisions in Its Rules Relating to the Trading of Options on Securities That Represent an Interest in Registered Investment Companies

April 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 16, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') file with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. CBOE filed the proposal as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] 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

CBOE hereby proposes to clarify certain provisions in its rules relating to the trading of options on securities that represent an interest in registered investment companies, including margin requirements and strike price intervals.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 2, 1998, the Commission approved a CBOE rule change relating to the listing and trading of options on securities that represent an interest in listed, open-end, registered investment companies that hold securities comprising or based on broad-based indexes or portfolios of securities.[4] On August 3, 2000, the Commission approved a CBOE rule change proposing to allow for the trading of options on securities that represent interests in registered investment companies based on narrow-based indexes or portfolios of securities.[5] The Exchange is now proposing to clarify certain rules relating to the trading of these products (''Fund Shares'').[6] More specifically, the Exchange is proposing to make clear in its rules (1) the margin requirements applicable to options on Fund Shares and (2) strike price intervals applicable to trading in certain Fund Shares.

In SR–CBOE–97–03, the Commission approved margin requirements for options on Fund Shares at the same levels that apply to options generally under CBOE Rule 12.3, except that margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% of the market value of equivalent units of the underlying security value.[7] Because that filing only contemplated options on Fund Shares based on broad-based indexes, it had the effect of making these margin requirements comparable to margin requirements for broad-based index options traded under CBOE Chapter 24. However, as a result of a CBOE rule filing making broad revisions to Rule 12.3 governing margin requirements that was filed after SR–CBOE–97–03 but approved before SR CBOL–97–03,[8] the margin provisions adopted in SR–CBOE–97–03 were mistakenly never incorporated into the text of CBOE Rule 12.3 despite the fact that they were approved.

The Exchange now merely seeks to incorporate into CBOE Rule 12.3 the omitted language previously approved in SR–CBOE–97–03. The Exchange also proposes to formalize margin requirements for options on Fund Shares based on narrow-based indexes or portfolios of securities. As with broad-based Fund Share options, these narrow-based Fund Share options would be comparable to their index option equivalent. Accordingly, the Exchange proposes to amend CBOE Rule 12.3 to provide that, for options on Fund Shares based on narrow-based indexes or portfolios of securities, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 20% of the market value of equivalent units of the underlying security value.[9] The Exchange notes that these proposed changes are consistent with the American Stock Exchange's (''Amex'') margin requirements for Fund Shares set forth in Amex Rule 462.

The CBOE is also proposing to clarify in CBOE Rule 5.5 that the intervals for strike prices of series of options on Fund Shares based on the Nasdaq-100 Index shall be $1.00. The Exchange notes that the Amex, Philadelphia Stock Exchange, and International Securities Exchange trade such options with $1.00 strike intervals.[10]

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the requirements of section 6(b)(5) Act.[11] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose a 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 written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate) it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[14]

CBOE has requested that the Commission waive the 30-day pre-operative period because the CBOE believes that the proposed rule change does not significantly affect the protection of investors or the public interest or impose any significant burden on competition. The Commission agrees with the CBOE and believes that it is consistent with the protection of investors and the public interest that the proposed rule change become effective immediately. Accordingly, the commission finds good cause to waive the 30-day operative waiting period and to designate that the proposal become operative immediately.[15]

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

[4] *See* Securities Exchange Act Release No. 40166 (July 2, 1998) 63 FR 37430 (July 10, 1998) (File No. SR–CBOE–97–03).

[5] *See* Securities Exchange Act Release No. 43114 (August 3, 2000) 65 FR 49041 (August 10, 2000) (File No. SR–CBOE–00–31).

[6] There are several Fund Share structures that can be listed and traded on CBOE, including Index Portfolio Receipts and Index Portfolio Shares.

[7] The margin requirement is subject to CBOE Rule 12.3(c)(5).

[8] *See* Securities Exchange Act Release No. 36709 (June 2, 1997), 62 FR 31643 (June 10, 1997) (File No. SR–CBOE–97–17)

[9] The margin requirement is subject to CBOE Rule 12.3(c)(5).

[10] *See* Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998); Securities Exchange Act Release No. 44037 (March 2, 2001), 66 FR 14613 (March 13, 2001); and Securities Exchange Act Release No. 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] Upon request from the CBOE, the Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change at least five business days prior to the date of filing. 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–01–11 and should be submitted by May 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–8770 Filed 4–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44140; File No. SR–EMCC–00–08]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Approving a Proposed Rule Change To Permit Members To Satisfy Clearing Fund Obligations With Either Immediately Available Funds or Eligible Treasury Securities

March 30, 2001.

On November 3, 2000, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–EMCC–00–08) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on January 11, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Prior to this order, EMCC's Rule 4, section 5(B)(iii) required that members satisfy their obligation to make additional required deposits (''margin'') to the clearing fund in immediately available funds. EMCC Rule 4, section 8 permits the substitution of eligible collateral for clearing fund cash. Members may substitute on the same day a cash deposit is made eligible treasury securities[3] or an eligible letter of credit[4] for all or a portion of any such deposited cash provided the member maintains the requisite minimum ratios of cash to securities and/or letters of credit.[5]

To accommodate the member requests, EMCC proposed changing Rule 4, section 5(b)(iii) to allow members the option of meeting clearing fund margin calls with either cash or eligible treasury securities. The proposed rule change increases operating efficiencies by transforming what is currently a two-step process into a single step process. Eligible treasury securities so deposited will be valued at 95% of their current market value as provided in EMCC Rule 4, section 8. Notwithstanding the change, EMCC retains the discretionary right to require additional deposits to be made in cash.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[6] The Commission believes that the approval of EMCC's rule change is consistent with this Section because this merely allows firms to meet a call for additional clearing fund collateral with a deposit of government securities valued at 95% of current market value instead of with a deposit of immediately available funds immediately followed by a substitution of government funds. The Commission also notes that EMCC has retained the right to require firms to meet calls for additional clearing fund in immediately available funds.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–00–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–8739 Filed 4–9–01; 8:45 am]

BILLING CODE 8010–01–M

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43808 (January 4, 2001), 66 FR 2463.

[3] As defined in EMCC Rule 1, the term ''eligible treasury security'' means an unmatured, marketable debt security in book-entry form that is a direct obligation of the United States Government.

[4] As defined in EMCC Rule 1, the term ''eligible letter of credit'' means a letter of credit that:

(a) is issued by an approved letter of credit issuer;

(b) contains the unqualified commitment of such issuer to pay a specified sum of money upon demand (properly drawn under the letter of credit) at any time prior to the expiration of the letter of credit;

(c) is irrevocable and may be neither revoked nor amended to reduce its amount except upon the issuer's written notice to EMCC of its intent to revoke or amend, which must be given not less than five full business days prior to the date fixed for such revocation or amendment, and EMCC's consent to the revocation or amendment, which shall be given promptly upon EMCC's determination that the member either has substituted other collateral of at least equal value prior to such revocation or amendment or otherwise will have sufficient remaining value in its clearing fund deposit at the time of such revocation or amendment to satisfy its anticipated required fund deposit;

(d) states that (1) it will be duly honored upon presentment of it to the issuing bank and (2) partial drawings are permitted; and

(e) is in a form and contains such other terms and conditions as may be required by EMCC.

[5] EMCC Rule 4, sections 2 and 8(c).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] 17 CFR 200.30-3(9a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3330]

Commonwealth of Massachusetts

Middlesex County and the contiguous Counties of Essex, Norfolk, Suffolk and Worcester in Massachusetts; Hillsborough County in the State of New Hampshire constitute a disaster area as a result of damages caused by a fire that occurred on March 25, 2001. Applications for loans for physical damage may be filed until the close of business on June 4, 2001 and for economic injury until the close of business on January 4, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	8.000

	Percent
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 333005 for Massachusetts and 333105 for New Hampshire. The number assigned to this disaster for economic injury is 9L3700 for Massachusetts and 9L3800 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 3, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–8808 Filed 4–9–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3329]

Commonwealth of Pennsylvania

Montgomery County and the contiguous Counties of Bucks, Berks, Chester, Delaware, Lehigh and Philadelphia in the Commonwealth of Pennsylvania constitute a disaster area as a result of a fire that occurred March 29, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 4, 2001 and for economic injury until the close of business on January 4, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 332905. The number assigned to this disaster for economic injury is 9L3600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 3, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–8807 Filed 4–9–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3635]

Bureau of Consular Affairs; Notice of Information Collection Under Emergency Review: Report of Death of an American Citizen Abroad (OMB# 1405–0048)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement.

Originating Office: CA/OCS/PRI.

Title of Information Collection: Report of Death of an American Citizen Abroad.

Frequency: On occasion.

Form Number: OF–180.

Respondents: Individuals—U.S. Consular Staff.

Estimated Number of Respondents: 6,000 per year.

Average Hours Per Response: 2.

Total Estimated Burden: 6,000.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 14, 2001. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Monica Gaw, CA/OCS/PRI, Room 4811, U.S. Department of State, Washington, DC 20520. She may be reached on 202–647–3683.

Dated: March 28, 2001.

Frank Moss,

Executive Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 01–8810 Filed 4–9–01; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

[Public Notice 3636]

Notice of Information Collection under Emergency Review: Medical History and Examination for Foreign Service (OMB# 1405–0068)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Reinstatement of Expired Information Collection

Originating Office: Office of Medical Services M/DGHR/MED.

Title of Information Collection: Medical History and Examination for Foreign Service.

Frequency: Biennially.

Form Number: DS–1843 Medical History and Examination for Foreign Service for Persons 12 Years and Over and DS–1622 Medical History and Examination for Foreign Service for Persons 11 Years and Under.

Respondents: Candidates for Foreign Service Positions and their Eligible Family Members.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 12,000.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by April 14, 2001. If granted, the emergency approval is valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date of publication of this notice. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to John A. Triplett, Office of Medical Services, 2401 E Street, NW, Room 201, (202) 663–1680, U.S. Department of State, Washington, DC 20520.

Dated: March 26, 2001.

Gary R. Alexander,

Executive Director, Office of Medical Services, Department of State.

[FR Doc. 01–8811 Filed 4–9–01; 8:45 am]

BILLING CODE 4710–36–U

DEPARTMENT OF STATE

[Public Notice 3634]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: March 1 and 12, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: March 22, 2001.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

Department of State

March 1, 2001.

The Honorable J. Dennis Hastert.
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia beyond those addressed in DTC 39–98, dated March 19, 1998, DTC 98–99, dated August 5, 1999, and DTC 014–00, dated March 7, 2000, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael A. Guest

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 034–01

Department of State

March 12, 2001.

The Honorable J. Dennis Hastert.
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of the MTSAT–1R satellite and associated ground equipment to the Japanese Ministry of Transport. The satellite will provide meteorological information to the Japanese Meteorological Agency as well as civil aviation communications for the Japanese Civil Aviation Bureau. The satellite is planned for launch from either Japan or French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Michael A. Guest,

Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 006–01

[FR Doc. 01–8809 Filed 4–9–01; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending March 23, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2001–9213.

Date Filed: March 20, 2001.

Parties: Members of the International Air Transport Association.

Subject: CTC2 EUR 0008, dated March 20, 2001, Mail Vote 117—TC2 Within Europe Cargo Resolutions (Amending), Intended effective date: April 1, 2001.

Docket Number: OST–2001–9215.

Date Filed: March 21, 2001.

Parties: Members of the International Air Transport Association.

Subject: PTC12 MATL–EUR 0050 dated February 9, 2001, TC12 Mid Atlantic-Europe Resolutions r1-r30, PTC12 MATL–EURO 0051 dated March 13, 2001, (Extension Filing Period), Minutes—PTC12 MATL–EURO 0052, dated March 16, 2001, Tables—PTC12 MATL–EUR Fares 0017, dated February 13, 2001, Intended effective date: April 1, 2001.

Docket Number: OST–2001–9226.

Date Filed: March 22, 2001.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–AFR 0104 dated March 20, 2001, TC12 South Atlantic-Africa Expedited Resolution 002xx Intended effective date: April 15, 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–8761 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending March 23, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–477

Date Filed: March 20, 2001

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 10, 2001.

Description: Application of L.B. Limited (''LB''), pursuant to 49 U.S.C. 41301, *et seq.* 14 CFR 211.21 requesting renewal of its foreign air carrier permit, authorizing LB to engage in (a) scheduled foreign air transportation of persons, property and mail as follows: 1. Between Freeport, The Bahamas, and the coterminal points Baltimore, MD/Washington, DC; Birmingham, AL; Chicago, IL; Cincinnati, OH; Cleveland, OH; Detroit, MI; Fort Lauderdale, FL; Greenville/Spartanburg, SC; Hartford, CT; Jacksonville, FL; Memphis, TN; Miami, FL; Nashville, TN; New Orleans, LA; New York, NY; Orlando, FL; Philadelphia, PA; Raleigh-Durham, NC; Richmond, VA; Tampa, FL; and West Palm Beach, FL; and, 2. Between Nassau, The Bahamas, and the coterminal points Baltimore, MD/Washington, DC; Chicago, IL; Cincinnati, OH; Cleveland, OH; Fort Lauderdale, FL; Hartford, CT; Miami, FL; Nashville, TN; New Orleans, LA; New York, NY; Orlando, FL; Philadelphia, PA; Raleigh-Durham, NC; Richmond, VA; and West Palm Beach, FL; and (b) charters pursuant to 14 CFR 212 of the Department's regulations.

Docket Number: OST–2001–9214

Date Filed: March 20, 2001

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 10, 2001

Description: Application of Air Florida Express, Inc. d/b/a Air Florida pursuant to 49 U.S.C. section 41738 and subpart B, requesting authority to operate scheduled passenger service as a commuter air carrier between Fort Lauderdale Hollywood International Airport and Marathon Airport in Florida.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–8760 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Sunair Express, LLC

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2001–4–3) Docket OST–00–8015.

SUMMARY: The Department of Transportation is proposing to find that SunAir Express, LLC is fit, willing, and able, to provide commuter air service under 49 U.S.C. 41738.

Responses:

Objections and answers to objections should be filed in Docket OST–00–8015 and addressed to the Department of Transportation Dockets, PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than April 18, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: April 4, 2001.

Susan E. McDermott,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 01–8759 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–28]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 30, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA

received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on April 4, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: FAA–2001–8613.

Petitioner: Midwest Express Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of the Relief Sought: To permit MEA to replace its required approved pyrotechnic signaling device on each aircraft with, for each crewmember on each aircraft operated under this proposed exemption, a personal flotation device that is equipped with an approved survivor locator light.

Docket No.: FAA–2001–9138.

Petitioner: Air Canada.

Section of 14 CFR Affected: 14 CFR 43.17(c)(2)

Description of Relief Sought: To permit Air Canada to perform maintenance, preventive maintenance, and alteration on U.S. aeronautical products that were not transported to Canada from the United States.

[FR Doc. 01–8717 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on February 1, 2001 (66 FR 8609).

DATES: Comments must be submitted on or before May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On February 1, 2001, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 66 FR 8609. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Passenger Train Emergency Preparedness.

OMB Control Number: 2130–0545.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: The collection of information is due to the passenger train emergency preparedness regulations set forth in 49 CFR Parts 223 and 239 which require railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting operations of rail passenger service. The regulations require luminescent or lighted emergency markings so that passengers and emergency responders can readily determine where the closest and most accessible exit routes are located and how the emergency exit mechanisms are operated. Windows and doors intended for emergency access by responders for extrication of passengers must be marked with retro-reflective material so that emergency responders, particularly in conditions of poor visibility, can easily distinguish them from less accessible doors and windows. Records of the inspection, maintenance and repairs of emergency window and door exits, as well as records of operational efficiency tests, will be used to ensure compliance with the regulations.

Annual Estimated Burden Hours: 4,595.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. §§ 3501–3520.

Issued in Washington, DC on April 4, 2001.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 01–8764 Filed 4–9–01; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34024]

East Chattanooga Belt Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company

East Chattanooga Belt Railway Company (ECBT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease and operate a line of railroad currently owned by Norfolk Southern Railway Company (NS) beginning at approximately NS milepost 448, in the vicinity of CP 23rd Street, railroad valuation station 1+25, and extending to valuation station 5633+27, at the intersection of the rail line and Awtry Street, a distance of approximately 4.4 route miles in Chattanooga, TN.

The parties report that they intend to consummate the transaction on or after the April 4, 2001 effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34024 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2615.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: April 3, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–8664 Filed 4–9–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance; Proposed Collection; 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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of the Under Secretary for Domestic Finance of the Department of the Treasury is soliciting comments concerning requests for its determination that certain activities are financial in nature pursuant to the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338 (GLBA).

DATES: Written comments should be received on or before June 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Three Financial Activities Regulation, Office of Financial Institutions Policy, 1500 Pennsylvania Ave., NW., Room SC37, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Edward J. DeMarco, Acting Director, Office of Financial Institutions Policy, (202) 622–2730, or Gary W. Sutton, Senior Banking Counsel, (202) 622–1976.

SUPPLEMENTARY INFORMATION:

Title: Activities permitted under section 5136A(b((3) of the Revised Statutes.

OMB Number: 1505–0179.

CFR Cite: 12 CFR 1501.2.

Abstract: Section 121 of the GLBA requires the Secretary of the Treasury (Secretary), in consultation with the Board of Governors of the Federal Reserve System, to define the extent to which three generally described activities are financial in nature or incidental to a financial activity, and therefore permissible for a financial subsidiary of a national bank. National banks and other interested parties may submit requests that the Secretary determine that an activity is included within one of these categories of activities and is therefore financial in nature or incidental to a financial activity, including in such request information to enable the Secretary to make such a determination.

Current Actions: The Secretary may notify those requesting such a determination that an activity is or is not within one of the three categories of activities and therefore is or is not financial in nature or incidental.

Type of Review: Extension.

Affected Public: National banks; other interested parties.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 100 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 4, 2001.

Edward J. DeMarco,

Acting Director, Office of Financial Institutions Policy.

[FR Doc. 01–8736 Filed 4–9–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance; Proposed Collection; 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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of the Under Secretary for Domestic Finance of the Department of the Treasury is soliciting comments concerning the record keeping and reporting requirements contained in the final rule governing merchant banking investments that it adopted jointly with the Federal Reserve Board pursuant to the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338 (GLBA).

DATES: Written comments should be received on or before June 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Merchant Banking Regulation, Office of Financial Institutions Policy, 1500 Pennsylvania Ave., NW., Room SC37, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Edward J. DeMarco, Acting Director, Office of Financial Institutions Policy, (202) 622–2730, or Gary W. Sutton, Senior Banking Counsel, (202) 622–1976.

SUPPLEMENTARY INFORMATION:

Title: Risk management, record keeping and reporting policies required to make merchant banking investments.

OMB Number: 1505–0182.

CFR Cite: 12 CFR 1500.6.

Abstract: Section 103 of the GLBA authorizes the Secretary of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly to adopt regulations implementing the authority of financial holding companies to make merchant banking investments. Pursuant to that rulemaking authority, Treasury and the Board jointly adopted a final rule that imposes certain requirements and restrictions on financial holding companies that make merchant banking investments.

Current Actions: The final rule adopted by Treasury and the Board requires financial holding companies engaged in merchant banking to have and maintain certain policies, procedures, records, and systems to appropriately monitor and manage their merchant banking investments.

Type of Review: Extension.

Affected Public: Financial holding companies.

Estimated Number of Respondents: 450

Estimated Time Per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 22,500 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 4, 2001.

Edward J. DeMarco,

Acting Director, Office of Financial Institutions Policy.

[FR Doc. 01–8737 Filed 4–9–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments; reopening of comment period.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before July 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Lynne Gittes, Alcohol Labeling and Formulation Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8140.

SUPPLEMENTARY INFORMATION:

Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act. This notice was previously published on January 22, 2001, 66 FR 6762.

OMB Number: 1512–0092.

Form Number: ATF F 5100.31.

Abstract: ATF administers the Federal Alcohol Administration Act and its implementing regulations. The law and regulations provide, in part, standards and guidelines for the labeling of alcohol beverages. Under the law and regulations, U.S. bottlers and importers cannot bottle or import alcohol beverages without a certificate of label approval. To obtain approval, U.S. bottlers and importers must complete ATF F 5100.31.

Current Actions: ATF F 5100.31 has been revised. Minor changes were made to the front of the form. The wording of items 7, 16 and 17 were slightly modified for clarification purposes. The back of the form was completely changed. Following plain language guidelines, the instructions for completing the form and conditions of approval were reformatted. The conditions under which approved labels may be modified without submission of a new application for certificate of label approval were changed. The single-most significant revision of the form is the allowance to add, delete or change any nonmandatory label information without submission of a new application for certificate of label approval. There is an increase in burden hours due to an increase in respondents. The recordkeeping requirement for this information collection is 3 years.

Type of Review: Revision.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 9,047.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 37,016.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 2, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–8796 Filed 4–9–01; 8:45 am]

BILLING CODE 4810–31–P

Federal Register

Tuesday,
April 10, 2001

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for FY 2001–2003; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for FY 2001–2003

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed funding priorities for Fiscal Years (FY) 2001–2003 for two rehabilitation engineering research centers.

SUMMARY: We propose funding priorities for one Rehabilitation and Engineering Research Program (RERC) on Technology for Successful Aging and one RERC on Transportation Safety under the National Institute on Disability and Rehabilitation Research (NIDRR) for FY 2001–2003. We may use these priorities for competitions in FY 2001 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 10, 2001.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: donna_nangle@ed.gov

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3414, Switzer Building, 330 C Street SW., Washington, D.C., between the hours of 8 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability that needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

National Education Goals

These proposed priorities will address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The authority for the program to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764(b)(4)). Regulations governing this program are found in 34 CFR part 350.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

The proposed priorities refer to NIDRR's Long-Range Plan that can be accessed on the World Wide Web at: (*http://www.ed.gov/offices/OSERS/NIDRR/#LRP*).

Rehabilitation Engineering Research Centers Program

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(3)). The Assistant Secretary may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) Other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

Proposed Priority 1: RERC on Technology for Successful Aging

Background

Americans are living longer, and because of this demographic revolution the landscape of disability is also changing. Since 1900, average life expectancy has increased dramatically

from less than 50 years of age to approximately 76 years, and centenarians now represent the fastest growing age group in the United States (Bureau of the Census, ''Current Population Reports,'' pgs. 70–73, 1993). During this same time period, the percentage of Americans who are 65 years or older has more than tripled (from 4.1% in 1900 to 12.7% in 1999) and the actual number increased eleven times from 3.1 million to 34.5 million. This number is expected to double by the year 2030 (Administration on Aging, ''Profile of Older Americans, 2000,'': http://www.aoa.dhhs.gov/aoa/stats/profile/).

In 1994–1995 more than half of those 65 and older (52.5%) reported having at least one disability and it is estimated that one-third of this population has a severe disability. Over 4.4 million (14%) have difficulty in carrying out activities of daily living (ADLs), which includes bathing, dressing, eating, and getting around the house, and 6.5 million (21%) reported difficulty in carrying out instrumental activities of daily living (IADLs) such as preparing of meals, shopping, managing money, using the telephone, doing housework, and taking medication. However, despite the increased risks of disability associated with aging, ninety-five percent of older Americans choose to remain in their own homes, use public services and function independently as they age (Current Population Reports, ''Americans with Disabilities, 1994–1995,'' http://www.census.gov/main/cprs.html).

Although there are many similarities between younger and older persons with disabilities (e.g., the goal of independent living), there are also important differences. Younger persons with disabilities are much more likely to experience impairment or disability in only one area (e.g., cognitive, hearing, vision, or mobility), whereas older persons tend to have multiple chronic conditions, presenting a mix of symptoms, impairments, and functional limitations. Older persons with disabilities also differ from their younger counterparts in that they are predominantly female, have lower income, and have a smaller network of social support.

As the baby boomer generation ages, the challenge for policymakers and industry is to fully leverage advances in information, communications, sensors, advanced materials, lighting, and many other technologies to optimize existing public and private investments and to create new environments that respond to an aging society's needs (Coughlin, J.F., ''Technology Needs of Aging Boomers,'' *Issues in Science and Technology Online:* http://bob.nap.edu/issues/16.1/coughlin.htm, pg. 5, 1999). There is a need for an integrated infrastructure for independent aging that should include a safe home, a productive workplace, personal communications, and lifelong transportation.

The NIDRR Long-Range Plan suggests that aging of the disabled population in conjunction with quality of life issues dictates a particular focus on prevention and alleviation of secondary disabilities and coexisting conditions and on health maintenance over the lifespan. Research in this area must focus on the development and evaluation of environmental options in the built environment and the communications environment, including such approaches as universal design, modular design, and assistive technology that enable individuals with disabilities and society to select the most appropriate means to accommodate or alleviate limitations (NIDRR, Long-Range Plan: 1999–2003, pg. 49).

Home environmental interventions and assistive and universally designed technologies have the potential to increase independence for community-based older persons with disabilities. A new generation of home-based monitoring and communication technologies could enable caregivers at any distance to monitor and respond to the needs of older friends, family, residents, and patients. Systems that make full use of the existing telecommunications infrastructure could be used to ensure that medicine has been taken, that physical functions are normal, and that minor symptoms are not indicators of a larger problem. They could provide early identification of problems that, if left untreated, may result in hospitalization for the individual and higher health care costs to society (Coughlin, J.F., op cit., pg. 7, 1999).

The fact that most older adults choose to remain in their own homes as they age is a cost effective option from a public policy perspective provided that the home can be used as a platform to ensure overall wellness and community integration. For example, introduction of a new generation of appliances, health monitors, and related devices that can safely support independence and remote caregiving could make the home a viable alternative to longterm care for many older adults. Research should go beyond questions of design and physical accessibility to the development of an integrated home that is attractive to us when we are younger and supportive of us as we age (Coughlin, J.F., op cit., pg. 6, 1999).

In the emerging, evolving field of assistive technology, there are gaps in the research. This is particularly true for older adults with disabilities. To create enabling home environments, research is needed on assistive and universally designed technologies and environmental interventions that are safe, affordable, support independence and social participation, and involve the integration of information technology and ergonomic principles. As part of achieving this goal, there is a need to develop appropriate devices that unobtrusively monitor key needs (i.e., taking medications, eating, and drinking), as well as critical events (i.e., falls or stove left on). There is also a need for research to determine the most effective ways to inform professionals, families, and consumers about new and emerging assistive and universally designed technologies, the best ways to use them, and ways to pay for them.

Another important area relates to the needs of older persons with cognitive impairments. This population presents the greatest challenge to creating enabling environments. According to recent findings, individuals with cognitive impairment use the fewest numbers of assistive devices but could benefit from the development of ''smart'' environments—devices that anticipate needs, suggest (or actually provide) alternatives, and limit the amount of sensory input and/or decision making required (Mann, W., *Topics in Geriatric Rehabilitation 8(2),* pgs. 35–52, 1993).

Proposed Priority 1: RERC on Technology for Successful Aging

We propose to establish an RERC on technologies for successful aging that will focus on technological solutions to promote the health, safety, independence, active engagement and quality of life of older persons with disabilities. The RERC must:

(a) Identify, assess, and evaluate current and emerging needs, and barriers to meeting those needs, for home-based monitoring and communication technologies that promote heath, independence, and active engagement of older persons with disabilities in the community and with family and friends;

(b) Investigate, develop, and evaluate home-based monitoring and communication technologies to promote health independence, and active engagement of older persons with disabilities;

(c) Investigate, develop, and evaluate technologies that can be used to create

''smart'' environments that anticipate needs, suggest (or actually provide) alternatives, and limit the amount of sensory input and/or decision making required of older persons with multiple types of impairments, including sensory, mobility, and cognitive;

(d) Identify, develop and evaluate strategies and training materials to promote knowledge about new and existing technologies for use by caregivers, home health providers, case managers and by older persons with disabilities; and

(e) Develop and explore various strategies for strengthening partnerships with industry to facilitate the development of new technologies and applications that are appropriate for use by older persons with multiple types of impairments and functional capabilities.

In addition to activities proposed by the applicant to carry out these purposes, the RERC must:

• Develop and implement in the first year of the grant, and in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to all relevant target audiences including, but not limited to, clinicians, engineers, manufacturers, service providers, older persons with disabilities, families, disability organizations, technology service providers, case managers, businesses, and appropriate journals;

• Develop and implement in the first year of the grant, and in consultation with the NIDRR-funded RERC on Technology Transfer, a utilization plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace;

• Conduct in the third year of the grant a state-of-the-science conference on home-based monitoring and communication technologies to promote the health, independence, and active engagement of older persons with disabilities and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant; and * Collaborate on research projects of mutual interest with NIDRR-funded projects, such as the RERCs on Universal Design and the Built Environment, Mobile Wireless Technologies, Information Technology Access, and Telecommunications Access and the RRTC on Aging with a Disability, as identified through consultation with the NIDRR project officer.

Proposed Priority 2: RERC on Transportation Safety

Background

Americans live in a very mobile society where access to, and use of, public and private transportation services is essential to daily living. There are roughly 1.7 million Americans living outside of institutions who use wheelchairs and scooters (Kaye, H.S., Kang, T., and LaPlante, M.P., ''Mobility Device Use in the United States,'' *Disability Statistics Report, (14),* Washington, DC: U.S. Department of Education, NIDRR, June, 2000), including those who rely heavily on public and private transportation services to commute to work and school, participate in recreational activities, and carry out daily activities. The Individuals with Disabilities Education Act (IDEA) requires that children with disabilities, including those who use wheelchairs, must be transported safely to educational settings. The Americans with Disabilities Act of 1990 (ADA) requires that all public and private transportation systems, including trains, buses, and subways be accessible to persons with disabilities, including those who use wheelchairs. (The ADA does not address air transportation and school buses.) However, in a recent report eighty-two percent of wheelchair users stated they have difficulty accessing their local public transportation system (Kaye, H.S., Kang, T., and LaPlante, M.P., ''Mobility Device Use in the United States.'' *Disability Statistics Report, (14),* Washington, DC: U.S. Department of Education, NIDRR, June, 2000).

Many wheelchair users are not capable of transferring into a vehicle seat and instead are required to travel seated while in their wheelchairs. However, most wheelchairs are not designed to function as vehicle seats, thus putting wheelchair-seated travelers at greater risk of injury compared to those who sit in standard vehicle seats (Bertocci, G.E., et al., ''Computer Simulation and Sled Test Validation of a Powerbase Wheelchair and Occupant Subjected to Frontal Crash Conditions,'' *IEEE Transactions on Rehabilitation Engineering,* Vol. 7, No. 2, pg. 234, June, 1999). Providing effective occupant protection in a motor vehicle is a multifaceted problem that involves the vehicle seat, how the seat is anchored to the vehicle, and an occupant restraint system (seatbelts, airbags, etc). Manufacturers of motor vehicle seats are required to perform extensive testing to ensure that vehicle seating systems are designed and constructed to provide support for the occupant under crash conditions (Department of Transportation, U.S. National Center for Health Statistics, ''Federal Motor Vehicle Safety Standards Seating Systems,'' U.S. Government Printing Office, Washington, DC, 49 CFR 571.207). However, wheelchairs used as motor vehicle seats are not necessarily designed for such use and must rely upon after-market products to secure or anchor the wheelchair to the vehicle. Unfortunately, tie-down systems are not afforded the same scrutiny as vehicle seating systems thereby increasing the likelihood that the tie-down systems could fail and the wheelchair and its occupant could become a projectile in crash settings.

Laboratory research has dramatically demonstrated the potential danger for wheelchair riders not adequately secured using wheelchair tie-down and restraint systems (WTORS) during vehicle collisions (Benson, J.B. and Schneider, L.W., ''Improving the crashworthiness of restraints for handicapped children,'' In: *Advances in belt restraint systems, design, performance, and usage: Society of Automobile Engineers Technical Paper #840528,* Warrandale, PA., pgs. 389–404. 1984). Although there has been an increased awareness about wheelchair rider safety, there is a paucity of information regarding the risk to wheelchair riders while riding in motor vehicles. In an effort to better characterize wheelchair rider risk, an analysis of motor vehicle accident data for the general public was conducted. According to Shaw, the most readily accessible and quantifiable information regarding vehicle accidents involving onboard wheelchairs was found in the National Electronic Injury Surveillance System (NEISS) database that is maintained by the Consumer Product Safety Commission (CPSC). CPSC staff collect information from a sample of 95 (out of an estimated 6,000) hospitals nationwide that are equipped to accommodate emergency visits. Based upon data collected from January 1988 through September 1996, an estimated 1,320 wheelchair riders were injured as a result of vehicle accidents (Shaw, G., ''Wheelchair rider risk in motor vehicles: A technical note,'' *Journal of Rehabilitation Research and Development, Vol. 37, No. 1,* Pgs. 89–100, January/February, 2000).

Similar results were found in a different study that looked at NEISS data from 1986 to 1990. In that study, an estimated 2,200 wheelchair riders were injured and the author concluded that ''improper securement accidents generally occur when the vehicle stops

too quickly or makes a sharp turn.'' Furthermore, the author could only find the record of one fatality between 1973 and 1991 that resulted from an occupant falling from the wheelchair due to a sudden stop (Richardson, H.A., ''Wheelchair occupants injured in motor vehicle-related accidents,'' U.S. Department of Transportation National Center for Statistics and Analysis, Mathematical Analysis Division, Washington, DC, 1991).

Both studies expressed the need for caution when using NEISS data to define wheelchair rider injury risk. Although the NEISS data source provides a perspective regarding the approximate number of incidents and insight as to the kinds of injury-producing situations, it does not provide sufficient specific detail such as a consistent reporting and classification of vehicle type and size (i.e., large, heavy vehicles versus small, lighter vehicles), the WTORS used, and the death and injury rate per unit of exposure. This information is needed to establish the risk and to evaluate the efficiency of risk-reduction efforts (Shaw, G., op cit., 2000).

Voluntary standards have been developed to establish general design and performance requirements for wheelchairs intended to also be used as a vehicle seat and for WTORS. The American National Standards Institute/Rehabilitation Engineering Society of North America (ANSI/RESNA) wheelchair standard (hereafter referred to ANSI/RESNA WC–19) provides wheelchair manufacturers with design and testing guidelines under frontal impact conditions for wheelchairs intended to be used as seats in motor vehicles (American National Standards Institute (ANSI)/Rehabilitation Engineering Society of North America (RESNA), ''WC/Volume 1, Section 19: Wheelchairs used as seats in motor vehicles,'' RESNA standard, Arlington, VA: RESNA, 2000). Similarly, a standard developed by the Society of Automotive Engineers (SAE J2249) provides guidance for the installation and usage of WTORS (SAE, ''SAE J2249: Wheelchair tie-downs and occupant restraints systems for use in motor vehicles,'' Society of Automotive Engineers (SAE), 1996).

Although these voluntary standards address the safety needs of wheelchair-seated travelers, there is still much that needs to be accomplished. For instance, the ANSI/RESNA WC–19 standards are used to assess the crashworthiness of complete wheelchair systems through a variety of tests including dynamic frontal impact testing. However, there are no requirements to test the crashworthiness of wheelchair systems under varying impact directions, such as side or rear impact crashes. Studies of both the biomechanics and kinematics of occupants and wheelchairs subjected to side and rear impact crashes could lead to a better understanding of injury risk for wheelchair-seated occupants under these circumstances and improved design criteria and safety standards.

The SAE J2249 standards recommend using four-point, strap-type wheelchair tie-downs for securing wheelchairs to a vehicle. Devices such as these have been used for some time and are effective if the chair is designed to accommodate the strains and is secured properly. However, strap-type tie-downs are cumbersome and time-consuming, warranting the need for development of wheelchair tie-downs that are both safe and easy to operate.

Finally, it is not uncommon for rehabilitation technology professionals to order a wheelchair frame or base from one supplier and add to it a separate seating system or other peripheral device, such as a ventilator, that has been purchased from another supplier. Despite an effort to evaluate the crashworthiness of a wheelchair system using the ANSI/RESNA WC–19 standards, the common practice of adding after-market or customized equipment invalidates the test results of a wheelchair tested with originally manufactured components. Subsequently, the after-market or customized equipment are not subjected to the same dynamic impact testing used on the original wheelchair system to evaluate its ability to withstand crash-level forces (Van Roosmalen, L., et al., ''Proposed Test Method for and Evaluation of Wheelchair Seating System (WCSS) Crashworthiness,'' *Journal of Rehabilitation Research and Development, Vol. 37, No. 5,* Pgs. 543–553, September/October, 2000).

Perhaps one of the most successful safety devices introduced by the automobile industry is the safety belt, or occupant restraint system. It is estimated that safety belts save 9,500 lives every year (National Highway Traffic Safety Administration, ''America's Experience with Seat Belt and Child Seat Use,'' January 2, 2001: www.nhtsa.dot.gov/people/injury/airbags/presbelt/america_seatbelt.html) and many States now make it mandatory for occupants riding in private vehicles to wear safety belts. Traditional vehicle seating systems protect their occupants through properly positioned occupant restraint systems and crashworthy seat design (Department of Transportation, U.S. National Center for Health Statistics, ''Federal Motor Vehicle Safety Standards Seating Systems,'' U.S. Government Printing Office, Washington, DC, 49 CFR 571.207). Unfortunately, individuals who must remain seated in their wheelchairs while traveling in motor vehicles are unable to benefit from traditional seating systems. According to the SAE J2249 standards, the current practice for wheelchair-seated occupant pelvic restraints (lap belts) is to anchor the belts to the vehicle floor or to rear wheelchair tie-downs. Current practice for the shoulder restraint is to anchor one end of the belt on the vehicle wall or ceiling and the lower end to the pelvic restraint belt (Society of Automotive Engineers, ''SAE J2249: Wheelchair tie-downs and occupant restraints (WTORS) for use in motor vehicles,'' 1996). ANSI/RESNA WC–19 recommends an additional wheelchair integrated pelvic restraint on wheelchairs that are used in motor vehicles (American National Standards Institute (ANSI)/Rehabilitation Engineering Society of North America (RESNA), ''WC/Volume 1, Section 19: Wheelchairs used as seats in motor vehicles,'' RESNA Standard, Arlington, VA: RESNA, 2000). However, there are numerous problems associated with anchoring vehicle-mounted occupant restraint systems for wheelchair-seated occupants including, but not limited to, the limited number of anchoring options due to window locations, seating positions, and the vehicle's structural integrity. In addition, all users, regardless of wheelchair models, seat heights, etc., are required to use the same fixed occupant restraint systems that have the potential of compromising safety belt fit, comfort, and occupant safety.

Proposed Priority 2: RERC on Transportation Safety

We propose to establish an RERC on transportation to improve the safety of wheelchair users who remain seated in their wheelchairs while using public and private transportation services and to investigate new wheelchair securement technologies that might enable wheelchair users to independently secure and release the wheelchair without the need for a second person. The RERC must:

(a) Investigate and report on the incidence, extent, and nature of injury of wheelchair riders due to motor vehicle accidents, making a distinction between vehicle size and weight, and include recommendations for ways to minimize injury;

(b) Investigate and report on safety issues, including both kinematics and biomechanics, related to wheelchair-seated occupants subjected to side and rear impact crashes;

(c) Investigate, develop and evaluate universal securement interfaces that would enable wheelchair and scooter users to safely and independently secure their wheelchairs and scooters to motor vehicles;

(d) Investigate and compare methods for dynamically testing the crashworthiness of after-market and customized wheelchair seating systems and peripheral devices and, if found to be viable, develop strategies for integrating these methods into existing voluntary wheelchair performance standards;

(e) Investigate, develop, and evaluate integrated occupant restraint systems that are independent of the vehicle and easy for wheelchair-seated occupants to operate; and

(f) Investigate the use of new or existing voluntary performance standards that would address problems associated with wheelchair-seated occupants subjected to side and rear impact crashes and potential benefits of using integrated occupant restraint systems, universal securement interfaces, and after-market and customized wheelchair seating systems and peripheral devices.

In addition to the activities proposed by the applicant to carry out the purposes, the RERC must:

- Develop and implement in the first year of the grant, and in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to clinicians, engineers, manufacturers, persons with disabilities, disability organizations, technology service providers, businesses, and appropriate journals;
- Develop and implement in the first year, and in consultation with the NIDRR-funded RERC on Technology Transfer, a utilization plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace;
- Conduct in the third year of the grant a state-of-the-science conference on wheelchair transportation and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant;
- Collaborate on research projects of mutual interest with other projects, such as the NIDRR-funded RERC on Wheeled Mobility and the Federal Transit Administration-funded Project Action, as identified through consultation with the NIDRR project officer; and
- Collaborate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of public and private transportation for individuals with disabilities including, but not limited to, the U.S. Department of Transportation's Federal Transit Administration and National Highway Traffic Safety Administration, and other relevant Federal agencies identified by the NIDRR project officer.

Applicable Program Regulations: 34 CFR part 350.

Program Authority: 29 U.S.C. 762(g) and 764(b)(4).

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(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Center Program)

Dated: April 4, 2001.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

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April 10, 2001

Part III

Department of Housing and Urban Development

Office of Federal Housing and Enterprise Oversight

12 CFR Part 1777

Prompt Supervisory Response and Corrective Action; Proposed Rule

12 CFR Part 1710

Corporate Governance; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1777

RIN 2550–AA12

Prompt Supervisory Response and Corrective Action

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) solicits comments on a proposed regulation to set forth the procedures under which OFHEO administers the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, under which OFHEO takes prompt corrective action in response to specified declines in the capital levels of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises). OFHEO also proposes to implement a system of prompt supervisory responses to be taken whenever certain developments internal or external to an Enterprise, which are specified in the proposed rule, warrant special supervisory review by OFHEO. The occurrence of such a development does not of itself establish that an Enterprise is in an unsound condition; rather, such a triggering occurrence provides a reasonable juncture for OFHEO to undertake a focused inquiry into the likely consequences of the development for the Enterprise.

DATES: Written comments on the proposed rule must be received by July 9, 2001.

ADDRESSES: All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at *http://www.ofheo.gov.* OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5″ disk. Alternatively, comments may be submitted via electronic mail to: RegComments@ofheo.gov.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, (202) 414–6924, or Jamey Basham, Counsel (202) 414–8906 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339 (TDD *only*).

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development with responsibility for ensuring that the Enterprises are adequately capitalized and operate safely and in conformity to the requirements of applicable statutes, rules and regulations, including their respective charter acts.[1] The Enterprises were established to effect specific public purposes under Federal law, including the provision of liquidity to the residential mortgage market and the promotion of the availability of mortgage credit benefiting low- and moderate-income families and areas that are underserved by lending institutions.[2]

The enumerated statutory authorities of the Director explicitly include the authority to issue rules to carry out the duties of the Director,[3] as well as other broad supervisory powers similar to those of the Federal bank regulatory agencies. OFHEO is empowered to conduct examinations of the Enterprises; to require the Enterprises to provide reports;[4] to establish capital standards for the Enterprises;[5] and, in appropriate circumstances, to exercise administrative enforcement authority essentially similar to that granted by Congress to the Federal bank regulatory agencies. OFHEO's enforcement authorities include the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to otherwise sanction or impose civil money penalties when appropriate.[6] OFHEO's enforcement regime, addressing the scope of these authorities and the applicable rules of practice and procedure, is set forth in part 1780 of OFHEO's regulations.[7]

In addition, subtitle B of the 1992 Act[8] requires OFHEO to establish certain capital thresholds for the Enterprises. The statute directs OFHEO to assign capital classifications to the Enterprises based on those capital thresholds, and authorizes OFHEO to reclassify an Enterprise notwithstanding the thresholds. An Enterprise that is not classified as ''adequately capitalized'' is required to obtain OFHEO's approval for, and carry out, a formal plan to restore the Enterprise's capital. Statutory provisions also prohibit an Enterprise from making any capital distribution that would result in the Enterprise not meeting the capital thresholds, absent OFHEO's approval, and imposes additional restrictions on capital distributions so long as the Enterprise is not classified as adequately capitalized. An Enterprise that is not classified as adequately capitalized may also be subject to a variety of regulatory limitations and restrictions as deemed to be appropriate by OFHEO.

Prompt Supervisory Response to Factors Beyond Capital

As the exclusive safety and soundness regulator of the Enterprises, OFHEO has been constituted with broad supervisory authorities, in order to detect and address safety and soundness problems that may arise, and has broad enforcement powers in order to ensure that any safety and soundness deficiencies are promptly remedied. OFHEO is empowered to require such reports and actions by the Enterprises as the agency deems to be appropriate to enable OFHEO to monitor the risks encountered by the Enterprises so as reduce the possibility of loss long before actual losses reach the level of capital impairment.[9] In order to provide a broad early intervention regime that addresses both capital-related and non-capital-related supervisory concerns, OFHEO proposes to commit itself to undertake specified prompt supervisory

[1] 12 U.S.C. 4513(a). *See also* 12 U.S.C. 4513(b)(1)–(5), 4517, 4521(a)(2)–(3), 4631(a)(3), 4636(a)(1).

[2] *See* Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; 1992 Act at 12 U.S.C. 4561–4567, 4562 note.

[3] 12 U.S.C. 4513(b)(1).

[4] 12 U.S.C. 4514, 4517, 1456(c), 1723a(k).

[5] 12 U.S.C. 4611–4614.

[6] 12 U.S.C. 4631–4641.

[7] 12 CFR part 1780; *see* 65 FR 81775 (December 27, 2000)(OFHEO notice of proposed rulemaking to amend purpose and scope section of part 1780, to summarize agency's statutory enforcement powers).

[8] 12 U.S.C. 4614–4619, 4622, 4623.

[9] *See, e.g.,* OFHEO Policy Guidance PG–00–001, *Minimum Safety and Soundness* (Dec. 19, 2000) (setting forth the minimum supervisory requirementsd used by OFHEO in reviewing and ensuring the adequacy of policies and procedures of the Enterprises in the areas of asset underwriting and credit quality, balance sheet growth, market risks, information technology, internal controls, audits, information reporting and documentation, and board and management responsibilities and functions). OFHEO PG–00–001 available at http://www.ofheo,gov.

responses to address both capital and non-capital considerations.

As a financial institution supervisory agency, OFHEO's concerns may include a diverse array of considerations—ranging from matters such as declining collateral values to issues such as asset quality, liquidity, and operational difficulties—that could result in substantial losses to an Enterprise long before capital is impaired. When, in the course of the supervisory process, OFHEO detects any significant changes in indicators reflecting upon such matters, it is appropriate that the agency analyze the situation at that juncture, rather than relying on declines in capital to prompt agency action. If the analysis indicates problems exist, supervisory responses might reasonably include a mixture of early warning and early action initiatives that would be effective before specific problems negatively affect an Enterprise. OFHEO is proposing to adopt a prompt supervisory response regulation that makes the agency's regime for such analysis and early intervention transparent to the public. As recognized by the Government Accounting Office (GAO), a comprehensive prompt corrective action regime that includes prompt supervisory response based on non-capital indicators is likely to be less burdensome and more effective than a system that is exclusively capital-based.[10]

Federal bank regulatory agencies have long employed supervisory criteria other than capital when assessing capital-related classifications. For example, the regulations of the Federal banking agencies provide that the agencies may reclassify a depository institution to a lower capital classification if an unsafe or unsound practice relating to asset quality, management, earnings, or liquidity has not been corrected.[11] Under the proposed rule, OFHEO would adopt a system under which OFHEO commits itself to undertake prompt supervisory responses, but such responses would not necessarily include alteration of the capital classifications of an Enterprise. The prompt supervisory response regime is founded on OFHEO's broad authority under the 1992 Act to take such actions as are necessary to ensure that the Enterprises are, among other things, operating safely in accordance with law, including by adopting supervisory policies and standards through regulation or other guidance,[12] by requiring the Enterprises to submit reports,[13] and by taking enforcement or other remedial actions, such as temporary or permanent cease and desist orders, pursuant to subtitle C of the 1992 Act.

Prompt Supervisory Response Provisions of the Proposed Rule

Subpart A of the proposed rule sets out the prompt supervisory response regime, under which OFHEO will monitor various supervisory concerns in addition to an Enterprise's capital classification, and may require prompt action by an Enterprise to remedy or prevent losses or threatened losses, or other threats to safety and soundness. The procedures under subpart A of the proposed rule are separate from the capital-based prompt corrective action regime described below under subpart B of the proposed rule, but they may be used in conjunction with subpart B. Similar to the procedures under subpart B, subpart A of the proposed rule would establish a set of ''tripwires,'' looking to various developments that are appropriate junctures for a supervisory review to ascertain the financial or operational consequences of such developments upon the Enterprise. The occurrence of these tripwires would trigger automatic supervisory responses from OFHEO.

As described in § 1777.1(a) and § 1777.1(b), the rule would be issued under OFHEO's above-discussed broad statutory authority to take such actions as the Director of OFHEO deems appropriate to ensure that the Enterprises operate in a safe and sound manner, including administrative enforcement actions, together with OFHEO's reporting and examination authorities. As is set out in § 1777.1(b), the purpose of subpart A of the rule would be to fashion a broad early intervention regime to address both capital concerns and other serious supervisory considerations. However, as is stated in § 1777.1(b), OFHEO's initiation of the procedures under the proposed rule would not necessarily indicate that a violation of law or regulation has occurred or that an unsound condition exists; rather, the proposed rule is consistent with the process OFHEO employs in reviewing the conduct of an Enterprise's affairs as a safety and soundness regulator. The supervisory responses under the proposed rule, described below (including a supervisory letter, an action plan, or a notice to show cause) do not constitute orders under the 1992 Act for purposes of 12 U.S.C. 4631 or 4636. They are simply steps in a process under which OFHEO will review issues and, as necessary and appropriate, provide supervisory guidance to the Enterprises.

Section 1777.10 lists various developments, the emergence of which might reasonably indicate that the Enterprise is experiencing or will soon experience some form of unusual stress that is not yet reflected in its capital level. Upon the occurrence of any of the items listed in § 1777.10 of the proposed rule, OFHEO would take one or more of the supervisory responsive actions enumerated in § 1777.11.

Nevertheless, as is noted under § 1777.2(a), identification of particular developments under § 1777.10 in no way limits the authority of OFHEO to take action with regard to other issues impacting upon the Enterprises' capital, safety and soundness, and compliance with applicable law. Moreover, as is noted under § 1777.2(c), the enumeration of supervisory responsive actions in § 1777.11 does not limit OFHEO's discretion to take whatever form of supervisory action OFHEO deems necessary under the 1992 Act. For example, circumstances might indicate to OFHEO that more expedient use of enforcement tools is warranted.

Section 1777.10 sets out a list of ten potential developments that would cause OFHEO to initiate a review under subpart A. The list includes both environmental indicators tied to market factors and internal indicators tied to factors within a particular Enterprise. The marketplace indicators enumerated in the proposed rule look to certain specified changes in housing prices. The internal indicators include specific items related to an Enterprise's interest rate risk, net income, net interest margin, equity, and loan delinquencies, as well as certain operational and governance matters. OFHEO specifically invites public comment whether there are other marketplace or internal indicators appropriate for inclusion in § 1777.10.

Section 1777.11 sets out the proposed supervisory responsive actions to be taken if one of the developments enumerated in § 1777.10 is detected by OFHEO in connection with an examination or otherwise as the agency exercises its routine supervisory functions and oversight of the Enterprises. There are a number of alternatives.

[10] *See* General Accounting Office Report GAO/GGD–97–18, *Bank and Thrift Regulation, Implementation of FDICIA's Prompt Corrective Regulatory Action Provisions* (Nov. 21, 1996) at pp. 49–53.

[11] 12 CFR 6.4(d) (Office of the Comptroller of the Currency); 12 CFR 208.40 (Board of Governors of the Federal Reserve System); 12 CFR 325.104 (Federal Deposit Insurance Corporation).

[12] 12 U.S.C. 4513(b)(1), 4513(b)(5).

[13] 12 U.S.C. 4514, 1456(c), 1723a(k).

In every case, OFHEO would initiate a Level I supervisory action under § 1777.11(a), within five days of OFHEO's determination that a § 1777.10 development has occurred. The Enterprise would receive a supervisory letter formally advising the Enterprise that OFHEO has begun the prompt supervisory response process to address the recent development and containing other information depending on the facts and circumstances. OFHEO may direct the Enterprise to supply information about the situation, respond to OFHEO's specific questions or concerns, take corrective or remedial action, or other action deemed appropriate. OFHEO seeks to avoid requiring particular actions, encouraging management of the Enterprises to design the most appropriate course. Unless the development in question has occurred precipitously, OFHEO would have in all likelihood already have commenced a supervisory dialog with the Enterprise about the situation, and the information obtained and points already established through such dialog would affect the content of the supervisory letter.

Based on the Enterprise's response to the supervisory letter and other appropriate factors, OFHEO would promptly determine whether additional supervisory actions would be necessary. Material provided by the Enterprise in response to the supervisory letter may cause OFHEO to conclude that the development creates no substantial supervisory concern or that the Enterprise's management of the risks and concerns presented by the development is adequate. In other cases, the supervisory letter process may indicate that some level of supervisory concern is warranted, but the letter process itself and continuing supervisory dialogue may be all that is required to cause the Enterprise to undertake sufficient corrective or remedial measures.

If additional supervisory actions were deemed necessary, OFHEO would have a variety of alternatives under § 1777.11. Level II supervisory action, as set out in § 1777.11(b), would provide for a special review of an Enterprise. A special review could be useful in supplementing information already obtained by OFHEO through the examination process, and could provide OFHEO with a clearer picture of the situation than could otherwise be obtained through letters or reports. Such review would be conducted by OFHEO's Office of General Counsel, Office of Research and Model Development, Office of Examination and Oversight, Office of Policy Analysis and Research, or such other department or individual as determined by the Director. Following completion of the special review, OFHEO would promptly determine whether additional supervisory action was warranted.

Under Level III supervisory action set out in § 1777.11(c), OFHEO would direct the Enterprise to prepare and submit an action plan addressing the development. Among other things, the Enterprise's action plan would be required to include information about the circumstances leading up to the development and an assessment of its possible effects upon the Enterprise. The Enterprise would also describe its proposed course of action for dealing with the development, including an analysis of alternatives available to the Enterprise. If OFHEO determined that the action plan was insufficient to resolve the supervisory issues created by the development, OFHEO would direct the Enterprise to revise the plan. However, if OFHEO determined that the supervisory issues would not be resolved even under a revised plan, OFHEO would promptly determine what other supervisory action should be initiated.

Under Level IV supervisory action, as set out in § 1777.11(d), OFHEO would require the Enterprise to show cause why OFHEO should not initiate formal enforcement action against the Enterprise. OFHEO is not, however, required to issue a show cause notice prior to initiating an administrative enforcement action.

The proposed rule contemplates that Level II through Level IV supervisory responsive action need not be carried out sequentially. For example, depending on the facts and circumstances, OFHEO might deem it appropriate to combine Level I action with another Level of action at the initiation of the process. For another example, the Level I process might subsequently cause OFHEO to initiate simultaneous Level II and Level III responses.

In addition, as specified in § 1777.12, OFHEO might also turn to any of the informal or formal supervisory tools available to OFHEO under the 1992 Act. OFHEO might do so at any time, notwithstanding the pendency of Level I-Level IV action. OFHEO might also use such supervisory tools to take action against an Enterprise that failed to make a submission or comply with a directive from OFHEO in connection with actions under Level I-IV. Moreover, OFHEO might use such supervisory tools to address an Enterprise's failure to implement an appropriate action in response to a supervisory letter or under an action plan.

Summary of Prompt Corrective Action Provisions of the 1992 Act

Subtitle B of the 1992 Act directs OFHEO to classify the Enterprises into one of four capital classifications (''adequately capitalized,'' ''undercapitalized,'' ''significantly undercapitalized,'' or ''critically undercapitalized,''), based on the level of capital maintained by the Enterprise. For these purposes, OFHEO assesses the Enterprises' capital by reference to two standards.

The first capital standard is based on ratios of core capital instruments to on balance sheet assets and off balance sheet obligations. The ratios are set according to percentages contained in 12 U.S.C. 4612 and 4613, subject to certain adjustments by OFHEO, and calculated in accordance with guidance from OFHEO under part 1750 of OFHEO's regulations.[14] The statute provides for a ''minimum capital'' level based on these ratios, as well as a ''critical capital'' level, based on lower ratios, that triggers additional enforcement requirements and authorities under subtitle B of the 1992 Act.[15]

The other capital standard is for ''risk-based capital.'' Rather than applying leverage ratios, this risk-based capital level requires the Enterprises to hold sufficient total capital to maintain a positive capital position during a hypothetical ten-year stress period characterized by statutorily-prescribed stressful credit conditions and large movements in interest rates, plus an additional amount to cover management and operations risk. Section 4611 of Title 12 directs OFHEO to develop a stress test which, when applied to an Enterprise's current business, will project the amount of total capital that would be necessary to survive the stresses described in the statute during the stress period. OFHEO has issued a proposed rule to amend 12 CFR part 1750 to set out this risk-based capital level. 64 FR 18084 (April 13, 1999).

Section 4614 of Title 12 directs OFHEO to classify each Enterprise as adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized, using each

[14] 12 CFR part 1750.

[15] OFHEO's regulations at 12 CFR 1750.4 describe how the minimum capital level of an Enterprise is to be calculated. OFHEO calculates the critical capital level in accordance with 12 U.S.C. 4613. As is discussed below, OFHEO is proposing to include a regulatory definition of the critical capital level in part 1777.

Enterprise's compliance with the minimum capital level, critical capital level, and risk-based capital level as reference points. However, as provided in 12 U.S.C. 4614(d) and 4615(c), OFHEO is not to include consideration of an Enterprise's risk-based capital level during the classification process, until the expiration of one year following the effective date of OFHEO's risk-based capital regulation. Until such time, OFHEO is to classify each Enterprise by reference to its minimum capital level and critical capital level.

Section 4614 of Title 12 also grants OFHEO broad discretionary authority to reclassify an Enterprise into a lower capital classification in appropriate circumstances. OFHEO may reclassify an Enterprise at any time if the Director of OFHEO determines, in his or her discretion, that the Enterprise is engaging in conduct not approved by the Director that could result in a rapid depletion of the Enterprise's core capital. Under this standard, if OFHEO determines that some action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) on the part of an Enterprise could result in losses that might impair the Enterprise's capital position, OFHEO can intervene promptly. Or, if action or inaction could contribute significantly to deepening losses, this standard empowers OFHEO to act before increasing losses achieve such severity that the Enterprise's capital in excess of regulatory minimums is exhausted. Section 4614 also authorizes OFHEO to make a discretionary reclassification any time the Director determines, in his or her discretion, that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly.

OFHEO is to issue a capital classification for each Enterprise at least quarterly, as required by 12 U.S.C. 4614. The procedure for classification (including reclassification) is outlined in 12 U.S.C. 4618. OFHEO is to provide the Enterprise with prior written notice of the capital classification that the agency intends to make. The Enterprise then has 30 days (subject to limitation or extension as OFHEO deems appropriate) to respond. OFHEO then, in its discretion, makes a final determination of the Enterprise's capital classification, including consideration of any relevant information the Enterprise submitted in its response.

Subtitle B specifies certain steps that will automatically result upon an Enterprise's classification in a category lower than adequately capitalized. An Enterprise that is classified as undercapitalized or significantly undercapitalized must submit a capital restoration plan to OFHEO, describing, among other things, how and when the Enterprise will restore its capital position and the types and levels of activities in which the Enterprise will engage during the term of the plan. OFHEO will approve or reject a plan. In the latter case, the Enterprise must revise the plan and resubmit it for OFHEO's review. An Enterprise's failure to submit a plan in a timely manner, or to submit a plan that is acceptable to OFHEO, is grounds for OFHEO to reclassify the Enterprise into the next lower capital category. In addition, if OFHEO determines that an Enterprise has failed to make, in good faith, reasonable efforts necessary to comply with an approved capital restoration plan, including the schedule for fulfilling the plan, then OFHEO may reclassify the Enterprise into the next lower capital category.

An Enterprise that is classified in any category lower than adequately capitalized is prohibited from making any capital distribution that would result in the Enterprise being classified into a lower category. A capital distribution is defined by the 1992 Act to include (i) dividends and distributions in cash or in kind made with respect to any shares or other ownership interests in an Enterprise, except a dividend consisting only of shares of the Enterprise; (ii) any payment made by an Enterprise to repurchase, redeem, retire, or acquire any of its shares or an extension of credit to finance such a transaction, or any transaction that OFHEO determines by regulation to be a capital distribution in substance. 12 U.S.C. 4502(2).[16] An Enterprise that is classified as significantly undercapitalized is further prohibited from making any capital distribution, absent written approval by OFHEO pursuant to statutorily-specified standards. It should also be noted that, without restriction as to an Enterprise's capital classification, each Enterprise's charter act prohibits the Enterprise from making any capital distribution that would decrease the capital of the Enterprise to an amount less than the risk-based capital level or the minimum capital level, absent written approval by OFHEO.[17]

Upon classifying an Enterprise as critically undercapitalized, 12 U.S.C. 4617 requires OFHEO to appoint a conservator for the Enterprise, unless OFHEO makes a written determination, and the Secretary of the Treasury concurs in writing, that the appointment of a conservator likely would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market, and the public interest would be better served by taking some other enforcement action authorized by the 1992 Act. If OFHEO makes such a determination not to appoint a conservator, the Enterprise is subject to the same mandatory and discretionary supervisory responses as apply to a significantly undercapitalized Enterprise under 12 U.S.C. 4616. OFHEO is also vested with discretion under 12 U.S.C. 4616 to appoint a conservator for an Enterprise that is significantly undercapitalized, if OFHEO determines that the Enterprise's core capital is less than the minimum capital level and that alternative remedies available to OFHEO under the 1992 Act are not satisfactory.[18]

In addition to these automatic supervisory steps, 12 U.S.C. 4616(b) invests OFHEO with discretionary authority to take a variety of supervisory actions at any time with respect to an Enterprise that is classified as significantly undercapitalized. OFHEO may fashion such remedy or require supervisory action as appropriate including, but not limited to, any of the following:

- Limit any increase in, or require a reduction of, any borrowings and other types of obligations of an Enterprise, including off-balance sheet obligations;
- Limit or prohibit the growth of assets of an Enterprise or require reduction of its assets;
- Require an Enterprise to obtain additional capital in such form and amount as specified by OFHEO; and
- Require an Enterprise to terminate, reduce, or modify any program or activity that OFHEO determines entails excessive risk to the Enterprise.

The procedure for issuing an order to an Enterprise to take such remedial action is outlined in 12 U.S.C. 4618. OFHEO is to provide the Enterprise with prior written notice of the proposed order. The Enterprise then has thirty days (subject to limitation or expansion as deemed appropriate by

[16] The statutory definition provides an exception for payments that OFHEO determines are made by an Enterprise to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan qualified under section 401 of the Internal Revenue Code of 1986, or any substantially equivalent plan.

[17] The Federal Home Loan Mortgage Corporation Act at 12 U.S.C. 1452(b)(2), and the Federal National Mortgage Association Charter Act at 12 U.S.C. 1718(c)(2).

[18] OFHEO is also empowered to appoint a conservator for an Enterprise under a number of circumstances enumerated in 12 U.S.C. 4619(a)(1) through (2).

OFHEO) to respond. OFHEO then, in its discretion, makes a final determination regarding issuance of a final order, including consideration of any relevant information the Enterprise submitted in its response. The order to take remedial action is enforceable by OFHEO through judicial action in the United States District Court for the District of Columbia, as provided in 12 U.S.C. 4635.

Implementation of the Prompt Corrective Action Provisions of the 1992 Act by the Proposed Rule

Subpart B of the proposed rule describes the scope of the actions OFHEO is authorized to take under the prompt corrective action statutory provisions in subtitle B of the 1992 Act, and the procedures by which such actions will be carried out.

The authority, purpose, and scope of subpart B is set out in § § 1777.1(a) and (c), which briefly review the statutes underlying the rule (discussed above). Also, as is discussed in § 1777.1(d), the 1992 Act directs OFHEO to determine capital classifications for the Enterprises by reference to three capital triggers (the minimum capital level, the critical capital level, and the risk-based capital level), but 12 U.S.C. 4614(d) delays consideration of the risk-based capital level until one year after OFHEO's risk-based capital rule becomes effective. Section 4615 of Title 12, setting out the supervisory actions that are applicable to an Enterprise that is classified as undercapitalized, similarly provides that its provisions will not take effect until one year after OFHEO's risk-based capital rule becomes effective. Section 4614(d) provides that, until that time, an Enterprise shall be classified as adequately capitalized if the Enterprise maintains an amount of capital that equals or exceeds the minimum capital level.

Therefore, under subpart B of the proposed rule at § 1777.20, different sets of capital classifications will apply depending on whether the one-year post-effectiveness period for the risk-based capital rules has expired. Section 1777.20(a) contains the ''permanent'' set of capital classifications taking the risk-based capital level into account as well as the minimum capital level and critical capital level. This set of capital classifications will apply any time after the expiration of one year following the initial effective date of OFHEO's regulations establishing the risk-based capital test (issued under 12 U.S.C. 4611(e)). The currently-applicable ''temporary'' set of capital classifications is contained in § 1777.20(c), as an exception to § 1777.20(a) that applies until expiration of one year following the initial effective date of the risk-based capital regulations. This set of classifications is based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. Section 4614(a) of Title 12, when read together with 12 U.S.C. 4616(c) (making statutory provisions calling for prompt corrective action with regard to a significantly undercapitalized Enterprise effective from the time the Enterprise is first classified under section 4614) and 12 U.S.C. 4617(d) (same, for a critically undercapitalized Enterprise), indicates that Congress intended OFHEO to classify the Enterprises for prompt corrective action purposes by reference to minimum capital and critical capital levels, pending implementation of the risk-based capital test.

As discussed in § 1777.2(b), the prompt corrective action provisions are but one aspect of OFHEO's broad supervisory authority to ensure that the Enterprises maintain capital that is adequate for their safe and sound operation. Maintenance of the minimum capital level and risk-based capital level upon which an Enterprise's capital classification is based does not alone establish that the Enterprise is operating in a safe and sound manner or possesses sufficient capital to address all circumstances. Such capital levels are statutory floors, to be considered together with other factors when assessing the strength of the Enterprise, such as asset quality and diversity, liquidity, earnings, operations, and expected growth, or any unusual stress to the Enterprise. Classification of an Enterprise as ''adequately capitalized'' under subtitle B of the 1992 Act indicates that the Enterprise is at least in compliance with these floor levels as of the particular times stated in the classification determination, but it does not necessarily mean that the Enterprise's capital is sufficient in light of all such considerations. OFHEO has authority to require an Enterprise to hold additional capital when the circumstances indicate additional capital is necessary or appropriate in light of the overall strength of the Enterprise and markets.

Moreover, the prompt corrective action provisions represent but one kind of supervisory response available to OFHEO to deal with capital deficiencies at an Enterprise. The 1992 Act grants OFHEO broad discretion to take other supervisory actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator, entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Moreover, the selection of one form of action or a combination of actions does not foreclose OFHEO from pursuing any other action.

The definitions in § 1777.3 cross-reference to OFHEO's capital rules at 12 CFR part 1750 in defining core and total capital. Section 1777.3 defines the minimum capital level as the minimum amount of core capital specified for an Enterprise pursuant to 12 U.S.C. 4612, as determined under OFHEO's capital rules at § 1750.4. The definition of critical capital in § 1777.3 refers to the calculation of core capital required to meet the minimum capital level under § 1750.4 of OFHEO's capital rules, making the appropriate adjustments thereto in order to implement the lower percentages specified in 12 U.S.C. 4613 as compared to 12 U.S.C. 4612. Thus, § 1777.3 defines the critical capital level as the amount of core capital that is equal to the sum of one half of the amount determined under § 1750.4(a)(1) and five-ninths of the amounts determined under § 1750.4(a)(2) through § 1750.4(a)(7). Section 1777.3 defines the risk-based capital level to mean the amount of total capital specified for an Enterprise pursuant to 12 U.S.C. 4611, as determined under OFHEO's regulations implementing section 4611.[19]

The definitions of ''affiliate'' and ''Enterprise'' are taken from 12 U.S.C. 4502(1) and 4502(6), respectively. The 1992 Act, in defining an Enterprise to include the Enterprise's affiliates, vests OFHEO with broad jurisdiction over the supervision and regulation of such affiliates as appropriate in differing circumstances. Section 4502(1) defines an affiliate to be any entity that controls, is controlled by, or is under common control with an Enterprise. The 1992 Act does not, however, define control, leaving the term to be interpreted by OFHEO in light of the context in which the term is used and the particular provision of the 1992 Act at issue. In determining whether control exists for the purposes of exercising jurisdiction over an affiliate of an Enterprise under any particular provision of the 1992 Act, OFHEO considers the nature of the particular provision and the facts and circumstances involved. Among other things, OFHEO considers whether an entity exercises a controlling influence

[19] As discussed above, OFHEO has proposed such rules, to be located in 12 CFR part 1750.

over the management and policies of a particular entity, including by ownership of, or the power to vote, a concentration of any class of voting securities, by the ability to elect or appoint members of the board of directors or officers of the entity, or by other means.

The definition of ''capital distribution'' is taken from 12 U.S.C. 4502(2). Although the statute authorizes OFHEO to expand the capital distribution definition by regulation, OFHEO is not at this time proposing to cover any category of payments beyond those listed in the statutory definition; OFHEO specifically requests public comment addressing whether and what additional types of payments should be covered.

As discussed above, § 1777.20(c) contains a set of capital classifications based on an Enterprise's minimum capital level and critical capital level, reflecting the classification criteria presently used by OFHEO. These classifications apply until the expiration of one year following the initial effective date of OFHEO's regulations establishing the risk-based test:

• *Adequately capitalized:* Pending phase-in of the risk-based capital test, an Enterprise is deemed to be classified as adequately capitalized so long as it meets the minimum capital level, as required by 12 U.S.C. 4614(d), unless OFHEO has exercised its discretion to reclassify the Enterprise into any lower capital classification.

• *Undercapitalized:* As discussed above, 12 U.S.C. 4614(d) provides that an Enterprise that meets the minimum capital level is to be classified nevertheless as adequately classified, notwithstanding 12 U.S.C. 4614(a)(2). However, pending phase-in of the risk-based capital level, an Enterprise that meets the minimum capital level could be classified as undercapitalized through discretionary reclassification by OFHEO.

• *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if it meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized.

• *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if it does not meet the critical capital level.

• *Discretionary reclassification:* Section 4614(b) of Title 12 authorizes OFHEO to reclassify an Enterprise into the next lower capital classification at any time, in the discretion of the Director of OFHEO. Appropriate grounds for reclassification include a finding by the Director that the Enterprise is either engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. Other reclassifications, based on other sections of subtitle B of the 1992 Act pertaining to failure to submit an acceptable capital restoration plan or implement it, are located in § 1777.7, the section addressing capital restoration plans.

For purposes of OFHEO's discretionary authority to reclassify an Enterprise based on ''conduct that could result in a rapid depletion of core capital'' under 12 U.S.C. 4614(b), OFHEO interprets ''conduct'' to include action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events). Notably, the statute does not require OFHEO to find that depletion of the Enterprise's core capital is underway or imminent, but requires only that OFHEO determine that such depletion is a possible consequence of the conduct in question. Congress, having already established the capital classifications based on capital levels to address scenarios in which an Enterprise's capital is in decline, established a broad standard for discretionary reclassification, to authorize early intervention by OFHEO when appropriate.

Section 1777.20(a) contains the set of capital classifications taking the risk-based capital level into account as well as the minimum and critical capital levels. This set of classifications will replace the set under § 1777.20(c) one year after the initial effective date of OFHEO's regulations establishing the risk-based capital test:

• *Adequately capitalized:* An Enterprise will be classified as adequately capitalized if the Enterprise meets the risk-based capital level and the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into any lower capital classification.

• *Undercapitalized:* An Enterprise will be classified as undercapitalized if it meets the minimum capital level but does not meet the risk-based capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise into any lower capital classification.

• *Significantly undercapitalized:* An Enterprise will be classified as significantly undercapitalized if the Enterprise meets the critical capital level but fails to meet the minimum capital level, unless OFHEO has exercised its discretion to reclassify the Enterprise as critically undercapitalized.

• *Critically undercapitalized:* An Enterprise will be classified as critically undercapitalized if the Enterprise does not meet the critical capital level.

• *Discretionary reclassification:* As discussed above, 12 U.S.C. 4614(b) authorizes OFHEO to reclassify an Enterprise into the next lower capital classification at any time, in the discretion of the Director of OFHEO. Appropriate grounds for reclassification include a finding by the Director that the Enterprise is either engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result in a rapid depletion of the Enterprise's core capital, or that the value of property subject to mortgages held or securitized by the Enterprise has decreased significantly. Other reclassifications, based on other sections of subtitle B of the 1992 Act pertaining to failure to submit an acceptable capital restoration plan or implement it, are located in § 1777.7, the section addressing capital restoration plans.

Under § 1777.20(a), the minimum and critical capital levels are the determinative standard for assessing whether an Enterprise falls into the significantly undercapitalized or critically undercapitalized classification based on capital, without regard to whether the Enterprise maintains total capital at or above its risk-based capital level. In enacting the 1992 Act, Congress intended that the minimum and critical capital levels be the ''tripwires'' for the prompt corrective actions specified in 12 U.S.C. 4616 and 4617. The amount of capital an Enterprise is required to hold to meet its risk-based capital level could be less than the amount of the capital required to meet its minimum capital level or even its critical capital level. To effectuate congressional intent, the rule avoids a result under which an Enterprise that failed to meet its minimum capital level or critical capital level could avoid classification as significantly undercapitalized or critically undercapitalized merely by maintaining total capital in compliance with its risk-based capital level.

As is provided in § 1777.20(b), if an Enterprise is reclassified by OFHEO on grounds that the Enterprise is engaging in action or inaction that could result in a rapid depletion of core capital, OFHEO will continue to take such conduct into account for each subsequent determination of the Enterprise's capital classification, until OFHEO determines that the action,

inaction, or condition in question has ceased and been remedied to OFHEO's satisfaction. For example, if OFHEO reclassified an Enterprise from adequately capitalized to undercapitalized based on such conduct, and during the pendency of such conduct, the Enterprise's total capital declined below the risk based capital level (which, standing alone, would result in classification in the undercapitalized category), the resulting classification could be to the significantly undercapitalized category. In addition, as provided in § 1777.20(b), nothing in 12 U.S.C. 4614(b) prohibits OFHEO from subsequently reclassifying an Enterprise again if the action, inaction, or condition has not ceased or been eliminated and remedied to OFHEO's satisfaction within a reasonable time. The foregoing is also applicable for a discretionary reclassification based on other grounds under § 1777.20(a)(5) or § 1777.20(c)(5), such as a decline in collateral values.

Section 1777.21, implementing 12 U.S.C. 4618, sets out the procedure by which OFHEO classifies the Enterprises.[20] These procedures apply to routine classifications, which OFHEO issues for each Enterprise at least once a quarter, based on capital reports from the Enterprise and any other additional relevant information. These procedures would also be used if it became necessary for OFHEO to reclassify an Enterprise in accordance with OFHEO's discretionary authority to do so under subtitle B of the 1992 Act, or if OFHEO otherwise determined that a new classification would be appropriate for any reason, including a change in an Enterprise's condition that is not reflected in the Enterprise's capital report.

OFHEO may issue capital classifications using different ''as of'' dates for the Enterprise's risk-based capital level and minimum and critical capital levels. The respective ''as of'' dates will be stated in the proposed and final capital classifications. For example, OFHEO may assess compliance with the minimum capital level on a more frequent or rapid basis than the risk-based capital level.

As § 1777.21(a)(4) provides, OFHEO may initiate a capital classification at any time. If another capital classification is pending at such time, OFHEO will advise the Enterprise whether the new classification supersedes the pending one. In addition, § 1777.21(b) requires the Enterprise to notify OFHEO of any material event that may reasonably be expected to cause the Enterprise's minimum, critical, or risk-based capital level to fall to a point that could result in a capital classification lower than the Enterprise's existing or proposed capital classifications.

Under the classification procedure, as set out in 12 U.S.C. 4618, OFHEO is to deliver written information to the Enterprise describing the proposed capital classification and the agency's basis for such classification. The Enterprise then has thirty days to submit any relevant information in response to the notice. OFHEO is authorized to extend the response period up to an additional thirty days or reduce the response period in appropriate circumstances; the Enterprise may also consent to an abbreviated response period. In exigent circumstances, the response period afforded to an Enterprise would likely be quite brief.

An Enterprise's failure to respond within the applicable period waives the opportunity to comment on the proposed classification. Once the response period has closed, OFHEO will make a final determination of the Enterprise's capital classification. OFHEO will take into consideration any relevant information submitted by the Enterprise during the response period in reaching the final decision. The final capital classification is to be provided to the Enterprise in writing, including a description of OFHEO's basis for the classification.

Section 1777.22 implements statutory capital distribution restrictions, including the above-cited provisions under each Enterprise's charter act, prohibiting, without regard to capital classification, each Enterprise from making any capital distribution that would decrease the capital of the Enterprise to an amount less than the risk-based capital level or the minimum capital level, except as explicitly approved by OFHEO. Section 1777.22(c) and (a) implement such provisions before and after the initial effective date of OFHEO's risk-based capital regulations, respectively. Section 1777.22(b)(1) implements 12 U.S.C. 4615(a)(2) and 4616(a)(2), prohibiting any Enterprise that is not classified as adequately capitalized from making any capital distributions that would result in classification into a lower capital classification. Section 1777.22(b)(2) also implements 12 U.S.C. 4616(a)(2), prohibiting a significantly undercapitalized Enterprise from making any capital distributions absent OFHEO's prior approval. Section 1777.22(b)(2) also applies in the case of an Enterprise classified as critically undercapitalized. The proposed rule acknowledges, in a manner consistent with 12 U.S.C. 4617(b) through (c), OFHEO's authority to take actions authorized by 12 U.S.C. 4616 in the case of a critically undercapitalized Enterprise, including one in conservatorship. Under the same authority, § 1777.23 requires an Enterprise classified as critically undercapitalized to submit a complete and acceptable capital restoration plan to OFHEO.

Section 1777.23 addresses capital restoration plans. Under § 1777.23(a)(1), an Enterprise is required to file a complete capital restoration plan with OFHEO within ten days of receiving final notice of capital classification stating that the Enterprise is classified as undercapitalized, significantly undercapitalized, or critically undercapitalized, unless OFHEO extends the period.

Under § 1777.23(a)(2), an Enterprise that is already operating under an approved capital restoration plan will not be required to submit a new plan each time the Enterprise receives subsequent notices of capital classification, unless OFHEO notifies the Enterprise to the contrary. As a general matter, OFHEO would be likely to direct the Enterprise to submit a new or amended plan if subsequent notices of capital classification are on grounds different from or in addition to the grounds underlying previous notices, or if changes in circumstances underlying the original plan indicate that reevaluation is appropriate, or if the original plan is not achieving the desired effects within a reasonable period.

In order to be complete, the Enterprise's capital restoration plan must include all of the information required by 12 U.S.C. 4622(a) and all other information directed by OFHEO. If the Enterprise does not submit a complete plan by the specified deadline, OFHEO may in its discretion reclassify the Enterprise into a lower capital classification, as described in § 1777.23(c). OFHEO's original notice of proposed capital classification will notify the Enterprise that the Enterprise's failure to submit a complete and timely capital restoration plan may lead to additional reclassification, as provided in § 1777.21(a)(1)(ii). Consequently, if a complete and timely

[20] Part 1750 of OFHEO's regulations currently contain classification procedures at 12 CFR 1750.5. When this part 1777 is adopted as a final rule, OFHEO will amend part 1750 to remove the classification procedures from part 1750. At that time, all classification procedures will be located in part 1777, and procedures under which the Enterprises file periodic capital reports will remain in part 1750.

capital restoration plan is not received, OFHEO may issue such reclassification under § 1777.21(a)(3) immediately upon expiration of the filing deadline, without further notice. As further provided in § 1777.23(c), such reclassification may affect each subsequent capital classification of the Enterprise, until the Enterprise files a plan that obtains OFHEO's approval. If the Enterprise has not corrected its failure to file an acceptable plan after a reasonable period, OFHEO may issue additional reclassifications to the Enterprise, without additional notice.

OFHEO will review the Enterprise's capital plan and provide an order within thirty days specifying the plan is approved or disapproved, subject to extension for an additional thirty days as OFHEO deems necessary. If the plan is disapproved, OFHEO's order will address the reasons for disapproval. The Enterprise must then submit an amended plan acceptable to OFHEO within thirty days or such longer period as OFHEO approves. This thirty day period is longer than the ten day period for submission of the initial plan, in order to facilitate dialog with the Enterprise as to how the Enterprise may rehabilitate its disapproved plan. However, as provided in § 1777.23(c), OFHEO may elect to reclassify the Enterprise into a lower capital classification, without additional notice, until such time as the Enterprise files an amended capital plan and OFHEO approves it.

Once a capital plan is approved, it may be amended only with the prior written approval of OFHEO, as provided in § 1777.23(f). The Enterprise's obligations under the plan remain in place except to the extent the plan itself identifies dates, events, or conditions upon which the obligations terminate. To the extent the plan is silent in regard to any particular obligation, the obligation remains in place until OFHEO issues an order terminating such obligation. An Enterprise may seek such termination orders from OFHEO.

Section 1777.23(h) of the proposed rule requires the Enterprise to take all actions reasonably necessary to comply with the approved plan and fulfill the schedule thereunder. If an Enterprise fails to do so, § 1777.23(h) indicates OFHEO may exercise its authority under 12 U.S.C. 4615(b)(2) and 4616(b)(5), which authorizes OFHEO to reclassify an Enterprise if OFHEO finds it has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan. OFHEO interprets the requirement of good faith under the statutory language to mean that the Enterprise must make all efforts reasonably necessary to implement the plan. As is provided in § 1777.23(h)(1)(ii) through (iii), the Enterprise's failure to implement the plan will be considered in the determination of each subsequent capital classification of the Enterprise until OFHEO determines the Enterprise is making such reasonable efforts. The Enterprise may face successive reclassifications for failure to make such efforts after a reasonable period.

In addition, a capital plan that has received an approval order by OFHEO is an order under the 1992 Act for purposes of 12 U.S.C. 4631, authorizing OFHEO to institute cease and desist proceedings if an Enterprise, executive officer, or director thereof engages in, or OFHEO has reasonable cause to believe is about to engage in, conduct that violates orders issued under the 1992 Act. Under certain circumstances, civil money penalties may also be imposed under 12 U.S.C. 4636 against an Enterprise, executive officer, or director thereof for violation of an order under the 1992 Act. As is noted in § 1777.23(h)(2), an Enterprise in any capital classification, its executive officers, and directors may be subject to action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with an approved plan.

Section 1777.24 of the proposed rule implements OFHEO's discretionary authority under 12 U.S.C. 4616(b)(1) through (4), to issue orders requiring a significantly undercapitalized Enterprise to take remedial and corrective actions such as reducing liabilities, limiting asset growth, obtaining new capital, or refraining from engaging in activities as specified by OFHEO. As indicated by § 1777.24, OFHEO may also issue such orders to an Enterprise that has been classified as critically undercapitalized, including one in conservatorship, under authority provided by 12 U.S.C. 4617(b) through (c).

The procedures under which these orders may be issued are similar to the procedures for issuance of capital classifications, and are set out in § § 1777.24 through 1777.26 of the proposed rule. Similar to the treatment of approved capital plans discussed above, the provisions contained in these orders bind the Enterprise until such provisions terminate under the terms of the order or OFHEO modifies the order, as discussed in § 1777.26(b). As indicated in § 1777.26(c), these orders constitute orders under the 1992 Act, and an Enterprise in any capital classification, its executive officers, and directors may be subject to administrative enforcement action by OFHEO under 12 U.S.C. 4631, 4632, and 4636 and 12 CFR part 1780 for failure to comply with such orders. Moreover, 12 U.S.C. 4635 provides jurisdiction in the United States District Court of the District of Columbia for direct enforcement of these orders.

Section 1777.27 summarizes 12 U.S.C. 4623, which provides that an Enterprise not classified as critically undercapitalized may seek judicial review of OFHEO's final notice of its capital classification, or a final notice of order issued under 12 U.S.C. 4616(b)(1) through (4). For any issue raised by such Enterprise in connection with such review, the Enterprise must have first exhausted its administrative remedies, by presenting all its objections, arguments, and information relating to such issue for OFHEO's consideration in the Enterprise's response to OFHEO's notice of capital classification or notice of intent to issue an order. The Enterprise's judicial action will not operate as a stay of OFHEO's final capital classification or order.

Section 1777.28 addresses appointment of a conservator for a significantly undercapitalized or critically undercapitalized Enterprise.[21] As is described in § 1777.12(a), 12 U.S.C. 4616 empowers OFHEO to appoint a conservator for a significantly undercapitalized Enterprise, if OFHEO determines the Enterprise's core capital is less than the minimum capital level and the alternative remedies available to OFHEO under the 1992 Act are not satisfactory. As is described in § 1777.12(b), 12 U.S.C. 4617 requires OFHEO to appoint a conservator for a critically undercapitalized Enterprise, unless OFHEO makes a written determination, and the Secretary of the Treasury concurs in writing, that the appointment of a conservator likely would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market, and the public interest would be better served by taking some other enforcement action authorized by the 1992 Act. Under 12 U.S.C. 4619(e)(2), either such appointment will be terminated by OFHEO upon the agency's determination that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level. OFHEO is also vested with discretion, under 12 U.S.C. 4619(e)(1), to terminate either

[21] OFHEO also has authority under 12 U.S.C. 4619(a)(1) through (2) to appoint conservators on various grounds, regardless of an Enterprise's capital classification.

type of conservatorship appointment based on the agency's determination that such termination is in the public interest and may safely be accomplished. These termination provisions are reflected in § 1777.28(d).

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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 or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Unfunded Mandates Reform Act of 1995

This proposed rule does not include a Federal mandate that could result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the proposed rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation only affects the Enterprises, their executive officers, and their directors.

Paperwork Reduction Act of 1995

This proposed rules contain no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1777

Administrative practice and procedure, Capital classification, Mortgages.

Accordingly, for the reasons set out in the preamble, OFHEO proposes to add part 1777 to subchapter C of 12 CFR chapter XVII to read as follows:

PART 1777—PROMPT CORRECTIVE ACTION

Sec.
1777.1 Authority, purpose, scope, and implementation dates.
1777.2 Preservation of other authority.
1777.3 Definitions.

Subpart A—Prompt Supervisory Response

1777.10 Developments prompting supervisory response.
1777.11 Supervisory response.
1777.12 Other supervisory action.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

1777.20 Capital classifications.
1777.21 Notice of capital category, and adjustments.
1777.22 Limitation on capital distributions.
1777.23 Capital restoration plans.
1777.24 Notice of intent to issue an order.
1777.25 Response to notice.
1777.26 Final notice of order.
1777.27 Exhaustion and review.
1777.28 Appointment of conservator for significantly undercapitalized or critically undercapitalized Enterprise.

Authority: 12 U.S.C. 1452(b)(2), 1456(c), 1718(c)(2), 1723a(k), 4513(a), 4513(b), 4514, 4517, 4611–4619, 4622, 4623, 4631, 4635.

§ 1777.1 Authority, purpose, scope, and implementation dates.

(a) **Authority.** This part is issued by the Office of Federal Housing Enterprise Oversight (OFHEO) pursuant to sections 1313, 1371, 1372, and 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act (1992 Act) (12 U.S.C. 4513, 4631, 4632, and 4636). These provisions broadly authorize OFHEO to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises) maintain adequate capital and operate in a safe and sound manner.

(b) *Authority, purpose and scope of subpart A.* In addition to the authority set forth in paragraph (a) of this section, subpart A of this part is also issued pursuant to section 1314 of the 1992 Act (12 U.S.C. 4514), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), requiring each Enterprise to submit such reports to OFHEO as the Director of OFHEO determines, in his or her judgment, are necessary to carry out the purposes of the 1992 Act. Subpart A is also issued in reliance on section 1317 of the 1992 Act (12 U.S.C. 4517) authorizing OFHEO to conduct examinations of the Enterprises. The purpose of subpart A is to set forth a framework of early intervention supervisory measures, other than formal enforcement actions, that OFHEO may take to address specified developments that merit supervisory review to ensure they do not pose a current or future threat to the safety and soundness of an Enterprise. OFHEO's initiation of procedures under subpart A does not necessarily indicate that any unsound condition exists or that any violation has taken place. The supervisory responses enumerated in § 1777.11 do not constitute orders under the 1992 Act for purposes of sections 1371, 1372, and 1376 thereof (12 U.S.C. 4631, 4632 and 4636).

(c) *Authority, purpose, and scope of subpart B.* In addition to the authority set forth in paragraph (a) of this section, subpart B of this part is also issued pursuant to subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623), section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)(2)), and section 303(c)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718(c)(2)). These provisions authorize OFHEO to administer certain capital requirements for the Enterprises, to classify the capital of the Enterprises based on capital levels specified in the 1992 Act, and, in appropriate circumstances, to exercise discretion to reclassify an Enterprise into a lower capital category. Under these provisions, there are also automatic consequences for an Enterprise that is not classified as adequately capitalized, as well as discretionary authority for OFHEO to require an Enterprise to take remedial actions. Subpart B implements the provisions of sections 1364 through 1368, 1369(b) through (e), 1369C, and 1369D of the 1992 Act as they apply to the Enterprises (12 U.S.C. 4614 through 4618, 4619(b) through (e), 4622 and 4623). The principal purposes of subpart B are to identify the capital

measures and capital levels that OFHEO uses in determining the capital classification of an Enterprise, to set out the procedures OFHEO uses in determining such capital classifications, to establish procedures for submission and review of capital restoration plans of an Enterprise that is not classified as adequately capitalized, and to establish procedures under which OFHEO issues orders pursuant to section 1366(b)(1) through (4) of the 1992 Act (12 U.S.C. 4616(b)(1) through (4)).

(d) *Effective dates of capital classifications.* Section 1364 of the 1992 Act (12 U.S.C. 4614(d)) directs OFHEO to determine capital classifications for the Enterprises by reference to two capital standards, consisting of the minimum or critical capital level on the one hand, and the risk-based capital level on the other. Section 1364(d) of the 1992 Act (12 U.S.C. 4614(d)) excludes consideration of whether the Enterprises meet the risk-based capital level in determining capital classifications or reclassifications under 1364, until one year after the effective date of OFHEO's regulation implementing OFHEO's risk-based capital test (issued under section 1361(e) of the 1992 Act (12 U.S.C. 4611(e)); until such time, section 1364(d) provides that an Enterprise is to be classified as adequately capitalized so long as it meets the minimum capital level. Subpart B contains a currently effective set of capital classifications omitting consideration of the risk-based capital level, as well as another set of capital classifications which will take effect, and displace the current set of capital classifications, one year after the effective date of OFHEO's risk-based capital rule.

§ 1777.2 Preservation of other authority.

(a) *Supervisory standards.* Notwithstanding the identification of certain developments for supervisory response under subpart A of this part, nothing in this part in any way limits the authority of OFHEO otherwise to take such actions as are deemed appropriate by the Director of OFHEO to ensure that the Enterprises maintain adequate capital, operate in a safe and sound manner, and comply with the 1992 Act and regulations, orders, and agreements thereunder.

(b) *Capital floor.* Classification of an Enterprise as adequately capitalized in accordance with subtitle B of the 1992 Act and subpart B of this part indicates that the Enterprise meets the capital levels under sections 1361 and 1362 of the 1992 Act (12 U.S.C. 4611 and 4612) and regulations promulgated thereunder as of particular times stated in the classification determination. Nothing in subpart B of this part or subtitle B of the 1992 Act limits OFHEO's authority otherwise to address circumstances that would require additional capital through regulations, orders, notices, guidance, or other actions.

(c) *Form of supervisory action or response.* In addition to the supervisory responses contemplated under subpart A of this part, and the authority to classify and reclassify the Enterprises, to issue orders, and to appoint conservators under subpart B of this part, the 1992 Act grants OFHEO broad discretion to take such other supervisory actions as may be deemed by OFHEO to be appropriate, including issuing temporary and permanent cease and desist orders, imposing civil money penalties, appointing a conservator under section 1369(a)(1) through (2) of the 1992 Act (12 U.S.C. 4619(a)(1) through (2)), entering into a written agreement the violation of which is actionable through enforcement proceedings, or entering into any other formal or informal agreement with an Enterprise. Neither the 1992 Act nor this part in any way limit OFHEO's discretion over the selection of the type of these actions, and the selection of one type of action under this part or under these other statutory authorities, or a combination thereof, does not foreclose OFHEO from pursuing any other action.

§ 1777.3 Definitions.

For purposes of this part, the following definitions will apply:

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*

Affiliate means an entity that controls an Enterprise, is controlled by an Enterprise, or is under common control with an Enterprise.

Capital distribution means:

(1) Any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an Enterprise, except a dividend consisting only of shares of the Enterprise; and

(2) Any payment made by an Enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit made to finance an acquisition by the Enterprise of such shares or other ownership interests, except to the extent the Enterprise makes a payment to repurchase its shares for the purpose of fulfilling an obligation of the Enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401 *et seq.*) or any substantially equivalent plan and is approved in writing by OFHEO in advance.

Core capital has the same meaning as provided in 12 CFR 1750.2.

Critical capital level means the amount of core capital that is equal to the sum of one half of the amount determined under 12 CFR 1750.4(a)(1) and five-ninths of the amounts determined under 12 CFR 1750.4(a)(2) through 1750.4(a)(7).

Enterprise means the Federal National Mortgage Association and any affiliate thereof, and the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Minimum capital level means the minimum amount of core capital specified for an Enterprise pursuant to section 1362 of the 1992 Act (12 U.S.C. 4612), as determined under 12 CFR 1750.4.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Risk-based capital level means the amount of total capital specified for an Enterprise pursuant to section 1361 of the 1992 Act (12 U.S.C. 4611), as determined under OFHEO's regulations implementing section 1361.

Total capital has the same meaning as provided at 12 CFR 1750.11(n).

Subpart A—Prompt Supervisory Response

§ 1777.10 Developments prompting supervisory response.

In the event of any of the following developments, OFHEO shall undertake one of the supervisory responses enumerated in § 1777.11, or a combination thereof:

(a) OFHEO's national House Price Index (HPI) for the most recent quarter is more than two percent less than the national HPI four quarters previously, or for any Census Division or Divisions in which are located properties securing more than 25 percent of single-family mortgages owned or securing securities guaranteed by an Enterprise, the HPI for the most recent quarter for such Division or Divisions is more than five percent less than the HPI for that Division or Divisions four quarters previously;

(b) An Enterprise's interest rate risk, as assessed by any internal measure, exceeds the limit at which the Enterprise's policies and procedures require a report of such exception to its board of directors;

(c) An Enterprise's net income for the most recent calendar quarter is less than one-half of its average quarterly net income for any four-quarter period during the prior eight quarters;

(d) An Enterprise's net interest margin (NIM) for the most recent quarter is less

than one-half of its average NIM for any four-quarter period during the prior eight quarters;

(e) For single-family mortgage loans owned or securitized by an Enterprise that are delinquent ninety days or more or in foreclosure, the proportion of such loans in the most recent quarter has increased more than one-half of a percentage point compared to the lowest proportion of such loans in any of the prior four quarters;

(f) An Enterprise's equity, as measured on its Consolidated Fair Value Balance Sheet as of the end of a calendar year, is ten percent less than the Enterprise's equity so measured as of the end of the previous calendar year, and is ten percent or more below the amount of its core capital;

(g) An Enterprise experiences material and sustained disruptions to its data processing or operational systems;

(h) An Enterprise changes its external auditor without cause;

(i) The board of directors of an Enterprise fails to hold a scheduled meeting without cause; or

(j) Any other development, including conduct of an activity by an Enterprise, that OFHEO determines in its discretion presents a risk to the safety and soundness of the Enterprise or a possible violation of applicable law, regulation, or order.

§ 1777.11 Supervisory response.

(a) *Level I supervisory response.*—(1) *Supervisory letter.* Not later than five business days after OFHEO determines that a development enumerated in § 1777.10 has transpired, OFHEO shall deliver a supervisory letter alerting the chief executive officer or to the board of directors, of the Enterprise to OFHEO's determination that the development has occurred.

(2) *Contents of supervisory letter.* The supervisory letter shall notify the Enterprise that OFHEO is commencing review of the development pursuant to this subpart. As is appropriate under the particular circumstances and the nature of the development, the letter may direct the Enterprise to undertake one or more of the following, as of such time OFHEO directs:

(i) Provide OFHEO with any relevant information known to the Enterprise about the development, in such format as OFHEO directs;

(ii) Respond to specific questions and concerns OFHEO has about the development; and

(iii) Take appropriate action.

(3) *Review; further action.* Based on the Enterprise's response to the supervisory letter and consideration of other appropriate factors, OFHEO shall promptly determine whether the Level I supervisory response is adequate to resolve any supervisory issues implicated by the development, or whether additional supervisory response under this section is warranted.

(b) *Level II supervisory response.*—(1) *Special review.* In addition to any other supervisory response described in this section, OFHEO may conduct a special review of the Enterprise in order to assess the impact of the development on the Enterprise.

(2) *Review; further action.* Based on the results of the special review and consideration of other appropriate factors, OFHEO shall promptly determine whether additional supervisory response under this section is warranted.

(c) *Level III supervisory response.*—(1) *Action plan.* In addition to any other supervisory response described in this section, OFHEO may direct the Enterprise to prepare and submit an action plan to OFHEO, in such format and at such time as OFHEO directs.

(2) *Contents of action plan.* Such action plan shall include, subject to additional direction by OFHEO, the following:

(i) In the case of developments, activities, or investments described in § 1777.10(b) through (j), any relevant information known to the Enterprise about the circumstances that led to such development, activity, or investment;

(ii) An assessment of likely consequences that the development, activity, or investment may have for the Enterprise; and

(iii) The proposed course of action the Enterprise will undertake in response to the development, in conducting the activity, or making the investment, including an explanation as to why such approach is preferred to any other alternative actions by the Enterprise and how such approach will address the concerns of OFHEO.

(3) *Review; further action.* If OFHEO in its discretion determines that the information, assessment, or proposed course of action contained in the action plan is incomplete or inadequate, OFHEO shall promptly direct the Enterprise to correct such deficiencies to the extent OFHEO determines such corrections will aid in resolving supervisory issues implicated by the development, and will promptly determine whether additional supervisory response under this section is warranted.

(d) *Level IV supervisory response.*—(1) *Notice to show cause.* In addition to any other supervisory response described in this section, OFHEO may issue written notice to the board of directors of the Enterprise directing the Enterprise to show cause, on or before the date specified in the notice, why OFHEO should not issue one or more of the following:

(i) A notice of charges to the Enterprise under section 1371 of the 1992 Act (12 U.S.C. 4631) and the procedures in 12 CFR part 1780 commencing an action to order the Enterprise to cease and desist conduct, conditions, or violations specified in the notice to show cause;

(ii) A temporary order to the Enterprise under section 1372 of the 1992 Act (12 U.S.C. 4632) and the procedures in 12 CFR part 1780 to cease and desist from, and take affirmative actions to prevent or remedy harm from, conduct, conditions, or violations specified in the notice to show cause;

(iii) A notice of charges under section 1376 of the 1992 Act (12 U.S.C. 4636) and the procedures in 12 CFR part 1780 commencing imposition of a civil money penalty against the Enterprise; and

(iv) A notice of discretionary reclassification of the Enterprise's capital classification under section 1364(b) of the 1992 Act (12 U.S.C. 4614(b)) and subpart B of this part.

(2) *Review; further action.* Based on the Enterprise's response to the notice to show cause and consideration of other appropriate factors, OFHEO shall determine promptly whether to commence the actions described in the notice, and whether additional supervisory response under this section is warranted.

§ 1777.12 Other supervisory action.

Notwithstanding the pendency or completion of one or more supervisory responses described in § 1777.11, OFHEO may at any time undertake additional supervisory steps and actions in the form of any informal or formal supervisory tool available to OFHEO under the 1992 Act, including but not limited to the issuance of guidance or directives under section 1313 (12 U.S.C. 4513), the requiring of reports under section 1314 (12 U.S.C. 4514), the conduct of other examinations under section 1317 (12 U.S.C. 4517), discretionary reclassification under section 1364 (12 U.S.C. 4614), discretionary action under section 1366(b) (12 U.S.C. 4616(b)), appointment of a conservator under section 1369(a) (12 U.S.C. 4619(a)), or administrative enforcement action under sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632 and 4636). In addition, OFHEO may take any such steps or actions with respect to an

Enterprise that fails to make a submission or comply with a directive as required by § 1777.11, or to address an Enterprise's failure to implement an appropriate action in response to a supervisory letter or under an action plan under § 1777.11.

Subpart B—Capital Classifications and Orders Under Section 1366 of the 1992 Act

§ 1777.20 Capital classifications.

(a) *Capital classifications after the effective date of section 1365 of the 1992 Act.* The capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided under paragraph (a)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held total capital equaling or exceeding the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held total capital less than the risk-based capital level; and

(ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the minimum capital level.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (a)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held core capital less than the minimum capital level; and

(ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise held core capital less than the critical capital level.

(5) *Discretionary reclassification.*—(i) *Determination to reclassify.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result a rapid depletion of core capital, or that the value of the property subject to mortgages held or securitized by the Enterprise has decreased significantly, or that reclassification is otherwise deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(A) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized;

(B) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized;

(C) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(ii) *Prior approvals.* In making any determination to reclassify an Enterprise under paragraph (a)(5)(i) of this section, OFHEO will not base its decision to reclassify solely on action or inaction that previously was given specific approval by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan under section 1369C of the 1992 Act (12 U.S.C. 4622), or of a written agreement with the Enterprise that is enforceable in accordance with section 1371 of the 1992 Act (12 U.S.C. 4631).

(b) *Duration of reclassification; successive reclassifications.*—(1) Any reclassification of an Enterprise based on action, inaction, or conditions under paragraph (a)(5) or (c)(5) of this section shall be considered in the determination of each subsequent capital classification of the Enterprise, and shall only cease being considered in the determination of the Enterprise's capital classification after OFHEO determines that the action, inaction or condition upon which the reclassification was based has ceased or been eliminated and remedied to OFHEO's satisfaction.

(2) If the action, inaction, or condition upon which a reclassification was based under paragraph (a)(5) or (c)(5) of this section has not ceased or been eliminated and remedied to OFHEO's satisfaction within such reasonable period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under such paragraph (a)(5) or (c)(5) of this section into lower capital classifications.

(c) *Capital classifications before the effective date of section 1365 of the 1992 Act.* Notwithstanding paragraph (a) of this section, until the expiration of one year following the initial effective date of OFHEO's regulations establishing the risk-based capital test (issued under section 1361(e) of the 1992 Act (12 U.S.C. 4611(e)), the capital classification of an Enterprise for purposes of subpart B of this part is as follows:

(1) *Adequately capitalized.* Except as otherwise provided in paragraph (c)(5) of this section, an Enterprise will be classified as adequately capitalized if the Enterprise, as of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the minimum capital level.

(2) *Undercapitalized.* An Enterprise will be classified as undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the minimum capital level; and (ii) Is reclassified as undercapitalized by OFHEO under paragraph (c)(5) of this section.

(3) *Significantly undercapitalized.* Except as otherwise provided under paragraph (c)(5) of this section or § 1777.23(c) or § 1777.23(h), an Enterprise will be classified as significantly undercapitalized if the Enterprise:

(i) As of the date specified in the notice of proposed capital classification, held core capital less than the minimum capital level; and (ii) As of the date specified in the notice of proposed capital classification, held core capital equaling or exceeding the critical capital level.

(4) *Critically undercapitalized.* An Enterprise will be classified as critically undercapitalized if, as of the date specified in the notice of proposed capital classification, the Enterprise held core capital less than the critical capital level.

(5) *Discretionary reclassification.*—(i) *Determination to reclassify.* If OFHEO determines in writing that an Enterprise is engaging in action or inaction (including a failure to respond appropriately to changes in circumstances or unforeseen events) that could result a rapid depletion of core capital, or that the value of the property subject to mortgages held or securitized by the Enterprise has decreased significantly, or that reclassification is deemed necessary to ensure that the Enterprise holds adequate capital and operates safely, OFHEO may reclassify the Enterprise as:

(A) Undercapitalized if the Enterprise is otherwise classified as adequately capitalized;

(B) Significantly undercapitalized if the Enterprise is otherwise classified as undercapitalized;

(C) Critically undercapitalized if the Enterprise is otherwise classified as significantly undercapitalized.

(ii) *Prior approvals.* In making any determination to reclassify an Enterprise under paragraph (c)(5)(i) of this section, OFHEO will not base its decision to reclassify solely on action or inaction that previously was given specific approval by the Director of OFHEO in connection with the Director's approval of the Enterprise's capital restoration plan under section 1369C of the 1992 Act (12 US.C. 4622), or of a written agreement with the Enterprise that is enforceable in accordance with section 1371 of the 1992 Act (12 U.S.C. 4631).

§ 1777.21 Notice of capital category, and adjustments.

(a) *Notice of capital classification.* OFHEO will classify each Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c) on at least a quarterly basis. OFHEO may classify an Enterprise according to the capital classifications in § 1777.20(a) or § 1777.20(c), or reclassify an Enterprise as set out in § 1777.20(a)(5), § 1777.20(c)(5), § 1777.23(c), or § 1777.23(h), at such other times as OFHEO deems appropriate.

(1) *Notice of proposed capital classification.* (i) Before OFHEO classifies or reclassifies an Enterprise, OFHEO will provide the Enterprise with written notice containing the proposed capital classification, the information upon which the proposed classification is based, and the reason for the proposed classification, as appropriate.

(ii) Notices proposing to classify or reclassify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice that OFHEO may further reclassify the Enterprise under § 1777.23(c), without additional notice.

(iii) Notices proposing to classify or reclassify an Enterprise as significantly undercapitalized or critically undercapitalized may be combined with a notice under § 1777.24 that OFHEO intends to issue an order under section 1366 of the 1992 Act (12 U.S.C. 4616).

(iv) Notices proposing to classify an Enterprise as undercapitalized or significantly undercapitalized may be combined with a notice proposing to simultaneously reclassify the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5).

(2) *Response by the Enterprise.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in classifying or reclassifying the Enterprise.

(i) The Enterprise has thirty calendar days from receipt the notice of proposed capital classification to submit its response to OFHEO, unless OFHEO determines a shorter period to be appropriate or the Enterprise consents to a shorter period.

(ii) The Enterprise's response period may be extended for up to an additional thirty calendar days if OFHEO determines there is good cause for such extension.

(iii) The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed capital classification.

(3) *Classification determination and written notice of capital classification.* After the Enterprise has submitted its response under paragraph (a)(2) of this section or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will make its determination of the Enterprise's capital classification, taking into consideration such relevant information as is provided by the Enterprise in its response, if any, under paragraph (a)(2) of this section. OFHEO will provide the Enterprise with a written notice of capital classification, which shall include a description of the basis for OFHEO's determination.

(4) *Timing.* OFHEO may, in its discretion, issue a notice of proposed capital classification to an Enterprise at any time. If a notice of proposed classification is pending (under the process set out in paragraphs (a)(1) through (3) of this section) at that time, OFHEO may, in its discretion, specify whether the subsequent notice of proposed capital classification supersedes the pending notice.

(b) *Developments indicating possible change to capital classification*—(1) *Notice to OFHEO.* An Enterprise shall promptly provide OFHEO with written notice of any material development that may reasonably be expected to cause the Enterprise's core or total capital to fall to a point that could result in assignment of the Enterprise to a lower capital classification than the capital classification assigned to the Enterprise in its most recent notice of capital classification from OFHEO, or proposed to be assigned in the Enterprise's most recent notice of proposed capital classification from OFHEO. The Enterprise shall deliver such notice to OFHEO no later than 10 calendar days after the Enterprise becomes aware of or reasonably should have become aware of such development.

(2) OFHEO, in its discretion, will determine whether to issue a new notice of proposed capital classification under paragraph (a) of this section, based on OFHEO's review of the notice under paragraph (a)(1) of this section from the Enterprise and any other information deemed relevant by OFHEO.

§ 1777.22 Limitation on capital distributions.

(a) *Capital distributions on or after the effective date of the risk-based capital level.* On or after the effective date of OFHEO's regulations establishing the risk-based capital level (issued under section 1361(e) of the 1992 Act (12 U.S.C. 4611(e)), an Enterprise shall make no capital distribution that would decrease the total capital of the Enterprise to an amount less than the risk-based capital level or the core capital of the Enterprise to an amount less than the minimum capital level without the prior written approval of OFHEO.

(b) *Capital distributions by an Enterprise that is not adequately capitalized*—(1) *Prohibited distributions.* An Enterprise that is not classified as adequately capitalized shall make no capital distribution that would result in the Enterprise being classified into a lower capital classification than the one to which it is classified at the time of such distribution.

(2) *Restricted distributions.* An Enterprise classified as significantly or critically undercapitalized shall make no capital distribution without the prior written approval of OFHEO. OFHEO may grant a request for such a capital distribution only if OFHEO determines, in its discretion, that the distribution:

(i) Will enhance the ability of the Enterprise to meet the risk-based capital level and the minimum capital level promptly;

(ii) Will contribute to the long-term financial safety and soundness of the Enterprise; or

(iii) Is otherwise in the public interest.

(c) *Capital distributions before the effective date of the risk-based capital level.* Until the effective date of OFHEO's regulations establishing the risk-based capital level (issued under section 1361(e) of the 1992 Act)(12 U.S.C. 4611(e)), an Enterprise may make no capital distribution that would decrease the core capital of the Enterprise to an amount less than the minimum capital level without the prior written approval of OFHEO.

§ 1777.23 Capital restoration plans.

(a) *Schedule for filing plans.*—(1) *In general.* An Enterprise shall file a capital restoration plan in writing with OFHEO within ten days of receiving a notice of capital classification under § 1777.21(a)(3) stating that the Enterprise is classified as undercapitalized, significantly

undercapitalized, or critically undercapitalized, unless OFHEO in its discretion determines an extension of the ten day period is necessary and provides the Enterprise with written notice of the date the plan is due.

(2) *Successive capital classifications.* Notwithstanding paragraph (a)(1) of this section, an Enterprise that has already submitted and is operating under a capital restoration plan approved by OFHEO under this part is not required to submit an additional capital restoration plan based on a subsequent notice of capital classification, unless OFHEO notifies the Enterprise that it must submit a new or amended capital restoration plan. An Enterprise that receives such a notice to submit a new or amended capital restoration plan shall file in writing with OFHEO a complete plan that is responsive to the terms of and within the deadline specified in such notice.

(b) *Contents of capital restoration plan.*—(1) The capital restoration plan submitted under paragraph (a)(1) or (2) of this section shall:

(i) Specify the level of capital the Enterprise will achieve and maintain;

(ii) Describe the actions that the Enterprise will take to become classified as adequately capitalized;

(iii) Establish a schedule for completing the actions set forth in the plan;

(iv) Specify the types and levels of activities (including existing and new programs) in which the Enterprise will engage during the term of the plan;

(v) Describe the actions that the Enterprise will take to comply with any mandatory and discretionary requirements to be imposed under Subtitle B of the 1992 Act (12 U.S.C. 4611 through 4623) or subpart B of this part;

(vi) To the extent the Enterprise is required to submit (or revise) a capital restoration plan as the result of a reclassification of the Enterprise under § 1777.20(a)(5) or § 1777.20(c)(5), describe the steps the Enterprise will take to cease or eliminate and remedy the action, inaction, or conditions that caused the reclassification; and

(vii) Provide any other information or discuss any other issues as instructed by OFHEO.

(2) The plan shall include a declaration by the president, vice president, treasurer, or other officer designated by the Board of Directors of the Enterprise to make such declaration, that the material contained in the plan is true and correct to the best of such officer's knowledge and belief.

(c) *Failure to submit.*—(1) *Failure to submit; submission of unacceptable plan.* If, upon the expiration of the period provided in paragraph (c)(1) or (2) of this section for an Enterprise to submit a capital restoration plan, an Enterprise fails to comply with the requirement to file a complete capital restoration plan, or if the capital restoration plan is disapproved after review under paragraph (d) of this section, OFHEO may, in accordance with § 1777.21(a)(1)(ii) without additional notice, reclassify the Enterprise:

(i) As significantly undercapitalized if it is otherwise classified as undercapitalized; or (ii) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(2) *Duration of reclassification.* An Enterprise's failure to submit an approved capital restoration plan as described in paragraph (c)(1) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after the Enterprise files a capital restoration plan that receives OFHEO's approval under paragraph (d) of this section.

(3) *Successive reclassifications.* If an Enterprise has not remedied its failure to file a complete capital restoration plan or an acceptable capital restoration plan within such reasonable period as is determined by OFHEO to be appropriate, OFHEO may consider such failure to be the basis for additional reclassification under paragraph (c)(1) of this section into a lower capital classification. Such reclassification may be made without additional notice in accordance with § 1777.21(a)(1)(ii).

(d) *Order approving or disapproving plan.* Not later than thirty calendar days after receipt of the Enterprise's complete or amended capital restoration plan under this section (subject to extension upon written notice to the Enterprise for an additional thirty calendar days as OFHEO deems necessary), OFHEO shall issue an order to the Enterprise approving or disapproving the plan. An order disapproving a plan shall include the reasons therefore.

(e) *Resubmission.* An Enterprise that receives an order disapproving its capital restoration plan shall submit an amended capital plan acceptable to OFHEO within thirty calendar days of the date of such order, or a longer period if OFHEO determines an extension is in the public interest.

(f) *Amendment.* An Enterprise that has received an order approving its capital restoration plan may amend the capital restoration plan only after written notice to OFHEO and OFHEO's issuance of an order approving the modification. Pending OFHEO's review and approval of the amendment in OFHEO's discretion, the Enterprise shall continue to implement the capital restoration plan under the original approval order.

(g) *Termination*—(1) *Termination under the terms of the plan.* An Enterprise that has received an order approving its capital restoration plan remains bound by each of its obligations under the plan until each such obligation terminates under express terms of the plan itself identifying a date, event, or condition upon which such obligation shall terminate.

(2) *Termination orders.* To the extent the plan does not include such express terms for any obligation thereunder, the Enterprise's obligation continues until OFHEO issues an order terminating such obligation under the plan. The Enterprise may also submit a written request to OFHEO seeking termination of such obligations. OFHEO will approve termination of such obligation to the extent that OFHEO determines, in its discretion, that the obligation's purpose under the plan has been fulfilled and that termination of the obligation is consistent with the overall safety and soundness of the Enterprise.

(h) *Implementation.*—(1) An Enterprise that has received an order approving its capital restoration plan is required to implement the plan.

(i) If OFHEO determines, in its discretion, that an Enterprise has failed to make efforts reasonably necessary to comply with the capital restoration plan and fulfill the schedule thereunder, OFHEO may reclassify the Enterprise:

(A) As significantly undercapitalized if it is otherwise classified as undercapitalized; or

(B) As critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(ii) *Duration of reclassification.* An Enterprise's failure to implement an approved capital restoration plan as described in paragraph (h)(1)(i) of this section shall continue to be grounds for reclassification at each subsequent capital classification of the Enterprise, and shall only cease being considered grounds for reclassification after OFHEO determines, in its discretion, that the Enterprise is making such efforts as are reasonably necessary to comply with the capital restoration plan and fulfill the schedule thereunder.

(iii) *Successive reclassifications.* If an Enterprise has not remedied its failure to implement an approved capital restoration plan within such reasonable period as is determined by OFHEO to be appropriate, OFHEO may consider such

failure to be the basis for additional reclassification under paragraph (h)(1)(i) of this section into a lower capital classification.

(2) *Administrative enforcement action.* A capital plan that has received an approval order from OFHEO under this section constitutes an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers, and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such plan.

§ 1777.24 Notice of intent to issue an order.

(a) *Orders under section 1366 of the 1992 Act (12 U.S.C. 4616).* In addition to any other action taken under this part, part 1780 of this chapter, or any other applicable authority, OFHEO may, in its discretion, issue an order to an Enterprise that is classified as significantly undercapitalized or critically undercapitalized, or is in conservatorship, directing the Enterprise to take one or more of the following actions:

(1) Limit any increase in, or reduce, any obligations of the Enterprise, including off-balance sheet obligations;

(2) Limit or eliminate growth of the Enterprise's assets or reduce the amount of the Enterprise's assets;

(3) Acquire new capital, in such form and amount as determined by OFHEO; and

(4) Terminate, reduce, or modify any activity of the Enterprise that OFHEO determines creates excessive risk to the Enterprise.

(b) *Notice of intent to issue an order.* Before OFHEO issues an order to an Enterprise pursuant to section 1366 of the 1992 Act (12 U.S.C. 4616), OFHEO will provide the Enterprise with written notice containing the proposed order.

(c) *Contents of notice.* A notice of intent to issue an order under this subpart shall include:

(1) A statement of the Enterprise's capital classification and its minimum capital level or critical capital level, and its risk-based capital level;

(2) A description of the restrictions, prohibitions, or affirmative actions that OFHEO proposes to impose or require; and

(3) The proposed date when such restrictions or prohibitions would become effective or the proposed date for the commencement and/or completion of the affirmative actions.

§ 1777.25 Response to notice.

(a) *Content of response.* The Enterprise may submit a response to OFHEO containing information for OFHEO's consideration in connection with the proposed order. The response should include, but is in no way limited to, the following:

(1) Any relevant information, mitigating circumstances, documentation, or other information the Enterprise wishes OFHEO to consider in support of the Enterprise's position regarding the proposed order; and

(2) Any recommended modification of the proposed order, and justification thereof.

(b) *Time to respond.* The Enterprise has thirty calendar days from receipt the notice of proposed order to submit its response to OFHEO, unless OFHEO determines a shorter period to be appropriate or the Enterprise consents to a shorter period. OFHEO may extend the Enterprise's response period for up to an additional thirty calendar days if OFHEO determines, in its discretion, that there is good cause for such extension.

(c) *Waiver and consent.* The Enterprise's failure to submit a response during the response period (as extended or shortened, if applicable) shall waive any right of the Enterprise to comment on or object to the proposed order.

§ 1777.26 Final notice of order.

(a) *Determination and notice.* After the Enterprise has submitted its response under § 1777.25 or the response period (as extended or shortened, if applicable) has expired, whichever occurs first, OFHEO will make its determination regarding the order in its discretion, taking into consideration such relevant information as is provided by the Enterprise in its response, if any, under § 1777.25. OFHEO will provide the Enterprise with a written final notice of any order issued by OFHEO under this subpart, which shall include a description of the basis for OFHEO's determination.

(b) *Termination or modification.* An Enterprise that has received an order under paragraph (a) of this section remains subject to each provision of the order until each such provision terminates under the express terms of the order. The Enterprise may submit a written request to OFHEO seeking modification or termination of one or more provisions of the order. Pending OFHEO's review and approval of the Enterprise's request in OFHEO's discretion, the Enterprise shall remain subject to the provisions of the order.

(c) *Enforcement of order*—(1) *Judicial enforcement.* An order issued under paragraph (a) of this section is an order for purposes of section 1375 of the 1992 Act (12 U.S.C. 4635). An Enterprise in any capital classification may be subject to enforcement of such order in the United States District Court for the District of Columbia pursuant to such section.

(2) *Administrative enforcement.* An order issued under paragraph (a) of this section constitutes an order under the 1992 Act. An Enterprise, regardless of its capital classification, as well as its executive officers, and directors may be subject to action by OFHEO under sections 1371, 1372, and 1376 of the 1992 Act (12 U.S.C. 4631, 4632, and 4636) and 12 CFR part 1780 for failure to comply with such order.

§ 1777.27 Exhaustion and review.

(a) *Judicial review.*—(1) *Review of certain actions.* An Enterprise that is not classified as critically undercapitalized may seek judicial review of a final notice of capital classification issued pursuant to § 1777.21(a)(3) or a final notice of order issued pursuant to § 1777.26(a) in accordance with section 1369D of the 1992 Act (12 U.S.C. 4623).

(2) *Other review barred.* Except as set out in paragraph (a)(1) of this section, or review of conservatorship appointments to the limited extent provided in section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)) and § 1777.28(c), no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of a capital classification or any other action of OFHEO pursuant to this subpart B, as provided in section 1369D of the 1992 Act (12 U.S.C. 4623).

(b) *Exhaustion of administrative remedies.* In connection with any issue for which an Enterprise seeks judicial review in connection with an action described in paragraph (a)(1) of this section, the Enterprise must have first exhausted its administrative remedies, by presenting all its objections, arguments, and information relating to such issue for OFHEO's consideration pursuant to § 1777.21(a)(2), as part of the Enterprise's response to OFHEO's notice of capital classification, or pursuant to § 1777.25, as part of the Enterprise's response to OFHEO's notice of intent to issue an order.

(c) *No stay pending review.* The commencement of proceedings for judicial review of a final capital classification or order as described in paragraph (a)(1) of this section shall not operate as a stay thereof.

§ 1777.28 Appointment of conservator for a significantly undercapitalized or critically undercapitalized Enterprise.

(a) *Significantly undercapitalized enterprise.* At any time after an Enterprise is classified as significantly undercapitalized, OFHEO may issue an

order appointing a conservator for the Enterprise upon determining that:

(1) The amount of core capital of the Enterprise is less than the minimum capital level; and

(2) The alternative remedies available to OFHEO under the 1992 Act are not satisfactory.

(b) *Critically undercapitalized Enterprise.*—(1) *Appointment upon classification.* Not later than thirty days after issuing a final notice of capital classification pursuant to § 1777.21(a)(3) classifying an Enterprise as significantly undercapitalized, OFHEO shall issue an order appointing a conservator for the Enterprise.

(2) *Exception.* Notwithstanding paragraph (b)(1) of this section, the Director of OFHEO may make a written finding, with the written concurrence of the Secretary of the Treasury, that:

(i) The appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

(ii) The public interest would be better served by taking some other enforcement action authorized under this title.

(c) *Judicial review.* An Enterprise for which a conservator has been appointed pursuant to paragraph (a) or (b) of this section may seek judicial review of the appointment in accordance with section 1369(b) of the 1992 Act (12 U.S.C. 4619(b)). Except as provided therein, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of the powers or functions of a conservator.

(d) *Termination.*—(1) *Upon reaching the minimum capital level.* OFHEO will issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that the Enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level.

(2) *In OFHEO's discretion.* OFHEO may, in its discretion, issue an order terminating a conservatorship appointment under paragraph (a) or (b) of this section upon a determination that such termination order is in the public interest and may safely be accomplished.

Dated: April 4, 2001.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 01–8671 Filed 4–9–01; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA20

Corporate Governance

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is responsible for ensuring the safety and soundness of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Enterprises). In furtherance of that responsibility, OFHEO is proposing a regulation to set forth minimum requirements with respect to corporate governance practices and procedures of the Enterprises.

DATES: Written comments on the proposed regulation must be received by June 11, 2001.

ADDRESSES: Send written comments concerning the proposed regulation to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Mr. Pollard by electronic mail at RegComments@OFHEO.gov. OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word© or in portable document format (PDF) on 3.5″ disk.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, telephone (202) 414–3804 (not a toll-free number); or Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Comments

OFHEO invites comments on all aspects of the proposed regulation, including legal and policy considerations, and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted on the OFHEO Internet web site at http://www.ofheo.gov. In addition, copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

Background

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises) are adequately capitalized and operate safely and in compliance with applicable laws, rules, and regulations.

Corporate governance involves the relationships between an Enterprise, its management, board of directors, shareholders, regulators, and other stakeholders. It provides the structure through which the business objectives and strategies of the Enterprises are set as well as the means of attaining those objectives and monitoring performance. In recent years, regulators, investor organizations, stock exchanges, and corporations themselves have increased their focus on the importance of good corporate governance practices and procedures to ensure the long-term success of corporations.

OFHEO recognizes that good corporate governance practices and procedures are essential to the safe and sound operations of the Enterprises and accomplishment of their public policy purposes. Thus, corporate governance is one category of risk and risk management that is examined by OFHEO under its annual risk-based examination program. The proposed regulation builds upon the annual risk-based examination program in that it sets forth basic safety and soundness standards for corporate governance with which the Enterprises are required to comply. The proposed corporate governance practices and procedures are substantively similar to those required by Federal banking agencies with respect to the regulated financial institutions. To a large extent, the corporate governance requirements set forth in the proposed regulation reflect the current practices of the Enterprises and the supervisory standards of OFHEO. The Enterprises must be able to continue to attract and retain the highest caliber of board members and executive officers.

Section-by-Section Analysis

Subpart A—General

Section 1710.1 Purpose

OFHEO is responsible under the Act for ensuring the safety and soundness of the Enterprises. In furtherance of that responsibility, proposed § 1710.1 provides that the purpose of the proposed regulation is to set forth minimum requirements with respect to the corporate governance practices and procedures of the Enterprises.

Section 1710.2 Definitions

Proposed § 1710.2 sets forth the definitions of terms used in the proposed regulation. The term:

Act is proposed to mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

Agent is proposed to mean any person, other than a board member, executive officer, or employee of an Enterprise, who acts on behalf or for the benefit of an Enterprise, such as representing an Enterprise in contacts with third parties or providing professional services to an Enterprise.

Board member is proposed to mean a member of the board of directors; and, for purposes of subpart D, ''board member'' is proposed to include a current or former board member.

Board of directors is proposed to mean the board of directors of an Enterprise.

Chartering acts is proposed to mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

Compensation is proposed to mean any payment of money or the provision of any other thing of current or potential value in connection with employment. The term ''compensation'' is also proposed to include all direct and indirect payments of benefits, both cash and non-cash, including, but not limited to, payments and benefits derived from compensation or benefit agreements, fee arrangements, perquisites, stock option plans, post employment benefits, or other compensatory arrangements.

Conflict of interest is proposed to mean an interest in a transaction, relationship, or activity that might affect adversely, or appear to affect adversely, the ability to perform duties and responsibilities on behalf of the Enterprise in an objective and impartial manner.

Director means the Director of OFHEO or his or her designee.

Employee is proposed to mean a salaried individual, other than an executive officer, who works part-time, full-time, or temporarily for an Enterprise.

Enterprise is proposed to mean the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term ''Enterprises'' is proposed to mean, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Entity is proposed to mean a corporation, company, association, firm, joint venture, general or limited partnership, society, joint stock company, fund, or other organization or institution.

Executive officer is proposed to mean any senior executive officer and any senior vice president or individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function, or who reports directly to the chairperson, vice chairperson, chief operating officer, or president; and, for purposes of subpart D, ''executive officer'' is proposed to include a current or former executive officer.

Independent board member is proposed to mean a board member who meets the criteria for independence under the NYSE rules for audit committee members, regardless of the committee(s) on which the board member serves.

Legal expenses is proposed to mean, with respect to a claim, proceeding, or action, the amount of legal or other professional fees and expenses, and the amount of, and any cost incurred in connection with a penalty, fine, assessment, judgment, or settlement.

NYSE means the New York Stock Exchange.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Payment, for purposes of subpart D of this part, is proposed to mean:

(1) Direct or indirect transfer of funds or assets;

(2) Forgiveness of a debt or other obligation;

(3) Conferment of a benefit, including but not limited to stock options and stock appreciation rights; and

(4) Segregation of funds or assets, establishment or funding of a trust, or purchase of or arrangement for a letter of credit or other instrument, for the purpose of making, or pursuant to an agreement to make, a payment on or after the date on which such funds or assets are segregated, such trust is established, or such letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on the determination, after such date, of the liability for the payment of such amount or the liquidation of the amount of such payment.

Person is proposed to mean an individual or entity.

Senior executive officer is proposed to mean the chairperson of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairperson, any executive vice president of an Enterprise, and any individual, without regard to title, who has similar responsibilities.

Sections 1710.3–1710.9

Sections 1710.3 through 1710.9 are proposed to be reserved.

Subpart B—Corporate Practices and Procedures

Section 1710.10 Applicable Law

Congress established the Enterprises as privately owned corporations, imbued with private and public purposes, to be managed by their respective boards of directors. To dispel any legal uncertainty as to whether and to what extent State or Federal law applies to corporate governance practices and procedures of the Enterprises, proposed § 1710.10 would require that each Enterprise elect to follow and be bound by a specified body of corporate governance law to the extent such law is not inconsistent with applicable Federal law, rules, or regulations, including the standards proposed here. Specifically, the proposal requires the Enterprise to elect either the law of the jurisdiction in which its principal office is located, Delaware General Corporation Law, or the Model Business Corporation Act. The Enterprise is required to specify its election in its bylaws.

The proposed approach provides the Enterprises with flexibility in structuring their corporate governance practices and procedures while at the same time providing shareholders and other interested parties with certainty as to the body of corporate law applicable to each Enterprise.

OFHEO requests comments as to whether the choice of law to be elected should be narrower or broader than proposed. More particularly, should the law of the jurisdiction where the principal office of the Enterprise is located be the applicable law? Should the Delaware General Corporation Law

and the Model Business Corporation Act be permissible alternatives? Should Federal law or agency-promulgated standards be the sole legal basis for corporate governance practices and procedures of the Enterprises?

Section 1710.11 Committees of Board of Directors

Proposed § 1710.11 provides that an Enterprise may establish committees of the board of directors, in addition to the minimally required audit and compensation committees. No committee is to have the authority of the board of directors to amend the bylaws and no committee is to operate to relieve the board of directors or any board member of any responsibility imposed by applicable laws, rules, and regulations. In addition, proposed § 1710.11 requires that each Enterprise provide in its bylaws for the establishment of audit and compensation committees, however styled.[1]

The proposed section requires that the audit committee comply with all NYSE rules with respect to the audit committee, including charter, independence, composition, and expertise requirements.[2] The NYSE rules are adequate to ensure an effective and independent audit committee without further supplementation by OFHEO. Furthermore, since both Enterprises are listed with the NYSE, the Enterprises should not need to make changes to their respective audit committees to comply with the requirements of proposed § 1710.11.

The compensation committee is proposed to be comprised of at least three independent board members. The proposed duties of the compensation committee include ensuring that compensation plans for executive officers and employees comply with applicable laws, rules, and regulations and approving the compensation of senior executive officers.

OFHEO specifically requests comments as to whether the definition of the term ''independent board member'' in proposed § 1710.2 is appropriate to use with respect to the independence of board members of the compensation committee.

Section 1710.12 Compensation of Board Members, Executive Officers, and Employees

Proposed § 1710.12 requires that the compensation of board members, executive officers, and employees be reasonable and commensurate with their duties and responsibilities and comply with applicable laws, rules, and regulations.[3]

Section 1710.13 Quorum of Board of Directors; Proxies not Permissible

Proposed § 1710.13 requires that each Enterprise provide in its bylaws that, for the transaction of business, a quorum of the board of directors is a majority of the entire board of directors and that a board member may not vote by proxy.

Section 1710.14 Conflict-of-Interest Standards

Proposed § 1710.14 requires that each Enterprise establish and administer written conflict-of-interest standards that will provide reasonable assurance that the board members, executive officers, employees, and agents of the Enterprise discharge their responsibilities in an objective and impartial manner.

Sections 1710.15–1710.19

Sections 1710.15 through 1710.19 are proposed to be reserved.

Subpart C—Responsibilities of Board of Directors

Section 1710.20 Conduct of Board Members

Proposed § 1710.20 sets forth the standards that board members must follow in conducting the business of the Enterprise. In addition to devoting sufficient time to his or her duties and responsibilities, each board member is to act:

(1) On a fully informed, impartial, objective, and independent basis;

(2) In good faith and with due diligence, care, and loyalty;

(3) In the best interests of the shareholders and the Enterprise; and

(4) In compliance with the chartering acts of the Enterprises and other applicable laws, rules, and regulations.

This proposed section is based on current legal standards embodied in State law and the Model Business Corporation Act.

Section 1710.21 Responsibilities of Board of Directors

Proposed § 1710.21 sets forth the responsibilities of the board of directors. The board of directors is responsible for managing the conduct and affairs of the Enterprise to ensure that the Enterprise is operated in a safe and sound manner, including, at a minimum:

(1) Reviewing and overseeing corporate strategy, major plans of action, and risk policy as well as monitoring corporate performance;

(2) Hiring and retaining qualified senior executive officers and overseeing succession planning for such senior executive officers;

(3) Ensuring that compensation plans for executive officers and employees comply with applicable law, rules, and regulations and approving the compensation of board members and senior executive officers.

(4) Ensuring the integrity of the accounting and financial reporting systems of the Enterprise, including independent audits, and that appropriate systems of control are in place to identify and monitor risk and compliance with the chartering acts of the Enterprises and other applicable laws, rules, and regulations;

(5) Remaining informed of the condition, activities, and operations of the Enterprise;

(6) Overseeing the process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors; and

(7) Ensuring the responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

The proposed section also notes that the board of directors should refer to publications of and formal pronouncements by OFHEO for guidance on the responsibilities of the board of directors.[4] The proposed section is based on current OFHEO supervisory standards as well as State laws and the Model Business Corporation Act.

Sections 1710.22–1710.29

Sections 1710.22 through 1710.29 are proposed to be reserved.

[1] The importance of an independent audit committee has received increased attention by recent publications, including the Recommendation of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees, sponsored by the NYSE and the National Association of Securities Dealers, which can be accessed at http://www.nyse.com or http://www.nasd.com.

[2] The NYSE rules applicable to audit committees are in sections 303.01 and 303.02 of the NYSE Listed Company Manual, which can be accessed at http://www.nyse.com.

[3] OFHEO has issued a proposed regulation with respect to the compensation of executive officers at 65 FR 81771 (Dec. 27, 2000).

[4] For example, the *OFHEO Examination Handbook,* published at http://www.ofheo.gov, provides information and sets forth the examination criteria with respect to responsibilities of the board of directors.

Subpart D—Indemnification Payments

Section 1710.30 Permitted Indemnification Payments

Proposed § 1710.30 delineates the circumstances under which an Enterprise may make or agree to make indemnification payments. In proposing this section, OFHEO has considered the likely effect of such delineation on the ability of the Enterprises to attract and retain competent board members, executive officers, employees, and agents, and defers to applicable law in connection with actions not initiated or undertaken by OFHEO.

OFHEO considers an administrative proceeding to be initiated or undertaken by the issuance of a notice of charges. With respect to administrative proceedings initiated or undertaken by OFHEO, the proposed section permits an Enterprise to make or to agree to make indemnification payments, which are not prohibited under proposed § 1710.31, to a board member or executive officer, if the following two criteria are met:

(1) The board of directors of the Enterprise, in good faith, determines in writing after due investigation and consideration that the board member or executive officer acted in good faith and in a manner he or she believed to be in the best interests of the Enterprise and that the indemnification payment will not materially adversely affect the safety and soundness of the Enterprise; and

(2) The board member or executive officer agrees in writing to reimburse the Enterprise, to the extent the Enterprise is not covered by a commercial insurance policy or similar coverage, for that portion of any indemnification payment that subsequently becomes a prohibited indemnification payment under proposed § 1710.31.

In connection with an administrative proceeding initiated or undertaken by OFHEO, proposed § 1710.30 provides that the board member or executive officer requesting an indemnification payment is not to participate in any way in the discussion of the board of directors and approval of such payment. It does, however, provide that the board member or executive officer may present the request for indemnification to the board of directors and respond to any inquiries from the board of directors concerning his or her involvement in the circumstances giving rise to the administrative proceeding.

If a majority of board members are named as respondents in an administrative proceeding initiated or undertaken by OFHEO and request indemnification, proposed § 1710.30 provides that the remaining board members may authorize independent legal counsel to review the indemnification request and provide the remaining board members with a written opinion of counsel as to whether the two criteria for payment, noted above, are met. If the opinion of counsel concludes that the criteria have been met, the remaining board members may rely on the opinion in authorizing the requested indemnification.

Likewise, if all of the board members are named as respondents in an administrative proceeding and request indemnification, proposed § 1710.30 provides that the board of directors is to authorize independent legal counsel to review the indemnification request and provide the board of directors with a written opinion of counsel as to whether the two criteria have been met. If the opinion of counsel concludes that the criteria have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

These proposed procedures address the conflicts inherent in situations where the majority or all of the board members are subjects of an administrative proceeding. The use of independent legal counsel provides for an unbiased review of the two criteria necessary to approve indemnification and does not impose an undue hardship on the Enterprise. The board members may, of course, decline to approve the indemnification request despite a favorable opinion of legal counsel. OFHEO would consider legal counsel to be independent for purposes of the proposed section if the legal counsel is not a member of the legal staff of the Enterprise, does not have a recent or ongoing relationship with the Enterprise or any of its board members or senior executive officers, and has no other conflict of interest.

In a civil action or an administrative proceeding not initiated or undertaken by OFHEO, the proposed section authorizes an Enterprise to provide for payment to any board member, executive officer, employee, or agent of the Enterprise of legal expenses, in accordance with applicable law, provided that such payment is consistent with the safe and sound operations of the Enterprise.

Section 1710.31 Prohibited Indemnification Payments

Proposed § 1710.31 addresses when indemnification is prohibited in connection with an administrative proceeding that OFHEO initiates or undertakes. Thus, the proposed section does not permit an Enterprise or any affiliate of an Enterprise to make or agree to make, with certain exceptions, any payment to indemnify a board member or executive officer for any legal expense incurred in connection with an administrative proceeding initiated or undertaken by OFHEO that results in a final order or settlement pursuant to which such board member or executive officer is assessed a civil money penalty or is required to cease and desist from or take any affirmative action with respect to the Enterprise.

The proposed exceptions to this prohibition are that an Enterprise may make a reasonable payment that:

(1) Is used to purchase a commercial insurance policy or similar coverage; provided, that such insurance policy or similar coverage is not used to indemnify a board member or executive officer for the cost of any civil money penalty assessed against him or her in an administrative proceeding initiated or undertaken by OFHEO, but may be used to pay other legal expenses incurred in connection with such administrative proceeding or the amount of any restitution to the Enterprise; or

(2) Represents partial indemnification for legal expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the board member or executive officer has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty.

With respect to the second exception noted above, OFHEO recognizes that the appropriate amount of any partial indemnification may be difficult to ascertain with certainty. OFHEO, nevertheless, is of the opinion that the permissibility of partial indemnification is more equitable than an all or nothing approach.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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 or foreign markets. Accordingly, no regulatory

impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Government Sponsored Enterprises.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add subchapter B to 12 CFR chapter XVII as follows:

Subchapter B—Corporate Governance

PART 1710—CORPORATE GOVERNANCE

Subpart A—General

Sec.
1710.1 Purpose.
1710.2 Definitions.
1710.3–1710.9 [Reserved]

Subpart B—Corporate Practices and Procedures

1710.10 Applicable law.
1710.11 Committees of board of directors.
1710.12 Compensation of board members, executive officers, and employees.
1710.13 Quorum of board of directors; proxies not permissible.
1710.14 Conflict-of-interest standards.
1710.15–1710.19 [Reserved]

Subpart C—Responsibilities of Board of Directors

1710.20 Conduct of board members.
1710.21 Responsibilities of board of directors.
1710.22–1710.29 [Reserved]

Subpart D—Indemnification Payments

1710.30 Permitted indemnification payments.
1710.31 Prohibited indemnification payments.

Authority: 12 U.S.C. 4513(a) and 4513(b)(1).

Subpart A—General

§ 1710.1 Purpose.

OFHEO is responsible under the Act for ensuring the safety and soundness of the Enterprises. In furtherance of that responsibility, this part sets forth minimum requirements with respect to the corporate governance practices and procedures of the Enterprises.

§ 1710.2 Definitions.

For purposes of this part, the term:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub.L. 102–550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

(b) *Agent* means any person, other than a board member, executive officer, or employee of an Enterprise, who acts on behalf or for the benefit of an Enterprise, such as representing an Enterprise in contacts with third parties or providing professional services to an Enterprise.

(c) *Board member* means a member of the board of directors; and, for purposes of subpart D of this part, the term ''board member'' includes a current or former board member.

(d) *Board of directors* means the board of directors of an Enterprise.

(e) *Chartering acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

(f) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment. The term ''compensation'' includes all direct and indirect payments of benefits, both cash and non-cash, including, but not limited to, payments and benefits derived from compensation or benefit agreements, fee arrangements, perquisites, stock option plans, post employment benefits, or other compensatory arrangements.

(g) *Conflict of interest* means an interest in a transaction, relationship, or activity that might affect adversely, or appear to affect adversely, the ability to perform duties and responsibilities on behalf of the Enterprise in an objective and impartial manner.

(h) *Director* means the Director of OFHEO or his or her designee.

(i) *Employee* means a salaried individual, other than an executive officer, who works part-time, full-time, or temporarily for an Enterprise.

(j) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term ''Enterprises'' means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(k) *Entity* means a corporation, company, association, firm, joint venture, general or limited partnership, society, joint stock company, fund, or other organization or institution.

(l) *Executive officer* means any senior executive officer and any senior vice president of an Enterprise and any individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function of an Enterprise, or who reports directly to the chairperson, vice chairperson, chief operating officer, or president of an Enterprise; and, for purposes of subpart D of this part, the term ''executive officer'' includes a current or former executive officer.

(m) *Independent board member* means a board member who meets the criteria for independence under the NYSE rules for audit committee members, regardless of the committee(s) on which the board member serves.

(n) *Legal expenses* means, with respect to a claim, proceeding, or action, the amount of legal or other professional fees and expenses, and the amount of, and any cost incurred in connection with a penalty, fine, assessment, judgment, or settlement.

(o) *NYSE* means the New York Stock Exchange.

(p) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(q) *Payment,* for purposes of subpart D of this part, means:

(1) Direct or indirect transfer of funds or assets;

(2) Forgiveness of a debt or other obligation;

(3) Conferment of a benefit, including but not limited to stock options and stock appreciation rights; and

(4) Segregation of funds or assets, establishment or funding of a trust, or purchase of or arrangement for a letter of credit or other instrument, for the purpose of making, or pursuant to an agreement to make, a payment on or after the date such funds or assets are segregated, such trust is established, or such letter of credit or such other instrument is made available, without regard to whether the obligation to make

such payment is contingent on the determination, after such date, of the liability for such payment or the liquidation of the amount of such payment.

(r) *Person* means an individual or entity.

(s) *Senior executive officer* means the chairperson of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairperson, any executive vice president of an Enterprise, and any individual, without regard to title, who has similar responsibilities.

§ § 1710.3—1710.9 [Reserved]

Subpart B—Corporate Practices and Procedures

§ 1710.10 Applicable law.

(a) *Election.* Each Enterprise shall elect to follow and be bound by the corporate governance practices and procedures of one of the following bodies of law, to the extent such procedures are not inconsistent with safety and soundness and applicable Federal law, rules, and regulations:

(1) Law of the jurisdiction in which the principal office of the Enterprise is located;

(2) Delaware General Corporation Law, Del. Code Ann. tit. 8, as amended; or

(3) Model Business Corporation Act, as amended.

(b) *Designation.* Each Enterprise shall designate in its bylaws the body of law elected pursuant to paragraph (a) of this section within 90 calendar days from the effective date of this part.

§ 1710.11 Committees of board of directors.

(a) *Committees.* An Enterprise may provide in its bylaws for the establishment of committees of the board of directors, in addition to the audit and compensation committees required under paragraph (b) of this section. No committee of the board of directors shall have the authority of the board of directors to amend the bylaws and no committee shall operate to relieve the board of directors or any board member of any responsibility imposed by applicable laws, rules, and regulations.

(b) *Audit and compensation committees.* Each Enterprise shall provide in its bylaws, within 90 calendar days after the effective date of this part, for the establishment of the following committees, however styled:

(1) An audit committee that is in compliance with the charter, independence, composition, expertise, and all other requirements of the audit committee rules of the NYSE.

(2) A compensation committee, comprised of at least three independent board members, whose duties include, at a minimum, ensuring that compensation plans for executive officers and employees comply with applicable laws, rules, and regulations and approving the compensation of senior executive officers.

§ 1710.12 Compensation of board members, executive officers, and employees.

Compensation of board members, executive officers, and employees shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities and comply with applicable laws, rules, and regulations.

§ 1710.13 Quorum of board of directors; proxies not permissible.

Each Enterprise shall provide in its bylaws, within 90 calendar days from the effective date of this part, that, for the transaction of business, a quorum of the board of directors is a majority of the entire board of directors and that a board member may not vote by proxy.

§ 1710.14 Conflict-of-interest standards.

Each Enterprise shall establish and administer written conflict-of-interest standards that will provide reasonable assurance that the board members, executive officers, employees, and agents of the Enterprise discharge their responsibilities in an objective and impartial manner.

§§ 1710.15–1710.19 [Reserved]

Subpart C—Responsibilities of Board of Directors

§ 1710.20 Conduct of board members.

(a) *Actions.* Each member of the board of directors of an Enterprise, in conducting the business of the Enterprise, shall act:

(1) On a fully informed, impartial, objective, and independent basis;

(2) In good faith and with due diligence, care, and loyalty;

(3) In the best interests of the shareholders and the Enterprise; and

(4) In compliance with the chartering act of the Enterprise and other applicable laws, rules, and regulations.

(b) *Time.* Each board member of an Enterprise shall devote sufficient time and attention to his or her responsibilities in conducting the business of the Enterprise.

§ 1710.21 Responsibilities of board of directors.

(a) *Responsibilities.* The board of directors is responsible for managing the conduct and affairs of the Enterprise to ensure that the Enterprise is operated in a safe and sound manner, including, at a minimum:

(1) Reviewing and overseeing corporate strategy, major plans of action, risk policy, as well as monitoring corporate performance;

(2) Hiring and retaining qualified senior executive officers and overseeing succession planning for such senior executive officers;

(3) Ensuring that compensation plans for executive officers and employees comply with applicable law, rules, and regulations and approving the compensation of board members and senior executive officers;

(4) Ensuring the integrity of the accounting and financial reporting systems of the Enterprise, including independent audits, and that appropriate systems of control are in place to identify and monitor risk and compliance with the chartering act of the Enterprise and other applicable laws, rules, and regulations;

(5) Remaining informed of the condition, activities, and operations of the Enterprise;

(6) Overseeing the process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors; and

(7) Ensuring the responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

(b) *Additional guidance.* The board of directors should refer to publications of and formal pronouncements of OFHEO for guidance on the responsibilities of the board of directors.

§ § 1710.22–1710.29 [Reserved]

Subpart D—Indemnification Payments

§ 1710.30 Permitted indemnification payments.

(a) *OFHEO administrative proceedings.* (1) Except as provided in § 1710.31, an Enterprise may make or agree to make indemnification payments to a board member or executive officer of the Enterprise with respect to legal expenses incurred in connection with an administrative proceeding initiated or undertaken by OFHEO, if:

(i) The board of directors of the Enterprise, in good faith, determines in writing after due investigation and consideration that the board member or executive officer acted in good faith and

in a manner he or she believed to be in the best interests of the Enterprise and that the indemnification payment will not materially adversely affect the safety and soundness of the Enterprise; and

(ii) The board member or executive officer agrees in writing to reimburse the Enterprise, to the extent the Enterprise is not covered by any commercial insurance policy or similar coverage, for that portion of an indemnification payment that subsequently becomes a prohibited indemnification payment under § 1710.31.

(2) In connection with an administrative proceeding initiated or undertaken by OFHEO:

(i) The board member or executive officer requesting an indemnification payment shall not participate in any way in the discussion of the board of directors and approval of such payment; provided, however, that such board member or executive officer may present the request for indemnification to the board of directors and respond to any inquiries from the board of directors concerning his or her involvement in the circumstances giving rise to the administrative proceeding.

(ii) In the event that a majority of the board members are named as respondents, the remaining board members may authorize independent legal counsel to review the indemnification request and provide the remaining board members with a written opinion of counsel as to whether the conditions delineated in paragraph (a)(1) of this section have been met. If the opinion of counsel concludes that such conditions have been met, the remaining members of the board of directors may rely on the opinion in authorizing the requested indemnification.

(iii) In the event that all of the board members are named as respondents, the board of directors shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a)(1) of this section have been met. If the opinion of counsel concludes that such conditions have been met, the board of directors may rely on the opinion in authorizing the requested indemnification.

(b) *Other civil actions or administrative proceedings.* In cases involving a civil action or an administrative proceeding not initiated or undertaken by OFHEO, an Enterprise may provide for payment to any board member, executive officer, employee, or agent of the Enterprise of legal expenses in accordance with applicable law, provided that such payment will not materially adversely affect the safety and soundness of the Enterprise.

§ 1710.31 Prohibited indemnification payments.

(a) *Prohibited indemnification payments.* An Enterprise or any affiliate of an Enterprise may not make, except as provided in paragraph (b) of this section, any payment to indemnify any board member or executive officer for any legal expense incurred in connection with an administrative proceeding initiated or undertaken by OFHEO that results in a final order or settlement pursuant to which the board member or executive officer is assessed a civil money penalty or is required to cease and desist from or take any affirmative action with respect to the Enterprise.

(b) *Exceptions.* An Enterprise may make a reasonable payment that:

(1) Is used to purchase any commercial insurance policy or similar coverage; provided, however, that such insurance policy or similar coverage shall not be used to indemnify a board member or executive officer for the cost of any civil money penalty assessed against him or her in an administrative proceeding initiated or undertaken by OFHEO, but may be used to pay other legal expenses incurred in connection with such administrative proceeding or to pay the amount of any restitution to the Enterprise; or

(2) Represents partial indemnification for legal expenses specifically attributable to particular charges for which there has been a formal and final adjudication or a finding in connection with a settlement that the board member or executive officer has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty.

Dated: April 4, 2001.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

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